

THE UNION BUDGET 2011-12

Direct Tax Implications

Kanu H. Doshi
Bhargava Vatsaraj



FORUM
OF FREE ENTERPRISE

"Free Enterprise was born with man and shall survive as long as man survives".

- A. D. Shroff
Founder-President
Forum of Free Enterprise

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Unlike last year's Budget (2010) which was for KHAAS ADMI who is Income tax payer, this year's Budget (2011) is for AAM ADMI with a lot of mention of agriculture, rural areas, Infrastructure and subsidies. In the following pages, we examine the Direct Tax proposals relevant to major segments of the society and the economy:

The Finance Bill 2011 has been passed with a few changes in Lok Sabha on 22nd March 2011. These changes have been duly incorporated in these notes.

INCOME TAX

The proposals in the Finance Bill as now passed by Lok Sabha on 22nd March 2011 shall become applicable from Assessment Year 2012–2013 (i.e. the financial year to end on March 31, 2012), unless otherwise specifically stated.

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INCOME TAX RATES

For Individuals, Hindu Undivided Family, Association Of Persons and Body of Individuals

Income	Existing rates Tax	Surcharge	Education Cess	New rates Total per cent	Tax	Surcharge	Education Cess	Total Percent
₹ 1,60,001 to ₹ 1,80,000 (Individuals other than covered under Note 1 & 2 below)	10	-	0.30	10.30	-	-	-	-
₹ 1,80,001 to ₹ 5,00,000	10	-	0.30	10.30	10	-	0.30	10.30
₹ 5,00,001 to ₹ 8,00,000	20	-	0.60	20.60	20	-	0.60	20.60
₹ 8,00,001 & above	30	-	0.90	30.90	30	-	0.90	30.90

Eligibility age of senior citizens has been reduced from 65 to 60 years.

In the case of a resident woman below the age of sixty years, the basic exemption limit is ₹ 1, 90,000/- . For income up to ₹ 5,00,000, tax @ 10.30 per cent is applicable.

In the case of a resident individual of the age of sixty years or above, the basic exemption limit is ₹ 2,50,000/- . For income up to ₹ 5,00,000, tax @ 10.30 per cent is applicable.

A new category of 'Very Senior Citizen' of the age 80 years and above, is eligible for a higher exemption limit of ₹ 5 lakh.

FOR PARTNERSHIP FIRM

- Partnership Firms are taxable @ 30 per cent.
- No surcharge is levied in the case of a firm.
- Education Cess is applicable @ 3 per cent on income tax (inclusive of Surcharge, if any).

FOR DOMESTIC COMPANIES

- Domestic companies are taxable @ 30 per cent.
- Surcharge reduced from present 7.5 to 5 per cent if income is in excess of ₹ 1,00,00,000.
- Education Cess is applicable @ 3 per cent on income tax (inclusive of Surcharge, if any).
- The rate of tax on profits from life insurance business is 12.5 per cent plus Surcharge and Education Cess.

Minimum Alternate Tax is increased from 18 per cent to 18.5 per cent of book profit.

FOR FOREIGN COMPANIES

- Foreign companies are taxable @ 40 per cent.
- Surcharge is reduced from 2.5 per cent to 2 per cent if income is in excess of ₹ 1,00,00,000.
- Education Cess is applicable @ 3 per cent on income tax (inclusive of Surcharge, if any).

DOMESTIC TAXATION

Amendment in definition of charitable purpose

- Under existing provisions, the first proviso to S.2(15) provides that any activity in the nature of trade, commerce

or business or rendering of any service in relation to trade, commerce or business for a cess or fee would be excluded from the definition of 'charitable purpose' irrespective of the nature of use or application of the income from such activity.

Section 2(15) is amended to enhance the current monetary limit in respect of receipts from such activities mentioned in first proviso to S.2(15) from ten lakh rupees to twenty five lakh rupees. The amendment shall take effect from 1st April 2012.

Exemption of income from notified infrastructure debt fund

- A new clause is inserted in S.10 wherein income received from infrastructure debt fund notified by Central Government and set up in accordance with the prescribed guidelines would be exempt from tax.
- S.115A is also amended to provide that any interest received by a non-resident from such notified debt fund shall be taxable @ 5%.
- A new S.194LB is inserted to provide that tax shall be deducted at source @ 5% by such notified debt fund on any interest paid by it to a non-resident.
- These amendments shall take effect from 1st June 2011.

Extension of time limit for obtaining exemption from Employees Provident Fund Organisation (EPFO)

- The time limit is extended in order to enable EPFO to process the application made by various establishments seeking exemption u/s 17 of the EPF & MP Act from 31st Dec 2010 to 31st March 2011.

Increase in the weighted deduction of amount paid/ incurred for scientific research

- Clause (a) of sub section (2AA) of S.35 is amended so as to enhance the weighted deduction from one hundred and seventy five per cent to two hundred percent on account of amount paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme. This amendment is to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

Amendment in provisions related to deductions in respect of the expenditure on Specified Business

- S.35AD is amended to include following two new businesses as "Specified Business" with effect from 1st April 2012:
 - i) The business of developing and building a housing project under a scheme for affordable housing framed by the Central Government, or the State Government as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed, vide insertion of sub clause (vii) in clause (c) of S. 35AD(8).
 - ii) The production of fertilizer in India, vide insertion of sub clause (viii) in clause (c) of S. 35AD(8).
- New clauses (ad) and (ae) in sub section (5) of S.35AD are inserted to specify that the date of commencement of operations shall be on or after the 1st of April 2011 for the business to be specified u/s 35AD(8)(c) (vii) and (viii) respectively. This amendment will take effect from 1st April 2012 and will apply in relation to assessment year 2012-13 and subsequent years.

- Sub clauses (iv) and (v) of clause (c) of S. 35(8) are amended to omit the word "new" from the existing definition of "Specified Business" in respect of new hotel and new business. The word "new" is removed in order to remove ambiguity u/s 73A. With this amendment, loss of the assessee on account of a 'Specified Business' claiming deduction u/s 35AD would be allowed to be set off against the profit of another "Specified Business", whether or not the latter is eligible for deduction u/s 35AD. Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, from the hotel or hospital which is eligible for deduction under section 35AD.

The amendment will take effect retrospectively from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

Benefits related to contribution to pension schemes

- A new clause (iv a) in S. 36(1) is inserted to provide that the contribution made by an employer to a notified pension scheme to the extent of 10 per cent of salary would be allowed as a deduction to the employer in computing the income under the head "Profits and gains of business or profession". The aforesaid amendment will take effect from 1st April 2012 (i.e. AY 2012-2013).
- S. 80CCE is amended to exclude the contributions made by an employer to a notified pension scheme, from the limit of deduction of one lakh rupees available to an individual cumulatively under existing S.80C, 80CCC, 80CCD. The aforesaid amendment will take effect from 1st April 2012 (i.e. AY 2012-2013).

Deduction for investment in long-term infrastructure bonds

- S. 80CCF is amended to allow deduction on account of investment made in notified long-term infrastructure bonds during financial year 2011-2012. The amendment will take effect from 1st April 2012 (i.e. AY 2012-2013).

Deduction in respect of profit and gains from business of generation and distribution of power

- The time limit is extended for an undertaking set up for generation and distribution of power if it begins to generate power up to 31st March 2012.
- The time limit is extended for an undertaking which starts transmission or distribution by laying a network of new transmission or distribution lines up to 31st March 2012.
- The time limit is extended for an undertaking which undertakes substantial renovation and modernization of existing network of transmission or distribution lines up to 31st March 2012.

Amendments affecting SEZ developers/units in SEZ

- A proviso to S. 115JB (6) is inserted to provide that the provisions of S.115JB (6) exempting SEZ developers and units in SEZ from Minimum Alternate Tax would be inapplicable with effect from 1st April 2012 (i.e. AY 2012-2013).
- A proviso to S. 115O(6) is inserted to discontinue the availability of exemption from Dividend Distribution Tax in case of SEZ developers with effect from 1st June 2011. Similarly, corresponding Explanation to S. 10(34) of the Act is omitted with effect from 1st June 2011.

- Consequential amendments have also been proposed to be made in the Second Schedule of the SEZ Act, 2005.

Increase in rate of Minimum Alternate Tax (MAT)

- S. 115JB(1) is amended to increase the rate of MAT to 18.5 per cent commencing AY 2012–2013 from the existing rate of 18 per cent of book profits of the company.

Special Provisions relating Limited Liability Partnerships

- Special Provisions relating to applicability of Alternate Minimum Tax (AMT) to Limited Liability Partnerships (LLP) vide insertion of new Chapter XII-BA:
 - S. 115JC is inserted to provide for AMT @ 18.5% in case the tax payable at such rate on the "adjusted total income" is less than the tax payable as per normal provisions of the Act.
 - New S.115JC(2) explains "adjusted total income" as total income of the LLP before giving effect to proposed Chapter 56 XII-BA as increased by deductions claimed under Chapter VIA and deduction u/s 10AA.
 - S. 115JD is inserted to provide for credit of AMT paid by LLP over the tax payable as per normal provisions of the Act and provides that the same would be allowed to be carried forward up to tenth assessment year immediately succeeding the assessment year in which such tax credit becomes allowable.
 - Further, S. 115JD provides that the tax credit would be set off against the tax payable as per normal provisions of the Act in the assessment year in which tax payable as per normal provisions of the Act exceeds AMT.

Tax on distribution of income to unit holders

Scope of S. 115R is expanded to include additional income tax on distribution by Mutual Fund at the rate of:

- 25% if the recipient is an individual or HUF in case of distribution by money market mutual fund or a liquid fund – 30% if the recipient is any other person in case of distribution by money market mutual fund or a liquid fund.
- 12.5 % if the recipient is an individual or HUF in case of distribution by a debt fund other than money market mutual fund or liquid fund and – 30% if the recipient is any other person in case of distribution by debt fund other than a money market mutual fund or a liquid fund.
- This amendment shall take effect from 1st June 2011.
- Distribution of income by an equity oriented unit continues to be exempt from tax.

Exemption to certain class of persons of furnishing a return of income Section 139(1C)

- Section 139(1C) is inserted with effect from 1st June, 2011, empowering the Central Government to exempt, by notification in the official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in the notification.

Amendment to Section 143(1B)

- Section 143(1B) is amended for extending the time limit for issue of notification from 31st March 2011 to 31st March 2012 for the purpose of giving effect to the scheme made under section 143(1A).

Deletion of Section 282B

- Section 282B is omitted regarding allotment of Document Identification Number with retrospective effect from 1st April, 2011.

INTERNATIONAL TAXATION TRANSFER PRICING

Determination of Arms length price

- +1-5 per cent variation is substituted permitting uls 92C between the actual price and arms length price by such percentage for various business segments as may be notified by the Central Government.
- This amendment shall take effect from 1st April 2012 and will, accordingly, apply in relation to the Assessment Year 2012-2013.

Powers of Transfer Pricing Officer (TPO)

- It is now provided that TPO shall have the jurisdiction to determine the arms length price of the transaction which is noticed by him also in the course of proceedings before him. The transactions shall be in addition to the transactions referred to the TPO by the Assessing Officer. (The aforesaid provision is introduced in order to annul the effect of CBDT instruction no. 3 of 2003 and the decision rendered by Delhi ITAT in the case of Amadeus India Private Limited).
- It is currently provided uls 92CA that the TPO can exercise powers available to the AO uls 131(1) and 133(6) which include powers of summoning or calling for detail for the purpose of inquiry or investigation into the matter.
- It is also proposed that TPO shall now have the power to conduct a survey uls 133A of the Act in order to conduct on the spot inquiry and verification.
- This amendment shall take effect from 1st June 2011.

Extension of time limit for filing the tax return in cases where transfer pricing audit is mandatory

- Due date of filing the return of income is extended from 30th September of the assessment year to 30th November of the assessment year for corporate assessees who have undertaken international transaction and filed a transfer pricing report in Form 3CEB.
- This amendment takes effect from 1st April, 2011.

Special measures in respect of transactions with person located in notified jurisdictional area introduced by insertion of new S.94A

- New S.94A is introduced in the Act effective from 1st June, 2011 as a counter measure in respect of transactions with persons located in a notified jurisdictional area. These anti avoidance provisions are aimed to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India.
- The new section provides as under:

Enabling powers to Central Government to notify any country or territory outside India which **does** not have effective exchange of information by it with India, as a notified jurisdictional area.

Scope of the term "person located in a notified jurisdictional area" is given wider meaning to include (a) a person resident in such notified area, (b) a company established in such notified area and (c) permanent establishment in notified area of any non-resident of such notified area.

- These provisions will be applicable in case of any transaction by an assessee, where either of the party

is located in such notified jurisdictional area. If so, then the following implications shall follow:

- All the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be international transaction and accordingly, compliance under provisions of sections 92 to 92F, also known as transfer pricing provisions, shall be applicable.

Any payments to any financial institution located in such jurisdictional area shall be allowed as deduction only if **assessee** provides an authorization, in prescribed form, authorizing the board or any other income tax authority to seek relevant information from such financial institution on behalf of assessee.

- Any expenditure or allowance (including depreciation) arising from the transaction with a person located in such jurisdictional area shall be allowed as deduction only if **assessee** maintains such other document and furnishes such information as may be prescribed in this behalf.
- If any sum is received from a person located in the notified jurisdictional area in any previous year, then, the onus is on the **assessee** to satisfactorily explain, the source of such money in the hands of such person or in the hands of the beneficial owner, or in case of his failure to do so, the amount shall be deemed to be income of the **assessee** for that previous year.
- Any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at source at the highest rate of tax specified in the relevant provision of the Act or rates in force or 30 percent.

PROVISION AND AMENDMENTS TO FACILITATE EXCHANGE OF INFORMATION BETWEEN TAX AUTHORITIES OF INDIA AND OTHER FOREIGN TERRITORY

Income tax authorities empowered to seek information under exchange of information from tax authorities outside India

- Section 131 is amended to insert new sub-section which proposes to empower officer not below the rank of Assistant Commissioner of Income Tax rights relating to discovery, production of evidence etc to make enquiry or investigation in respect of any person or class of persons in relation to double tax avoidance agreement or exchange of information agreement.

Further, it is also proposed to empower such authority, as notified by board, to impound and retain any books of accounts and other documents produced before it in any proceedings under the Act.

Assessing officer empowered to call for information

- Certain income tax authorities such as assessing officer, the Deputy Commissioner (Appeals), Joint Commissioner or the Commissioner (Appeals) are now empowered to **call** for any information under double tax avoidance agreement or exchange of information agreement from tax authorities of country outside India. Such powers are conferred effective from 1st June, 2011

Extension of time limit for assessments in case of exchange of information

S.153 of the Act provides for the time limits for completion of assessments and reassessments. In this regard, certain exclusion were provided in respect of specified period

for computing the period of limitation for completion of assessments and reassessments.

- Now the time taken in obtaining information from the tax authorities in jurisdictions situated outside India, under a double tax avoidance agreement or exchange of information agreement, is to be excluded from the statutory time limit prescribed for completion of assessment or reassessment.

Period of exclusion specified by amendment in Explanation to S.153

- In light of amendment in S.153, it is proposed that the period commencing from the date on which a reference for exchange of information is made by a competent authority and ending with the date on which the information so requested is received by the Commissioner subject to maximum period of six months, shall be excluded from the statutory time limit provided u/s 153 for completion of assessment or reassessment.

OTHER AMENDMENTS RELATING TO INTERNATIONAL TAX

Taxation of foreign dividends at a concessional rate of 15 per cent

- Dividends received by an Indian holding company from subsidiary foreign company will now be taxed at concessional rate @ 15%. However, no expenditure in relation to earning such dividend shall be allowed under the Act. A "subsidiary foreign company" shall mean a company in which the Indian company holds more than half of its nominal equity share capital.

"Dividends" shall have same meaning as provided u/s 2(22) but will not include deemed dividend by way of advancement of loan as provided u/s 2(22)(e).

Insertion of new provisions for reporting of activities of liaison offices

- A new S.285 is introduced mandating the filing of annual information by non-residents in respect of their liaison offices in India, within sixty days from the end of financial year, in the prescribed form and providing prescribed details relating to their liaison offices in India.

(The aforesaid provision is introduced in order to closely examine the activities actually carried out by the liaison office as it has been held in various decisions rendered by courts of law that a liaison office does not constitute permanent establishment of the foreign company on the premise that it is not permitted by RBI to undertake business generating activities).

TDS RATES FOR ASSESSMENT YEAR 2012-13 (FINANCIAL YEAR 2011-12)

(A) On payments to residents (subject to notes below)

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partnership Firm	Individual, HUF, AOP, BOI
				Rate (percent)		
1.	Interest on Securities	Payment in excess of ₹ 2,500	193	10	10	10
2.	Winning From Lotteries	Payment in excess of ₹ 5,000	194A	10	10	10

3.	Winning From Horse Race	Payment in excess of ₹ 10,000	194B	30	30	30
4.	Payment to contractors (other than for transport)	Payment in excess of ₹ 5,000	194BB	30	30	30
5.	Insurance Commission	Payment in excess of ₹ 30,000 per contract or ₹ 75,000 p.a.	194C	2	2	1
6.	Commission ■ Brokerage	Payment in excess of ₹ 20,000	194D	10	10	10
7.	Rent for Land or Building ■ Furniture & Fixture	Payment in excess of ₹ 5,000 p.a.	194H	10	10	10
8.	Rent for Plant & machinery, Equipments	Payment in excess of ₹ 1,80,000 p.a	194I	10	10	10
	Professional Fess/ Royalties			2	2	2
9.		Payment in excess of ₹ 30,000 p.a.	194J	10	10	10

Notes

1. No surcharge or cess shall be applicable while deducting tax at source on payments other than salaries to residents.
2. W.e.f. 1st April, 2010, the rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee.
3. For interest on Bank Deposits and Deposits with Post Office, the threshold limit is ₹ 10,000.

(B) On payments to non-residents (subject to notes below)

Sr. No.	Payments to Non-Resident Payee	Criteria for Deduction	Section	Rate (percent)
1.	Tax on Short Term Capital Gains	On sale of shares or units of mutual funds where STT is paid.	111A	15
2.	Tax on Long Term Capital Gains	Not being long term capital gains referred to section 10(33), 10(36) & 10(38) ie. Listed shares, units of mutual funds & units of UTI	112	20
3.	Winning from Lotteries	Payment in excess of ₹ 10,000	194B	30
t.	Winning From Horse Race	Payment in excess of ₹ 5,000	194BB	30
5.	Tax on royalty on copyrights, matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	a) Agreement made on or after 1st June, 1997 but before 1st June, 2005	115A(1)(b)/ 115A(1A)	20
		b) Agreement made after 1st June, 2005	115A(1)(b)/ 115A(1A)	10

6.	Tax on fees for technical services matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	a) Agreement made on or after 3rd June, 1977 before 1st June, 2005	115A(1)(b)	20
		b) Agreement made on or after 1st June, 2005	115A(1)(b)	10
7.	Tax on Interest	a) On borrowing in foreign currency by an Indian concern or by Government of India other than interest referred in (b) below	115A(1)(a)	20
		b) On notified infrastructure debt fund (w.e.f 1st June 2011)	194LB	5
8.	Other income	a) In case of non-resident companies		40
		b) In case of non-residents other than non-resident companies		30

Notes:

1. For NRI's opting to be taxed under chapter XII-A, tax shall be deductible at the rate of ten percent on long term capital gains and twenty percent on investment income.
2. The above rates will be increased by a surcharge at the rate of two percent (previously two and half percent) in the case of foreign company where the income or the aggregate of such incomes paid or likely to be paid exceeds one crore rupees.

3. Education cess and higher education cess shall be levied at the rate of two percent and one percent respectively
4. W e f 1st April, 2010, the rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee
5. Treaty rates will differ from Country to Country

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SHAILESH KAPADIA

(24-12-1949 – 19-10-1988)

Late Mr. Shailesh Kapadia, FCA, was a Chartered Accountant by profession and was a partner of M/s G.M. Kapadia & Co. and M/s Kapadia Associates, Chartered Accountants, Mumbai.

Shailesh qualified as a Chartered Accountant in 1974 after completing his Articles with M/s Dalal & Shah and M/s G.M. Kapadia & Co., Chartered Accountants, Mumbai. Shailesh had done his schooling at Scindia School, Gwalior and he graduated in Commerce from the Sydenham College of Commerce & Economics, Mumbai in 1970.

Shailesh enjoyed the confidence of clients, colleagues and friends. He had a charming personality and was able to achieve almost every task allotted to him. In his short but dynamic professional career, spanning over fourteen years, Shailesh held important positions in various professional and public institutions. His leadership qualities came to the fore when he was the President of the Bombay Chartered Accountants' Society in the year 1982-83. During his tenure he successfully organized the Third Regional Conference at Mumbai. He was member, Institute of Fiscal Studies, U.K.; member of the Law Committee and Vice-chairman of the Direct Taxation Committee, Indian Merchants' Chamber. He was also a Director of several public companies in India and Trustee of various Public Charitable Trusts.

He regularly contributed papers on diverse subjects of professional interest at refresher courses, seminars and conferences organised by professional bodies.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good".

- Eugene Black
*Former President,
World Bank*

FORUM

of Free Enterprise

The Forum of Free Enterprise is a non-political and non-partisan organisation started in 1956, to educate public opinion in India on free enterprise and its close relationship with the democratic way of life. The Forum seeks to stimulate public thinking on vital economic problems through booklets, meetings, and other means as befit a democratic society.

In recent years the Forum has also been focusing on the youth with a view to developing good and well-informed citizenship. A number of youth activities including essay and elocution contests and leadership training camps are organised every year towards this goal.

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