

Rews Beekly

March 2012

Volume I Issue3

Inside This Issue

Highlights of Union Budget Recent case laws Important Dates

Team Ksa

- CA Kamal Piyush
- CA Navin Kumar Malik
- CA Arun Kanodia
- CA Vijay Kumar Gupta
- CA Rajesh Kalani
- CA Rasmi Ranjan Jati
- CA Kuldeep Gupta
- CS Anil Kumar Arora
- CS Sanjana Dua

Services Offered

Audit and Assurance Accounting Services Income Tax Service Tax Value Added Tax Corporate Governance Services For Non-Resident Consultancy

Highlights (Proposal) of Union Budget 2012

Union Budget-2012 brings indirect tax pinch everybody while direct tax cuts benefit only those who earn enough to pay income tax. The hike in income tax exemption limit, individual saves only Rs. 2,060, whereas women gain only Rs. 1,030 and senior citizen gain nothing. During the budget section there are some new proposals which will bring in 2012-2013.

- TAX proposals for 2012-2013 mark progress towards implementation of Direct Tax Code (DTC) and Goods and Service Tax (GST).
- DTC rates proposed to be introduced for personal income tax.
- Proposal to introduce General Anti Avoidance Rule (GAAR) to counter aggressive tax avoidance scheme
- Rate of service tax has been increase from 10% to 12% with effect from April 1, 2012
- Introduction of negative list of services for levy service tax
- General rate of excise duty has been increased from 10% to 12% with immediate effect
- No change in the peak rate of custom duty

For detailed analysis on Union Budget 2012, please visit our web site: <u>http://www.ksaindia.in/otherpagetheme1.aspx?PAGENAME=Amendments%20</u> <u>after%20Budget%202012-13&CompanyID=0</u>

Other Changes

Rate of interest on Provident Fund has been decrease from 9.50% to 8.25%.

Important dates for the month of February 2012

Delhi: K-8, Ground Floor, Jangpura Extension, New Delhi-110014 Ph.: +91 11 24323155, Mobile: 9811061238, Fax: +91 11 24323156 Gurgaon: B-502, Suncity Heights, Suncity, Sector-54, Gurgaon-122001, Ph: +91 124 4241192 Surat: 206, Center Point, Ring Road, Surat-395002, Ph: +91 261 2462268, +91 261 2707175 Email: <u>kamalpiyush@ksaindia.in</u>, <u>ksaindia.in@gmail.com</u>, Website: <u>www.ksaindia.in</u>



HIGHLIGHTS– UNION BUDGET 2012

The slabs and rates of tax rate for Assessment Year 2013-2014 for resident Individual and Woman below 60 years are:

Net Income Range	Income Tax Rates	Education Cess
Up to Rs. 200,000	Nil	Nil
Rs. 200,001 – Rs. 500,000	10% of (total income <i>minus</i> Rs. 200,000)	3% of income-
Rs. 500,001 - Rs. 1,000,000	Rs. 30,000 + 20% of (total income <i>minus</i> Rs. 1,000,000)	tax
Above Rs. 1,000,000	Rs. 130,000 + 30% of (total income <i>minus</i> Rs. 1,000,000)	

No change in tax slabs for resident senior citizen and also no change in corporate tax.

- Alternate Minimum Tax (AMT) will apply @18.5% to all persons other than companies, claiming profit linked deductions. AMT will not applicable to persons (other than LLP) if adjustable total income of such person does not exceed Rs. 20 Lacs.
- Book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed, if the same is not credited to the Profit and Loss Account
- Section 68 amended to provide the nature and source of any sum credited, as share capital, share application money, share premium etc., in the books of closely held company shall be treated as explained only of the source of funds is also explained by the assessee company in the hands of resident share holders.
- Taxation of unexplained money, credits, investments, expenditures etc at the highest rate of @30% irrespective of the slab of income as well as no deduction for any expenditure or allowances under any provisions of the Act.
- Penalty will be levied on the undisclosed income admitted by the assessee during search and seizure operation (section 271AAB)
- Transfer pricing provisions, including procedure and penalty provisions, will be applicable to the transactions exceeding Rs. 5 Crores in a year between related resident parties for the purpose of computation of income, disallowance of expenses, etc. under sections 40A, 80-IA, 10AA and 80A or the transactions prescribed by the Board. Related persons to include companies having the same holding company.
- Due date of filing of income tax return in case of corporate assesses who are required to obtain and file Transfer Pricing Report is extended to 30th November each assessment year (applicable from assessment year 2012-2013).
- Furnishing of return of income has been made mandatory for every resident having any assets (including financial interest in any entity) located outside India or signing authority in any account located outside India. Furnishing of return by such a resident would be mandatory irrespective of the fact whether the resident tax payer has taxable income or not. (applicable from April 1, 2012)



IMPORTANT CHANGES IN TDS/TCS: (Applicable with effect from April 1, 2013)

- It shall be deemed that the Assessee has deducted and paid the tax on such sum on the date of furnishing of the return of income by the Resident payee referred to in the set proviso and meaning thereby no disallowance will be made on non deduction of TDS if the Resident payee has furnished the return of the income in hands of the deductor. (section-40(1a))
- No disallowance shall be made, on account of any expenditure being excessive or unreasonable having regard to the fair market value, in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F. Clause (b) of section 40A(2) amended so as to include therein any other company carrying on a business or profession in which the company referred to in sub-clause (b)(ii) has substantial interest.

(Following amendments will take effect from July 1, 2012)

- TDS @10% on any remuneration, fees or commission paid to the director, which is not in the nature of salary. (section-194J)
- Threshold limit of payment of interest on debenture issued by a company in which the public are substantially interested to a resident individual or HUF, has been increased from Rs. 2,500/- to Rs. 5,000/-. (section- 193)
- Seller of Immovable property with value exceeding Rs. 50 Lacs for Urban Area (Rs. 20 Lacs for Rural Area) will need to deduct tax at source @1% on sale value and pay it to the Government Treasury. (section-194LAA)
- Threshold for TDS on compensation or consideration for compulsory acquisition under section 194LA increased from Rs. 100,000/- to Rs. 200,000/-.

Failure to delay in Furnishing of TDS/TCS Return:

- Liable to pay by way of Fees of Rs. 200 per day from the due date to the date of furnishing of statement subject to not exceeding the total amount of TDS/TCS as the case may be. (section-234E). In addition, there will be penalty ranging from Rs. 10,000/- to Rs. 100,000/- will be applicable.
- Additional tax of 1% will be collected at source from the buyer on cash purchase of bullion or Jewellery in excess of Rs. 2 Lacs.
- TCS will applicable @1% on trading on coal, lignite and iron ore.
- Section 195(1) for deduction of tax at source on the payments to Non Resident shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non resident, whether or not the non resident has:
 - A residence or place of business or business connection in India or
 - Any other presence in any manner whatsoever in India. (this amendment will take effect retrospectively from April 1, 1962)
- Senior citizens, who do not have any income from business, are to be exempted from the payment of advance tax. (section-207) (amendment takes effect from for the financial year 2012-2013)



INCOME FROM BUSINESS AND PROFESSION (FOR THE ASSESSMENT YEAR 2013-2014)

- The assesses engaged in the business of generation or generation and distribution of power, will be allowed additional depreciation at the rate 20% under section 32(1)(iia), of the actual cost of the new machinery or plant (other than ships and aircrafts) acquired and installed in a previous year.
- Weighted deduction under section 35(2AB) @200% of expenditure incurred on scientific research or in house research and development facility to the business engaged in biotechnology or business of manufacture or production of specified article or things is being extend for further a period of five years i.e. up to March 31, 2017.
- Investment-linked deduction @100% of the capital expenditure (other than land, goodwill and financial instrument) will available under section 35AD to following new specified businesses:
 - Setting up and operating inland container depot or a container freight station,
 - Bee-keeping and production of honey and beeswax,
 - Setting up and operating a warehousing facility for storage of sugar.
- Investment-linked deduction @150% of the capital expenditure (other than land, goodwill and financial instrument) will available under section 35AD to following specified businesses:
 - Setting up and operating cold chain facility
 - Setting up and operating warehouse facility for storage of agricultural produce
 - Building and operating hospital with at least one hundred beds
 - Production of fertilizers
 - Developing and building Affordable Housing Project
- Limit of the total sales, turnover or gross receipts specified under section 44AB for getting accounts audited as well as for presumptive taxation under section 44AD is to be raised from Rs.
 60 Lacs to Rs. 1 Crore in the case person carrying business and from Rs. 15 Lacs to Rs. 25 Lacs in the of person carrying profession. However, Presumptive taxation is not applicable to:
 - A person carrying on profession under Section 44AA(1)
 - Person earning income in the nature of commission or brokerage income;
 - A person carrying on any agency business.
- Where a company, not being a company in which the public are substantially interested, receives from any person any consideration in the nature of Share Premium in excess of the fair market value to be treated as income under section 56(2).

INCOME FROM CAPITAL GAIN (FOR THE ASSESSMENT YEAR 2013-2014)

- The exemption of section 54F on reinvesting of capital gain on agriculture land is extending to HUF in addition to individual
- In case of conversion of sole proprietor/firm into company which is not regarded as transfer of capital asset, cost of acquisition of asset in hands of company would be the same as that in hands of sole proprietor/firm
- Exempt capital gains tax to individual and HUF on sale of a residential property (house and a plot of Land), if the sale consideration is used for subscription in equity of a manufacturing SME company for purchase of new plant and machinery and hold more than 50% share capital and voting rights.



EXEMPTIONS AND DEDUCTIONS

Exemption under section 10

Section 10(10D) has been amended to provide exemption for insurance policies issued on or after April 1, 2012 for policies where the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital assured (previously 20%)

Deduction under chapter VIA

- Teduction of Rs. 10,000/- for interest from saving bank accounts under section 80TTA.
- Deduction under 80CCF for Rs. 20,000/- for investment in infrastructure bond has been withdrawn from the Assessment Year 2013-2014
- Additional deduction of Rs. 5,000/- to cover expenses for preventive health check-ups for self and family members within the overall limit of Rs. 15,000/- under section 80D.
- Cash donation in excess of Rs. 10,000/- is not allowed as deduction under 80GGA and 80G.

OTHER AMENDMENTS: (FOR THE ASSESSMENT YEAR 2013-2014)

- Security Transaction Tax (STT) has been reduced by 20% from 0.125% to 0.1% on cash delivery transaction. (amendment takes effect from July 1, 2012)
- Extension of time for completion of assessment and reassessment under section 153 and 153B has been increased by three months. Time limit of assessment and reassessment of other assessments has been changed as under: (applicable with effect from July 1, 2012)

Proceeding Under Section	Current Time Allowed	Proposed Period
Under Section		Period
143	21 Months from the end of the Assessment Year	24 Months
143 and 92CA	33 Months from the end of the Assessment Year	36 Months
148	09 Months from the end of the Financial Year in which Notice Issued	12 Months
148 and 92CA	21 Months from the end of the Financial Year in which notice issued	24 Months
250/254/263	09 Months from the end of the Financial Year in which Order	12 Months
	Received	
250/254/263	21 Months from the end of the Financial Year in which Order	24 Months
and 92CA	Received	

WEALTH TAX

- Wealth does not include residential house allotted by a company to an employee or an officer or a whole time director, if the gross annual salary of such employee is less than Rs. 5 Lacs. The salary amount has been changed to Rs. 10 Lacs.
- RBI is not liable to pay wealth tax (amendment will take effect retrospectively from April 1, 1957)



INDIRECT TAX

EXCISE DUTY

- The First Schedule to the Central Excise Tariff is being amended.
 - The effective rate of excise duty of 10% on non petroleum product is being increased to 12%.
 - Concessional rate of Excise Duty of 5% non petroleum product is being increased to 6%
 - The Lower rate of 1% on Non Petroleum Products is being increased to 2% Except Precious metal Jewellery, coal and fertilizer remain the same.
- Section 9 provides that cases of evasion in which the duty leviable exceeds Rs. 100,000/- shall be punishable with a term of imprisonment extending to seven years and with fine amended to Rs. 300,000/-
- Large cars depending on their engine capacity and length enhance the duty from 22% to 24%, if car that attract a mixed rate of duty of 22 per cent + Rs 15,000 per vehicle, I propose to increase the duty and switch over to an ad valorem rate of 27 per cent.
- Excise duty on unbranded jewellery of precious metals would be charged on 30% of transaction value declared in the invoice. Duty increased from 1.5% to 3% on refined gold. Duty on gold jewellery sold from EOUs into DTA is increased from 5% to 10%.
- Rate of duty per machine applicable to pan masala, guthka, chewing tobacco, zarda scented tobacco and unmanufactured tobacco under the compounded levy scheme is being increased.
- Excise duty on parts of mobile phones, other than those cleared to a manufacture of mobile phones is being reduced from 10% to 2%, provided no Cenvat credit is taken.
- Excise duty is reduced from 10% to 6% on matches manufactured by semi mechanized units and processed foods products of soya
- Excise duty on LED lamps reduced to 6%
- For the purpose of charging excise duty on readymade garments bearing a brand name or sold under a brand name, the level of abatement from the retail sale price is being increased from 55% to 70%



CUSTOM DUTY

- Imports of equipment for initial setting up or substantial expansion of fertilizer projects are being fully exempted from basic customs duty of 5% for a period of three years up to March 31, 2015.
- Full exemption from basic customs duty and a concessional CVD of 1% to Steam coal for a period of two years till March 31, 2014.
- Full exemption from basic duty is also being provided to the Natural Gas and Liquefied Natural Gas fuels for power generation. Uranium concentrates, Sintered Uranium Dioxide in natural and pellet form.
- Reduce basic customs duty on machinery and instruments for surveying and prospecting from 10% or 7.5% to 2.5%. In addition, full exemption from basic customs duty is being provided to coal mining projects.
- Reduce the basic customs duty from 7.5% to 2.5% on:
 - sugarcane planter,
 - root or tuber crop harvesting machine
 - and rotary tiller and weedier;
 - parts for the manufacture of these;
- Reduce the basic customs duty from 7.5% to 5% on:
 - specified coffee plantation and processing machinery;
 - some water soluble fertilizers and liquid fertilizers, other than urea
- Reduce basic customs duty on equipment required for their implementation from 10% to 7.5%.
- Full exemption from import duty on specified equipment imported for road construction by contractors of Ministry of Road Transport and Highways, NHAI and State Governments is being extended to contracts awarded by Metropolitan Development Authorities
- Fully exempt from basic customs duty parts of aircraft and testing equipment imported, new and retreaded aircraft tyres.
- Full exemption from basic customs duty on Manufacturing Industry for Waste paper, LCD and LED TV panels



SERVICE TAX

CHANGE IN SERVICE TAX RATE. (Following changes will effect from April 1, 2012)

- The service tax is being increased from 10% to 12%.
- The Service Tax rate for Life Insurance under Rule 6(7A)(ii) of Service Tax Rules, 1994 changed as under:

Gross Amount of Premium Charged	New Rate	Old Rate
1st Year	3%	1.5%
Subsequent Year	1.5%	1.5%

- Rate of tax under Composition Scheme of Works Contract has been changed from 4% to 4.8% plus cess.
- Transport of passengers by Air for domestic and international fair structure of maximum service tax of Rupees 150 and Rupees 750 in case of economy class travel is being replaced by an ad valorem rate of twelve per cent with abatement of sixty per cent subject to the condition that no credit on inputs and capital goods is taken. Therefore, effective rate of tax on journey by air would be 4.8%, subject to availement of abatement.

CHANGE IN VALUATION RULE

Works Contract (Composition Scheme For Payment Of Service Tax) Rules, 2007

At present value of goods is allowed to be reduced from Gross Amount Charged If the value of goods is intimated for State VAT purpose. Now it is proposed to allow the benefit even if value is not intimated for VAT purpose, it can be done on the basis of documentary evidence showing value of goods sold under Work Contract.

In case value of goods cannot be determined, gross value for service tax purpose would be:-

- In case of original work (all new constructions and all types of additions and alterations to abandoned or damaged structures to make them workable):- 40% of total amount,
- Otherwise:- 60% of total amount,
- For contracts involving construction of complex or building for sale where any part of the consideration is received before the completion of the building: 25% of the total amount

For this purpose the total amount will be gross amount plus the value of any material supplied under the same contract or any other contract. CENVAT Credit on input services and capital goods will be allowed in all three cases.

AMENDMENT IN RULE 6

- Any amount realized as demurrage, or by any other name, for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service will be included in taxable value.
- Accidental damages due to unforeseen actions not relatable to the provision of service will be excluded from the value of service.
- Interest on loan has been substituted with (a) Interest on Deposits and (b) Interest on delayed payments. Interest on loans will now be an exempt income rather than an exclusion from value hence credit reversal will take place in case of interest on loans.



CHANGES IN CENVAT CREDIT RULES

- A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover in line with Circular No. 868/6/2008-CE dated 09.05.2008
- Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by all service receivers on reverse charge.

TIME WHEN CENVAT COULD BE TAKEN

Presently credit on inputs and Capital Goods can be taken only after they are brought to the premises of the service provider. Sub-rules 4(1) and 4(2) have been amended to allow credit without bringing them into premises subject to due documentation regarding their delivery and location. Interest on loans, advances will now be an exempt service. This will require reversal of credits used for earning such income. For the banking and financial sector, provisions are available to reverse credits up to 50% in rule 6(3D). It is being proposed to change this formula to actual basis, the value of service being net interest i.e. interest earned less interest paid on deposits, subject to a minimum of 50% of interest paid on deposits. For the non-financial sector it is being proposed that they may reverse credits on gross interest basis.

Amendment in Rule 3(5) of CENVAT Credit Rules, 2004

Rule 3(5) and 3(5A) are being amended to prescribe that in case the capital goods on which Cenvat credit has been taken are cleared after being used then the amount payable shall be either the amount calculated on the basis of Cenvat credit taken at the time of receipt reduced by a prescribed percentage or the duty on transaction value whichever is higher.

Changes in Rule 6(3) of CENVAT Credit Rules, 2004.

The rate for Cenvat reversal for exempt services has been revised likewise from 5% to 6% in Rule 6(3) of Cenvat Credit Rules (CCR), 2004

Rule 6(6A) Of CCR Rules will is being given effect from February 10, 2006. This will neutralize the investigations or demands for reversal of credits in respect of services provided to SEZs for the past.

CHANGES IN POINT OF TAXATION

- The time period for issuance of invoice is being increased from 15 days to 30 days ordinarily and 45 days for banks and financial institutions.
- In case of export of services and eight specified services provided by individuals or firms, the point of taxation is the date of payment. The special dispensation is being shifted from the POT Rules to the Service Tax Rules.
- The benefit available to individuals and firms to determine POT on the basis of date of payment for eight specified services is being modified so as to provide the benefit in respect all services in cases where turnover of the unit did not exceed Rs 50 Lacs previous financial year. This benefit will also be available to LLPs.



OTHER POINTS

- Penalty would be waived for those taxpayers who pay the service tax due on the renting of immovable property service (as on the sixth day of March, 2012), in full along with interest within six months. In case of failure to do so regular provisions will apply.
- To harmonization between Central Excise and Service Tax, a number of alignments have been made. These include a common simplified registration form and a common return for Central Excise and Service Tax, to be named EST-1. This common return will comprise only one page instead of 15 pages
- Revision Application Authority and Settlement Commission are being introduced in Service Tax to help resolve disputes with far greater ease.
- Cascading of taxes has been significantly reduced by permitting utilisation of input tax credits in a number of services such as catering, restaurants, hotel accommodation, pandal and shamiana and transport sectors.
- Repair of Roads has been exempted from service tax by Notification 24/2009-ST. By virtue of power under section97, exemption relating to road extended for the earlier period commencing from June 16, 2005.

FOLLOWING SERVICES ARE NEW TAXABLE SERVICE.

Agriculture and animal husbandry: all services required for cultivation, breeding, production, processing or marketing up to the stage the produce is sold in the primary markets are covered under service tax

FOLLOWING EXISTING SERVICES ARE ALTERED

- To take financial services to the door steps in rural areas, Service Tax will exempt on services of business facilitators and correspondents to banks and insurance companies.
- Construction services relating to specified infrastructure, canals, irrigation works, post-harvest infrastructure, residential dwelling, and low-cost mass housing up to an area of 60 sq. meter under the Scheme of Affordable Housing in Partnership
- In addition to the negative list, there is a list of exemptions which include health care, services provided by charities, religious persons, sportspersons, performing artists in folk and classical arts, individual advocates providing services to non-business entities, independent journalists, and services by way of animal care or car parking
- Tax all services except in the negative list.



NEGETIVE LIST OF SERVICE TAX

Negative list comprise all services provided by the government or local authorities, except a few specified services where they compete with private sector. The Service Tax provisions in the budget detail out 17 areas on which you will not be charged a tax, and for absolutely everything else that involves a service, you will need to pay 12% (plus cess). The seventeen areas are:

- Services including services such as getting a passport, a driving license, paying municipal taxes, car registration fees, police fines and so on by the Government or local authorities. Service tax will still be applicable on Speed or Express Post, and life insurance bought from a post office, Airport services, and Government services provided to businesses. (Companies will pay it on the annual filing charges payable to the Registrar of Companies, for instance).
- 2) Services by the Reserve Bank of India
- 3) Foreign consulates and embassies in India
- 4) Agricultural services including harvesting, planting, or warehousing services, renting of either vacant agricultural land or machinery,
- 5) Trading
- 6) Manufacturing of goods
- 7) Advertisements on hoardings or newspapers except advertisements in TV or Radio
- 8) Toll charges.
- 9) Gambling (casino, lottery ticket or bet on a horse race)
- 10) Entertainment events except a concert or an amusement park
- 11) Electricity, If paying a local utility
- 12) Education pre-school to high-school education
- 13) Residential rent
- 14) Certain financial transactions like giving money as a loan, buying a deposit, where interest is involved. However, the interest actually received (or paid) will be subject to service tax. If money is given without any interest, service tax will apply.
- 15) Public Transport except travel by First Class or any air-conditioned coach seats in a train and packaged tours.
- 16) Goods transport except road transport agency or a courier service.
- 17) For the absolute end: This includes funeral, burial, crematorium, hearse or mortuary services.

SERVICE TAX RETUNS

Monthly Returns – For corporate where tax liability exceeds Rs. 25 Lacs in previous financial year **Quarterly Returns** –For every Individual, Firm and LLP.

- For corporate assessee where tax liability does not exceeds Rs. 25 Lacs in the previous financial year



IMPORTANT DATES FOR THE MONTH OF FEBRUARY, 2012

Date	ACT	Form	Obligation
05.03.2012	Service	Challan No.TR-6	Payment of Service Tax of Feb by Companies
31.03.2012	Тах	Challan No.TR-6	Payment of Service Tax for the month/quarter ended March
07.03.2012	Income Tax	Form No.15G, 15H,27C	Submission of Forms received in Feb to IT Commissioner
07.03.2012		Challan No.ITNS- 281	Payment of TDS/TCS deducted/collected in February
15.03.2012		Challan No.280	Payment of Advance Income Tax: Companies and Others (100%)
10.03.2012	Excise	ER-1	Return for Non SSI assessees for February
10.03.2012		ER-2	Return for EOUs for February
10.03.2012		ER-6	Return by units paying duty >1 crore (CENVAT + PLA) for February
15.03.2012	D-VAT	DVAT-20	Deposit of TDS for the month of February
21.03.2012		DVAT - 43	Issue of DVAT certificate for deduction made in February
25.03.2012		DVAT-20 & Central	Deposit of VAT and CST Tax for February
25.03.2012		Form 16 and CST 1	E- Return of VAT for February
28.03.2012		16 & 1 & Ack	Physical Return of VAT and CST for February
31.03.2012		DVAT-51	DVAT-51 Filing for December quarter
15.03.2012	PF	Challan	Payment of PF for February (Cheque to be cleared by 20th)
15.03.2012		Form 5 & Form 10	Return of employees joining and leaving in February.
25.03.2012		Form 12A	Return of PF for February
21.03.2012	ESI	ESI Challan	Payment of ESI of February