

Union Budget 2011-12

Tax Proposals

Economic Laws Practice
Advocates & Solicitors

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1. Direct Taxes

What FM said

- Amendment only in respect of certain 'Urgent' matters
- Intend to bring DTC w.e.f. April , 2012

Following changes in line with DTC provisions

- Alignment of Tax Rates
- Widening of investment linked incentives
- SEZ
 - MAT to be levied on Units and Developers of SEZ
 - DDT to be levied on Developers of SEZ

- SEZ
- Transfer Pricing
- Dividends received from foreign subsidiaries
- Limited Liability Partnerships
- Liaison office
- Tax rates

Amendments effecting units/developers in SEZ

Particulars	Existing Provision	Budget Proposal	DTC Provisions
SEZ Developer			
Income-tax	Exempt	Exempt	Exempt
MAT	Exempt	Taxable*	Taxable
DDT	Exempt	Taxable**	Taxable
SEZ Unit			
Income-tax	Exempt	Exempt	Exempt
MAT	Exempt	Taxable*	Taxable
DDT	Taxable	Taxable	Taxable

* Effective from 1st April 2012

** Effective from 1st June 2011

● Section 92C

- Government to specify different percentage for different industries
 - ❖ Present harbour of 5% done away with
- Controversy in relation to the applicability of the tolerance % is sought to be addressed

● Section 92CA

- Presently the TPO could initiate proceedings only upon reference by the ITO
- Powers of the TPO widened
 - ❖ TPO can suo moto initiate survey proceedings
- Open Issues
 - ❖ Draconian provisions, may be misused by the TPO

Tightening the Noose on Non-Cooperating Countries

- Central Government empowered to specify any country/territory as “notified jurisdictional area”
 - If there is lack of effective exchange of information from them
- Applicability of Transfer Pricing provisions
 - Party(s) in such jurisdiction to be deemed to be associated enterprises
 - Transactions with such parties deemed to be international transactions
 - Party(s) need to comply with the TP Provisions and Guidelines
- No Deduction
 - For payments to Financial Institutions
 - On expenses/allowances/depreciations on payments for such transactions
- Receipts to be treated as income, if satisfactory explanation not provided to the AO on the source
- Any payments to such persons will invite withholding tax at 30% or more

Issues

- Guidelines and or basis of listing of country/territory as “notified jurisdictional area” not been outlined
- No minimum threshold prescribed in respect of
 - Share Holding Pattern
 - Income
- Onus on tax payers to justify the transactions
- Will the withholding to apply only if “income is chargeable to tax”

- New Section 115BBD introduced
 - To tax dividend from a foreign subsidiary
 - ❖ Proposed to be taxed @ 15%
 - ❖ Present taxability @ 30% plus applicable surcharge
 - No Deduction in respect of any expenditure incurred to be allowed
 - Benefit has been granted to the Indian Co., which brings the dividend into India
 - Open Issues
 - ❖ Deemed Dividend included in the definition of the “Dividend”
 - ❖ Interest paid in relation to borrowings, for funding the foreign subsidiary

Alternative Minimum Tax on LLPs

- LLP subjected to Alternate Minimum Tax ('AMT') at 18.5%
 - Payable where regular income tax is less than AMT
 - AMT to be calculated on Adjusted Total Income, which is total income as increased by:
 - ❖ Deduction claimed by an SEZ unit under Section 10AA; and
 - ❖ Deduction under Chapter VI-A (which includes Section 80-IA and other Sections)
 - Tax credit available where AMT exceeds Income Tax payable under the IT Act
 - ❖ Can be carried for 10 AYs from the AY in which the credit becomes available
 - ❖ AMT to be set-off against the income tax payable in any FY

- Amendment will come into force from April 1, 2012

- Open Aspects:
 - Clarity on carry-forward & set-off of AMT credit on conversion of an LLP into a Company and vice-versa

- Section 285 proposed to be introduced, wherein
 - A non-resident having a LO in India is required to file an annual statement
 - Within sixty days from the end of the financial year
 - In respect of its activities in a financial year
- Analysis
 - Various judicial forums including in the case of DDIT vs. Nike Inc and IKEA Trading have held that liaison office does not create a PE
 - In the absence of a PE, non-resident were not filing return of income in India
 - Tax department will now have data to examine whether LO is a PE or not
 - ❖ Likely to increase litigation on this aspect

Rate Change under the IT Act, 1961

● For Individuals/ HUF/ AOP/BOI:

Existing		Proposed	
Income (INR)	Rate (%)*	Income (INR)	Rate (%)*
0-1,60,000**	Nil	0-1,80,000**	Nil
1,60,001-5,00,000	10	1,80,001-5,00,000	10
5,00,001-8,00,000	20	5,00,001-8,00,000	20
8,00,001 and above	30	8,00,001 and above	30







- * Education cess of 2% and Secondary Education cess of 1% is leviable on the amount of income-tax.
- ** The basic exemption limit is:
 - INR 1,90,000 for resident women below the age of 60 years
 - INR 2,50,000 for resident individuals of the age of 60 years or more
 - INR 5,00,000 for Very Senior Citizens of the age of 80 years or more






2. Indirect Taxes

GST

Signals on the introduction of GST

In December, the Union Finance Minister had mentioned that the Central Government was willing to consider a phased approach for the introduction of GST.

Issue		Emerging Position
Transition date		To be decided post discussion with States
Constitutional amendments		Step towards roll out of GST, Constitutional Amendment Bill to be introduced in this session of Parliament
Draft legislation		Bill to be introduced this year
Alignment of CED and ST rates with proposed CGST rate		No change in CED & ST Standard Rates Increase in lower CED rate to 5% from 4%
Reduction in number of CED exemptions		Reduction in number of exemptions from CED
CST		No reduction in CST rate

Issue		Emerging Position
De minimis limits		No change in thresholds
Expanded scope of ST		New services brought under tax net, scope of some taxable services expanded
Automatic refunds		No mention in FM speech
Place of supply rules		No mention in FM speech
Time of supply rules		Notified. Basis changed from “receipt” to “accrual”

Proposed Constitutional Amendments

- Article 246A
 - ❖ Authorisation to Centre and States to make laws
- Article 269A
 - ❖ Centre to charge GST on inter-State supplies, to be shared by Centre and States
 - ❖ Imports to be deemed to be inter-State supplies
 - ❖ Parliament to formulate principles to determine an inter-State supply
- Article 279A
 - ❖ GST council comprising Centre and State representatives
 - ❖ GST Council to have recommendatory powers
 - ▶ Taxes to be subsumed in GST, exemptions, threshold limits, rates, other matters
- Article 279B
 - ❖ GST Dispute Settlement Authority to adjudicate disputes/complaints of deviation from recommendations of GST Council
- Recasting of other articles relating to taxing powers, definitions, etc. as appropriate

Constitutional amendments

Formation and role of GST Council

Formation and role of GST Dispute Resolution Panel

Draft legislations

-Centre

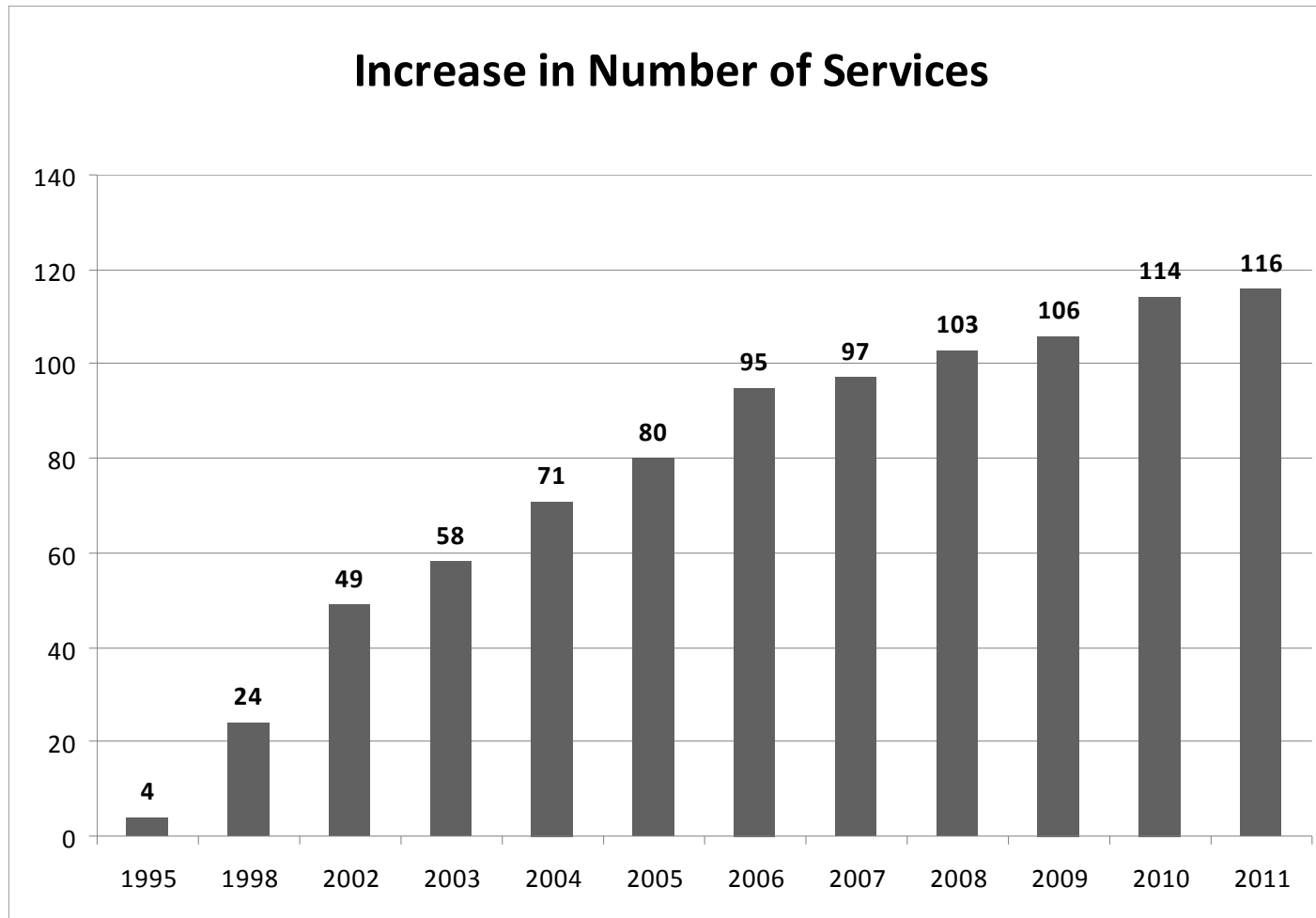
States

IT Infrastructure

Administrative structure

Service Tax

Service Tax net widened



- **New services introduced**

- Services provided by air-conditioned restaurants with licence to serve liquor
- Short term accommodation in hotels/clubs/guest houses

- **Amendment to existing entries**

- Life insurance services
 - ❖ To cover all services including in relation to management of investments
- Commercial training and coaching services
 - ❖ To cover all services except courses recognized by law
- Club or association services
 - ❖ To cover services rendered to non-members
- Business support services
 - ❖ To cover operational and administrative assistance of any kind
- Legal services
 - ❖ To cover services by business entities to individuals, representation services to business entities, and arbitration services to business entities
- Healthcare services
 - ❖ To cover all services provided by private hospitals with more than 25 beds, diagnostic services and services provided by doctors if provided from clinical establishment

Other legislative changes

- Amendment to penal provisions
- Export of Services Rules amended in a move towards a destination-based levy in respect of B2B services while origin based levy to B2C services
 - Preferential location services provided by Builders – Category I
 - Rail Travel & Health Check Up – Category II
 - Transport of Goods by Air – Category III
 - Market Research Agency – Category III
- Import of Services Rules
 - Transportation of Goods by Air & Road – Category III
- Works Contract (Composition Scheme)
 - Cenvat Credit restricted to 40% of Service Tax paid on Commission and Installation, Commercial and Industrial Construction and Construction of Residential Complex, if such service provider has avail credit on inputs

- **Point of Taxation Rules, 2011 notified wef 1-4-2011**
 - Draft Rules circulated in August 2010
 - Time of provision of service will be the earliest of the following:
 - ❖ Date of provision of service
 - ❖ Date of invoice
 - ❖ Date of payment
 - Consequential changes to existing Service Tax Rules
 - ❖ Effectively, a switch to accrual basis of taxation, as applies to other principal indirect taxes
 - ❖ Adjustment of tax when service not provided

CENVAT Credit

- Amendments to definitions

- Capital goods

- ❖ Inclusion of goods used outside the factory of the manufacturer for generation of electricity for captive use within the factory

- Input

- ❖ Definition of “input” amended to include all goods used in a factory by a manufacturer, and all goods used by a service provider for providing an output service
 - ❖ “Inputs” excludes
 - ▶ Petroleum items
 - ▶ Any goods used for construction of a civil structure except when used in the provision of any specified construction service
 - ▶ Goods having no relationship with the manufacture of final product
 - ▶ Goods primarily meant for the personal use or consumption of employees (such as food items, goods used in guesthouses etc.)

- Input service

- ❖ Definition of “input service” amended to include all services used in a factory by a manufacturer, and all goods used by a service provider for providing an output service
 - ▶ Definition aligned with the definition of “Input”
 - ▶ Services meant primarily for the personal use or consumption of employees do not qualify as “input service”

- ▶ “Activities relating to business” deleted
- ▶ Business exhibition and legal services included in definition
- ▶ Exclusion for specified services relating to construction of civil structure other than when sub-contracted
- ▶ Exclusion for services primarily meant for the personal use or consumption of employees (such as outdoor catering, club membership etc.)

■ Exempted services

- ❖ Taxable services exempted on condition that credit of inputs and input services is not availed

- Facility to avail 100% Credit under Rule 6(5) deleted
- Rule 6(3) options not available to banking and life insurance companies
 - Banking companies obligated to pay 50% of credit availed
 - Life insurance companies obligated to pay 20% of credit availed
- Provision of services to SEZ will not require reversal of CENVAT credit
- Trading to be treated as non-taxable service
 - Value of trading will be the difference between sale and purchase price of goods
- Presumptive rate of tax for reversal of credit to be reduced to 5%

Issues on refunds/rebates

Issues for Manufacturers	Emerging Position
Cumbersome process for refund of service tax on goods exported	No simplification announced
Refunds of accumulated credits under rule 5 not forthcoming	No development
Delay in grant of drawback	No development
Service tax chargeable on services consumed by SEZ units outside the zone	Scheme introduced to enable grant of refunds

Mechanism to provide refund of service tax in the form of All Industry Service Tax Rate like All Industry rate of Duty Drawback

Issues for Service Providers	Emerging Position
Delays in granting refunds for exporters (even after amendments made in 2010)	No development
Rebate of input services – practically unimplementable	No development

Duality of taxes

Activity	Customs Duty	Excise Duty	Service Tax	VAT / CST
Import of designs, knowhow etc.	✓		✓	
Intellectual Property Services			✓	✓
Works Contract			✓	✓
Construction Services			✓	✓
Development of Software			✓	✓
Maintenance and repair			✓	✓
Telecommunication services			✓	✓

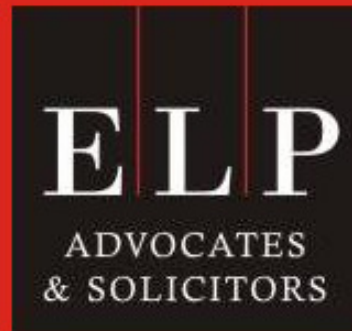
Central Excise Duty

- Section 11A substituted to make the provisions more clear and to insert new category of cases in respect of which SCN can be issued within 5 years
- Separate category carved out from extended period of limitation cases where a lower mandatory penalty of 50% will apply – will apply where an audit / investigation reveals short levy where transactions are reflected in the records.
- Even in cases of SCN's where extended period of limitation is invoked proposing 100% penalty, penalty can be remitted to 50% if details of transactions are found in the records
- Provisions of Sections 11AA and 11AB merged in 11AA – interest payable on duty not levied / short levied / not paid / short paid / erroneously refunded – rate of interest at a uniform 18%
- Section 11E inserted in the Act – creates a first charge on the property of a defaulter for excise dues subject to certain provisions of the Companies Act, Recovery of Debt due to Bank & Financial Institution Act and SARFAESI
- Section 12 of the Act retrospectively amended with effect from 10th May, 2008 to include reference to duties collected on the basis of compounded levy scheme imposed under Section 3A
- New Section 35R to empower the Board to issue instructions prescribing monetary limits below which appeals / applications / references need not be filed.

Customs Duty

Customs Duty- Legislative Changes

- Introduction of the concept of self assessment in the Customs Act. No requirement of assessment of every Bill of Entry or Shipping Bill
 - Move towards trust based compliance management
 - Definition of assessment to now include self – assessment
 - Consequential amendments in Sections 17 (assessment) and 18 (provisional assessment). When an importer cannot self-assess, he may request for assessment by an officer
- Section 27 amended – time limit for claiming refund of duty – 1 year from the existing six months – for all categories of importers
- Section 28 amended – changes similar as in Section 11A of the Central Excise Act
- Sections 28AA and 28AB substituted with a revised Section 28AA - provisions relating to interest – standard rate of 18%
- Section 110A amended to empower adjudicating authority to release goods instead of the Commissioner of Customs
- New Section 142A inserted to create a first charge on the property of the defaulter subject to other legislations– similar to the amendment in the Central Excise Act
- Amendment in Section 3 of Customs Tariff Act, 1975 to substitute reference from Standards of Weights & Measures Act, 1976 to Legal Metrology Act, 2009



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