

# INDIA UNION BUDGET 2013

Tax Proposals



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# FOREWORD



On the last day of Feb'2013, Mr. P Chidambaram, Minister of Finance, has presented the Union Budget for the year 2013-2014. While delivering his 8th Union Budget, Mr. P Chidambaram has optimistically portrayed that India can become a \$ 5 Trillion economy and will find space in top five largest economies in the world by 2025.

He acknowledges that there are various challenges in the Indian Economy and also the slowdown in global economic growth (which was only 3.2% in 2012). However, he dynamically highlights the position that, compared to the World map, only China and Indonesia grew faster than India in 2012-2013. In order to finance India's current account deficit, he acknowledges the need for encouraging foreign investments in the form of Foreign Direct Investments (FDI) /Foreign Institution Investors (FIIs) /External Commercial Borrowings (ECB), which should flow in steadiness with India's economic objectives.

With an increased economic space, this year he has set out the budget estimates of total expenditure of approximately \$333 Billion and planned expenditure at \$111 Billion.

Mr. Finance Minister has significantly made budget allocations to the welfare of women, children, minorities and disabled persons. He also sets the priorities towards health and education, water and rural development, agricultural development and also towards food security. India's 12th Five Year Plan projects an investment of around \$1100 Billion in infrastructure and to attain such a weighty goal, this budget has concentrated on sectors like road construction, industrial corridors, ports, national waterways, oil & gas, coal, power, textile and micro, small and medium enterprises. At the same time, this budget contains diverse measures to improve financial sector like banking, insurance and also the capital market.

On direct tax front, Mr. Finance Minister has proposed to increase his tax collections by levying new & additional surcharges on high income earners of the society, by

introducing withholding tax regime on transfer of immovable property & on profits distributed through buyback of shares, by increasing withholding tax rates on Royalties & Fee for Technical Services to Non-Residents and by introducing Commodity Transaction Tax in the capital market. As far as reforms are concerned, he announces to bring back Direct Tax Code (DTC) bill in this Budget Session and proposes to bring General Anti Avoidance Rules (GAAR) with effect from April 1, 2016, whereas Rules on Safe Harbour will be expected to come latest by March 31, 2013.

On Indirect tax front, the overall theme appears to be stability and enhanced focus on compliance and enforcement. Especially on the latter aspect, the Government has adopted a carrot and stick approach, with one time amnesty scheme for service tax defaulters, coupled with stringent provisions for recovery of sums due to the Government. To ensure stability in the tax regime, minimal changes have been proposed, including changes in duty rates. However, in this drive, some of the critical expectations of the industry from Union Budget have remained unfulfilled. These include measures aimed at widening the tax base, liberalization of credit regime, rationalization of the negative list based service tax, etc. Also, the industry was left guessing about the roadmap to Goods and Service Tax (GST).

Analyzing the above budget proposals, on a concluding note, we can look forward to a growing Indian economy which meets the anticipation of our Finance Minister in making entry in the cluster of top five economies of the World.

With the insertion of three new chapters, Finance Bill 2013 has proposed to introduce five new sections and amend thirty six sections of the Income Tax Act, 1961. We are happy to present below our brief synopsis on the Indian Union Budget 2013.

#### **Mazars Thought Leadership Team**

**March, 2013**

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# BUDGET HIGHLIGHTS

## Direct Tax

- No change in personal and corporate tax rates.
- Tax Rebate of ₹2,000 to individuals having Taxable Income up to ₹500K.
- Surcharge introduced for individuals (10% if Taxable Income exceeds ₹10 Million).
- Surcharge on domestic companies increased to 10% from 5% and for foreign companies increased to 5% from 2% if Taxable Income exceeds ₹100 Million.
- Surcharge on Dividend Distribution Tax (DDT) for domestic company increased to 10% from existing rate of 5%.
- These increases in surcharge rates to be in force only for one year.
- New Commodity Transaction Tax (CTT) @ 0.01% is proposed to be levied on 'Taxable Commodities Transactions', other than agricultural commodities.
- Rates of Securities Transaction Tax (STT) reduced on certain transaction.
- Retrospective clarification from Financial Year 2012-2013 to state that submission of Tax Residence Certificate (TRC) necessary but not sufficient for claiming benefits.
- Basic tax rate on taxable income by way of Royalty and Fees for Technical Services of non-residents enhanced to 25%.
- Concessional rate of 5% withholding tax on Interest in case of certain ₹ denominated Long-Term Infrastructure Bonds introduced.
- Gross Foreign Dividends (where shareholding is 26% or more) received by the Indian Company taxable at a concessional rate of 15% for one more year i.e. Financial Year 2013-2014. Cascading effect reduced by excluding them for computing Dividend Distribution Tax base if such dividends received from foreign subsidiary (more than 50%) and used in the same year for declaring further dividends.
- Deduction of 15% on investments made by a manufacturing company in a new Plant and Machinery acquired and installed between April 1, 2013 and March 31, 2015 if the same exceeds ₹1 Billion.

- 'Sunset Date' for projects in Power Sector to avail benefit under Section 80IA is extended from March 31, 2013 to March 31, 2014.
- Unlisted domestic company buying back its shares from shareholders subject to additional income-tax at the rate of 20% on distributed income. Income arising to shareholders as a result of such buy back is exempt from tax.
- 30% deduction for additional wages to companies having profits from manufacturing in factories.
- Income Tax exemption to National Financial Holdings Company Limited (NFHCL).
- Keyman Insurance Policy shall continue to be treated as Keyman Insurance policy even after its assignment to some other person before maturity.
- Permissible premium rate increased from 10% to 15% of the sum assured by relaxing eligibility conditions of Life Insurance Policies for persons suffering from disability and certain ailments.
- Contributions made to schemes of Central and State Governments similar to Central Government Health Scheme (CGHS) also be eligible for deduction.
- Section 80CCG liberalized to include listed units of Equity Oriented Funds (EOF).
- Provisions proposed for facilitating electronic filing of annexure-less return of net wealth.
- Donation to National Children's Fund eligible for 100% deduction.
- Additional benefit of ₹ 100K to first time home buyers by providing deduction of interest on loan (not exceeding ₹ 2.5 Million) taken for acquiring residential house property for value not exceeding ₹ 4.0 million.
- 1% Tax Deduction at Source (TDS) on the value of transfer of Immovable Properties (excluding agricultural land), where consideration exceeds ₹ 5.0 Million.
- Consideration for transfer of land and building (being stock in trade) to be taken as per stamp duty value as on date of agreement for sale.
- Transaction of Immovable property by an individual or HUF for inadequate consideration to attract taxation as per stamp duty valuation.
- "Tax due" for the purposes of recovery shall include penalty, interest and other sum payable.
- Tax return to be regarded as defective, inter-alia, if the tax and applicable interest are not paid by the date of furnishing of tax return.
- Application of seized assets under Section 132B does not includes Advance Tax.
- Added grounds for direction to conduct special audit under Section 142(2A).
- Exclusion of time in computing the Period of Limitation for completion of assessments and reassessments.
- General Anti Avoidance Rules (GAAR) provisions modified in line with representations and recommendations made to the government. GAAR is proposed to be effective from Financial Year 2015-2016.

- Venture Capital Fund / Venture Capital Company / Venture Capital Undertaking registered with Securities Exchange Board of India (SEBI) as Category I Alternative Investment Fund under the Alternative Investment Funds Regulations granted pass through status.
- Income of Securitization Trust regulated by SEBI / Reserve Bank of India (RBI) to be tax-exempt. Income distributed to bear distribution tax at 25% (Individual / HUF) and 30% (others) be tax-exempt for investors.

### Indirect Tax – Service tax

- Rate of service tax maintained at 12.36% (including education cess and SHE cess of 3%).
- Scope of services covered under negative list enlarged to include services in relation to vocational training, testing of agricultural produce and processes subject to excise duty under other Acts.
- Changes in mega exemption notification to broaden tax base by withdrawing following exemption:
  - ▶ repair or maintenance of aircrafts of Government
  - ▶ vehicle parking for general public
  - ▶ auxiliary educational services and renting of immovable property by educational institute
  - ▶ temporary enjoyment of copyright relating to cinematographic films except exhibition of films in cinema halls or theatres
  - ▶ services provided by air conditioned restaurant
  - ▶ transportation of petroleum and petroleum products, postal mail and household effects by rail or vessel
- Effective rate of service tax on residential units exceeding carpet area 2000 square feet or valuing more than ₹ 10 Million has been increased from 3.09% to 3.71%.
- Advance Ruling under service tax can be sought by a resident public limited company.
- Penalty provisions under service tax have been made more stringent – offences categorized as cognizable and non-cognizable.
- Introduction of Service Tax Voluntary Compliance Encouragement Scheme to provide one time amnesty to service providers by way of waiver of interest/penalty and immunity from prosecution.

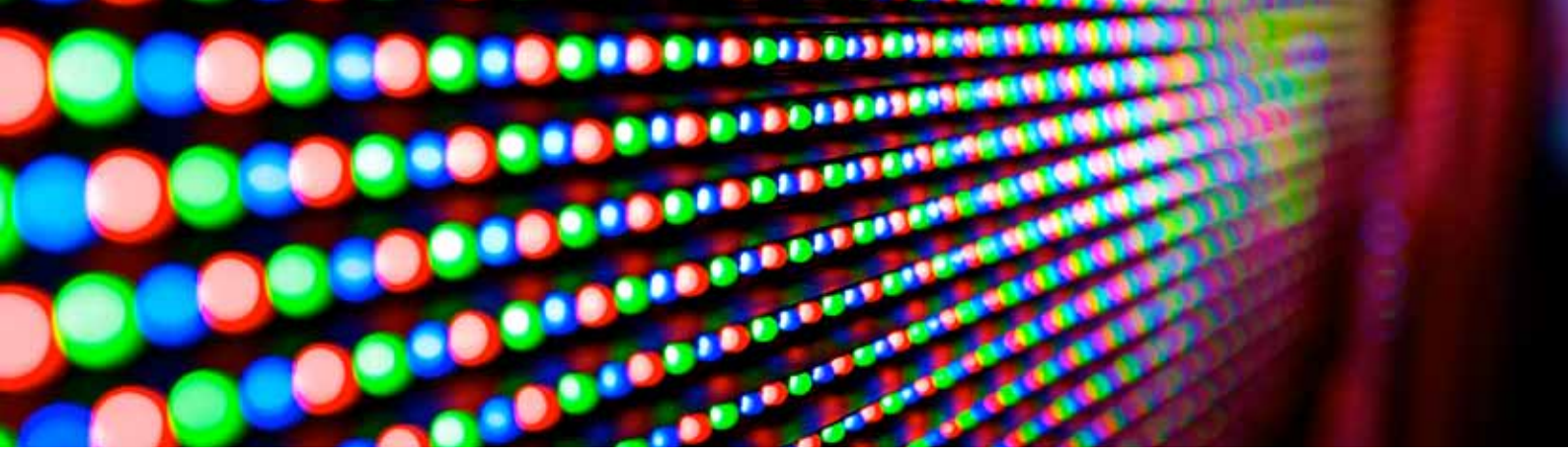


## Indirect Tax - Customs

- Standard rate of Customs duty remain unchanged at 10%.
- Pending clearance of imported goods for home consumption, warehousing permitted upto thirty days.
- Postal exports can be made for warehoused goods.
- Electronically filling of import or export manifest has been made mandatory, unless not feasible.
- Reduction in interest free period from 5 to 2 days for payment of customs duty post assessment of bill of entry.
- List of specified activities for seeking Advance Ruling expanded to include eligible applicants having existing business proposing to commence new / proposed activities.
- Automatic vacation of stay orders of Appellant Tribunal if appeal not disposed of within 365 days from the date of grant of original stay.
- Certain offences under Customs Act made stringent by categorizing the same as non-bailable.
- Provisions introduced to recover customs dues from third parties holding money on account of person liable to deposit customs dues.
- Baggage Rules amended to enhance the limit for duty free import of jewelry by eligible male passenger to ₹ 50K and by eligible female passenger to ₹100K.
- Time limit for consumption of parts and testing equipments for MRO of aircrafts, aircraft parts, ships and vessels increased from 3 months to one year.
- Exemption for MRO activity clarified when provided to foreign aircraft engaged in scheduled transport / cargo operations and also to foreign registered non-scheduled aircraft on a flight to or across India.
- Exemption of BCD on imports of hybrid and electric vehicles extended upto March 31, 2015.
- Exemption of BCD provided on import of lithium ion batteries for manufacture of lithium ion battery packs for supply to the manufacturer of hybrid and electric cars.
- Clarified that BCD exemption is available to all goods including chemicals and electronic parts required for manufacture of solar cells whether or not assembled in modules or panels.
- Increased rate of BCD on import of specified new motor car to 100%, specified old motor car to 125%, specified new motor cycle to 75%, yachts and other vessels to 25%, steam coal to 2%, raw silk to 15%, Set Top Box to 10%.
- Reduced rate of BCD on imports of pre-forms of precious and semi-precious stones to 2%, Bituminous coal to 2%, specified machinery for leather and footwear industry to 5%, and machinery of textile industry to 5%.
- Introduced levy of export duty on export of Bauxite at 10%, ilmenite unprocessed at 10% and ilmenite upgraded at 5%.

### Indirect Tax -Excise

- Standard rate of Excise duty remains unchanged at 12.36%. (including education cess and SHE cess of 3%).
- Categorized certain offences as cognizable and non-bailable, where duty liability exceeds ₹ 5 Million.
- Provisions have been introduced to enable excise officers to recover dues from third parties, who owe money to the person liable to deposit excise dues.
- List of specified issues for seeking Advance Ruling under excise laws expanded to include credit availability of input services.
- List of specified activities for seeking Advance Ruling expanded to include eligible applicants having existing business proposing to commence new / proposed activities.
- Automatic vacation of stay orders of Appellant Tribunal if appeal not disposed of within 365 days from the date of grant of original stay.
- Exemption from excise duty provided on readymade garments and made ups bearing brand name; all handmade carpets and carpets / other textile floor coverings of coir and jute, whether hand made or not .
- Exemption from excise duty provided to ships, tugs, pusher craft, dredgers and other specified vessels.
- Exemption from excise duty extended till March 31, 2015 on manufacture of specified parts of hybrid and electric vehicles.
- Introduction of MRP based valuation less 35% abatement on non-allopathic medicaments, both branded and generic.
- Increase in rate of Excise duty on mobile handsets exceeding ₹ 2K to 6%, specified SUV to 30%, Marble slabs and tiles to ₹ 60/square meter, and on cigarettes, cigars and cigarillos.
- Decrease in rate of Excise duty on chassis of diesel motor vehicles for transportation of goods to 13%.



# DIRECT TAX PROPOSALS

## 2.1 Tax Rates

### For Individuals / HUF / AOP / BOI

**For individual, Hindu Undivided Family (HUF), Association of Persons (AOP) and Body of Individuals (BOI)**

- No changes have been proposed in the existing slabs or tax rates, which are as under:-

Total Income	Tax Rates
Up to ₹ 200K	Nil
₹ 200K to ₹ 500K	10%
₹ 500K to ₹ 1,000K	20%
Above ₹ 1,000K	30%

- For a resident individual aged between 60 to 80 years, the basic exemption limit is ₹ 250K and for a resident individual aged 80 years or above, the basic exemption limit is ₹ 500K.
- 10% surcharge is applicable if the total income exceeds ₹ 1,000K.
- 3% education cess is applicable on income-tax inclusive of surcharge.

### Tax Rebate of ₹2,000

#### Tax Rebate of ₹2,000 to individuals having Total Income up to ₹ 500K

- To provide tax relief to the lower income bracket individual tax payers, it is proposed to provide rebate of ₹ 2,000 from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed ₹ 500K.
- The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of ₹ 2,000, whichever is less.
- Consequently any individual having income up to ₹ 220K will not be required to pay any tax and every individual having total income above ₹ 220K but not exceeding ₹ 500K shall get a tax relief of ₹ 2,000.

- Section 87 of the Income Tax Act, 1961 (the 'Act') also been consequentially amended. This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

### For Local Authorities, Firms including Limited Liability Partnerships (LLPs)

- Taxable at the rate of 30%.
- 10 % surcharge is applicable if the total income exceeds ₹ 1,000K.
- 3 % education cess is applicable on income-tax inclusive of surcharge, if any.

### For Companies

- No changes have been proposed in the present tax rates except surcharge rates:-

Particulars	Below ₹10 Million		Above ₹10 Million and Up to ₹100 Million		Above ₹100 Million	
	Existing	Proposed	Existing	Proposed	Existing	Proposed
<b>Surcharge Rates</b>						
Domestic	Nil	Nil	5%	5%	5%	10%
Foreign	Nil	Nil	2%	2%	2%	5%
<b>Effective Tax Rates</b>						
Domestic	30.90%	30.90%	32.45%	32.45%	32.45%	33.99%
Foreign	30.90%	30.90%	42.02%	42.02%	42.02%	43.26%
<b>Minimum Alternative Tax (MAT)</b>						
Domestic	19.055%	19.055%	20.007%	20.007%	20.007%	20.961%
Foreign	19.055%	19.055%	19.436%	19.436%	19.436%	20.007%

- Education cess @ 3% has been considered for determining effective tax rates.

## Commodities Transaction Tax (CTT)

### Tax on Commodity Transactions @ 0.01%.

- A new tax called Commodities Transaction Tax (CTT) is proposed to be introduced and levied on the "Taxable Commodities Transactions" entered into a recognized association.
- "Taxable Commodities Transactions" means a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities.
- It shall be payable by seller at the rate is 0.01% of the value of taxable commodity transaction.
- Further, it is proposed to amend section 36 (with effect from April 1, 2014) of the Income-tax Act to provide that CTT paid in the course of business shall be allowable as deduction from the income arising from such taxable commodities transactions.
- It shall be applicable from the date on which Chapter VII of the Finance Bill 2013 comes into force by way of notification in the official gazette by Central Government.

## Securities Transaction Tax (STT)

### Changes in the rates of Securities Transaction Tax

- Section 98 of the Finance (No. 2) Act, 2004, is proposed to amend STT rates as under:-
- The proposed amendments in the rates of STT shall be effective from June 1, 2013 and will accordingly apply to any transaction made on or after that date.

Nature of Transaction		
Payable By	Existing Rate	Proposed Rate
Delivery based purchase of units of an equity oriented fund entered in a recognized stock exchange		
Purchaser	0.1%	NIL
Delivery based sale of units of an equity oriented fund entered into in a recognized stock exchange		
Seller	0.1%	0.001%
Sale of a futures in securities		
Seller	0.017%	0.01%
Sale of a unit of an equity oriented fund to the mutual fund		
Seller	0.25%	0.001%

## 2.2 International Taxation

### Tax Residency Certificate

#### Tax Residency Certificate is necessary but is not a sufficient condition for claiming benefits

- Section 90 of the Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of:-
  - ▶ granting relief in respect of avoidance of double taxation,
  - ▶ exchange of information and
  - ▶ recovery of taxes.
- Further section 90A of the Act empowers the Central Government to adopt any agreement between specified associations for above mentioned purposes.
- The scheme of interplay between Double Taxation Avoidance Agreement (DTAA) and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the DTAA, is entitled to claim applicability of beneficial provisions either of DTAA or of the domestic law.
- Sections 90(4) and 90A(4) of the Income-tax Act inserted by Finance Act, 2012 makes submission of Tax Residency Certificate containing prescribed particulars, as a condition for availing benefits of the agreements referred to in these sections.

- It is proposed to amend sections 90 and 90A in order to provide that submission of a tax residency certificate is necessary but not a sufficient condition for claiming benefits under the agreements.
- These amendments will take effect retrospectively from April 1, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-2014 and subsequent Assessment Years.

### Royalty / Fee for Technical Services

#### Tax rate on payments by way of Royalty and Fee for Technical Services to Non-Residents increased from 10% to 25%.

- Presently as per Section 115A of the Act, Royalty and Fees for technical services (FTS) received by a non-resident taxpayer, not effectively connected with permanent establishment in India, is taxable on gross basis at the rate of 10%.
- Majority of tax treaties provides levy of tax on gross basis at the rates ranging from 10% to 25%.
- Taxation at rate of 10% as per section 115A has resulted in taxation at a lower rate even if treaty provides for a higher rate.
- In order to correct this anomaly, the tax rate as provided under section 115A, is proposed to be increased from 10% to 25%.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

### Dividend from Foreign Subsidiary

#### Concessional rate of 15% tax on dividend received by an Indian company from its foreign subsidiary proposed to continue for one more year

- Section 115BBD of the Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15%.
- This incentive for attracting repatriation of income earned by residents from investments made abroad is available for the Financial Year 2012-2013 i.e. Assessment Year 2013-14.
- In order to continue the tax incentive for one more year, it is proposed to amend section 115BBD to extend the applicability of this section in Financial Year 2013-2014 also.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015.

## Dividend Distribution Tax (DDT)

### Removal of the cascading effect of Dividend Distribution Tax (DDT)

- Section 115-O of the Act provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits, shall be liable to be taxed at the rate of 15%. This tax is known as Dividend Distribution Tax (DDT) and such distributed dividend is exempt in the hands of recipients.
- Section 115BBD of Income Tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15%.
- Section 115-O provides that the tax base for DDT (i.e. the dividend payable in case of a company) is to be reduced by an amount of dividend received from its subsidiary, if such subsidiary has paid the DDT, which is payable on such dividend. This ensured removal of cascading effect of DDT in a multi-tier structure, where dividend received by a domestic company from its subsidiary (which is also a domestic company) is distributed to its shareholders.
- It is proposed to amend section 115-O in order to remove the cascading effect in respect of dividends received by a domestic company from a similarly placed foreign subsidiary (i.e. the foreign company in which domestic company holds more than 50% of equity share capital).
- It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act.
- This amendment will take effect from June 1, 2013.

## Long Term Infrastructure Bonds

### Concessional rate of 5% withholding tax on interest in case of certain rupee denominated long-term infrastructure bonds

- Existing provisions of section 194LC provides that if an Indian company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the Central Government, then the interest payment to non-resident would be subject to concessional rate of 5%.
- In order to facilitate subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), it is proposed to amend section 194LC of the Act.
- It is proposed that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilized for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of section 194LC, the borrowing by the company shall be deemed to be in foreign currency and the benefit of reduced rate of tax would be available to such non-resident in respect of the interest income arising on such subscription.
- This amendment will take effect from June 1, 2013.

## 2.3 Corporate Taxation

### Section 32AC

#### Deduction of 15% to Manufacturing Companies on making Investment of more than ₹ 1,000 Million in Plant and Machinery during the period starting from April 1, 2013 and ending on March 31, 2015.

- To encourage substantive investment in Plant and Machinery, a new section 32AC is proposed to be inserted in the Act.
- In this new provision, a deduction shall be available to a company engaged in manufacturing of an article or a thing, and invests ₹1,000 Million and more in new assets (plant or machinery) during the period beginning from April 1, 2013 and ending on March 31, 2015.
- The “new asset” shall not include any:-
  - ▶ Already used plant or machinery
  - ▶ Office appliances like computers or computer software
  - ▶ Vehicle
  - ▶ Ship or aircraft
  - ▶ Plant or machinery, the whole of the actual cost of which is allowed as deduction/ depreciation in any previous years
- Quantum of deduction shall be

#### Assessment Year 2014-2015

15% of actual cost of new plant or machinery acquired and installed during the Financial Year 2013-2014, provided cost of such assets exceeds ₹1,000 Million .

#### Assessment Year 2015-2016

15% of amount of actual cost of new plant or machinery acquired and installed during the period beginning on April 1, 2013 and ending on March 31, 2015, as reduced by the deduction allowed, if any, for Assessment Year 2014-2015.

- It provides for restriction on transfer of the plant or machinery for a period of 5 years. However such restriction shall not apply in a case of amalgamation or demerger but shall apply to the amalgamated company or resulting company.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.



## Section 80-IA

**'Sunset Date' for projects in the Power Sector to avail benefit under Section 80IA is extended from March 31, 2013 to March 31, 2014.**

- Under the existing provisions of section 80IA, a deduction of profits and gains is allowed to an undertaking in power sector for the following eligible activities up till the terminal date of March 31, 2013:-

Eligible Activity	Eligible Period
Generation or generation and distribution of power	April 1, 1993 to March 31, 2013
Transmission or distribution by laying a network of new transmission or distribution lines	April 1, 1999 to March 31, 2013
Undertakes substantial renovation and modernization of the existing network of transmission or distribution lines	April 1, 2004 to March 31, 2013

- With a view to provide further time to commence the eligible activity to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal / sunset date by a further period of one year i.e. up to March 31, 2014.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015.

## Tax on Buy Back of Shares

**20% tax payable by unlisted companies on profits distributed to shareholders through buyback of shares**

- A company, having distributable reserves, has two options to distribute the same to its shareholders:-
  - Declaration and payment of dividends to its shareholders.
  - Purchase of its own shares i.e. buy back of shares at a fixed consideration.
- In the first option, the payment by company is subject to Dividend Distribution Tax (DDT) and thus the same income is exempt in the hands of shareholders.
- In the second option the income is taxed in the hands of shareholder in the form of capital gains.
- Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly, where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

- In order to curb such practice, it is proposed to amend the Act, by insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares, which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of such distributed income paid to the shareholder.
- The additional income-tax payable by the company shall be the final tax on similar lines as DDT.
- Like DDT, the income arising to the shareholders in respect of such buy back by the company would be tax exempt.
- This amendment will take effect from June 1, 2013.

### Deduction for Additional Wages

#### 30% deduction for additional wages to companies having profits from manufacturing in factories.

- The existing provisions contained in section 80JJAA of the Act provide for a deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed in industrial undertaking engaged in manufacture or production of article or thing.
- The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also.
- It is, therefore, proposed to provide that the deduction shall be available to companies deriving profits from manufacture of goods in its factory.
- It is also proposed to provide that the deduction under this section shall not be available if the factory is hived off or transferred from another existing entity or amalgamation with another company.,
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015.

### National Financial Holdings Co. Ltd.

#### Exemption to National Financial Holdings Company Limited (NFHCL).

- The Specified Undertaking of Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as the successor of Unit Trust of India (UTI). Exemption from Income-tax was available to SUUTI in respect of its income up to March 31, 2014.
- SUUTI has been wound up and is succeeded by a new company wholly owned by the Central Government. It has been incorporated on June 7, 2012 as National Financial Holdings Company Limited (NFHCL).

- In order to provide the exemption on the lines of SUUTI to NFHCL, it is proposed to amend section 10 to grant exemption to National Financial Holdings Company Limited in respect of its income accruing, arising or received on or before March 31, 2014.
- This amendment will take effect retrospectively from April 1, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-2014 and Assessment Year 2014-2015.

## Keyman Insurance Policy

### Keyman Insurance Policy will not change its characteristics, even if it is assigned to some other person before maturity.

- The existing provisions of section 10(10D), inter alia, exempt any sum received under a Life Insurance Policy other than a Keyman Insurance Policy.
- It has been noticed that the policies taken as keyman insurance policy are being assigned to the keyman before its maturity.
- The keyman pays the remaining premium on the policy and claims the sum received under the policy as exempt on the ground that the policy is no longer a keyman insurance policy. Thus, the exemption under section 10(10D) is being claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person. The Courts have also noticed this loophole in law.
- With a view to plug this loophole and check such practices to avoid payment of taxes, it is proposed to amend the provisions of Section 10(10D) to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015.

## 2.4 Personal Taxation

### Life Insurance Policy

#### Permissible premium rate increased from 10% to 15% of the sum assured by relaxing eligibility conditions of life insurance policies for persons suffering from disability and certain ailments.

- Under the existing provisions of
  - ▶ section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt.
  - ▶ section 80C(3A), the deduction under the said section is available in respect of any premium or other payment made on an insurance policy both subject to the condition that the premium paid for such policy does not exceed 10% of the 'actual capital sum assured'.

- Some of the insurance policies for persons with disability or suffering from specified diseases provide for an annual premium of more than 10% of the actual capital sum assured and thus are ineligible for exemption under section 10(10D) and deduction under section 80C is eligible only to an extent of the premium paid up to 10 % of the 'actual capital sum assured'.
- It is proposed to provide that any sum including the sum allocated by way of bonus received under an insurance policy issued on or after April 1, 2013 for the insurance on the life of any person who is
  - ▶ a person with disability or a person with severe disability as referred to in section 80U, or
  - ▶ suffering from disease or ailment as specified in the rules made under section 80DDB shall be exempt under section 10(10D), if the premium payable for any of the years during the term of the policy does not exceed 15% of the actual capital sum assured .
- It is also proposed to amend section 80C(3A) also to provide deduction on account of premium paid provided it does not exceed 15% of the actual capital sum assured.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

### Government Health Schemes

#### Contributions made to schemes of Central and State Governments similar to Central Government Health Scheme (CGHS), eligible for deduction

- Section 80D, inter alia, provides that the whole of the amount paid in the previous year out of the income chargeable to tax of the individual assessee, to effect or to keep in force an insurance on his health or the health of the family or any contribution made towards CGHS or any payment made on account of preventive health check-up of the assessee or his family, as does not exceed in the aggregate ₹15,000, is allowed to be deducted.
- It has been noticed that there are other health schemes of the Central / State Governments, which are similar to the CGHS but no deduction for such schemes is available to the subscribers.
- In order to bring such schemes at par with the CGHS, it is proposed to amend to allow the benefit of deduction under this section within the said limit.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

### Equity Oriented Funds (Listed Units)

#### Section 80CCG liberalized to include listed units of Equity Oriented Funds (EOF).

- Section 80CCG, inter alia, provide that a resident individual who has acquired listed equity shares in accordance with the scheme notified by the Central Government (Rajiv Gandhi Equity Savings Scheme), shall be allowed one time deduction of 50% of the amount

invested subject to limit ₹25,000. The deduction is available to a new retail investor whose Gross Total Income does not exceed ₹1.0Million

- With a view to liberalize the investment in capital markets by new retail investors, it is proposed provide that investment in listed units of an EOF shall also be eligible for deduction.
- It is further proposed that deduction shall be allowed for 3 consecutive assessment years, beginning with previous year in which such investments were first made by new retail investor, whose gross total income does not exceed ₹1.2Million
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

## E-Filing of Wealth Tax Return

### Enabling provisions for facilitating electronic filing of annexure-less return of net wealth

- Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth as on the valuation date in the prescribed form and manner including prescribed particulars.
- Currently, certain documents, reports are also required to be furnished along with the return of net wealth as per the provisions of Wealth-tax Act Wealth-tax Rules.
- Sections 139C and 139D of the Income-Tax Act contain provisions for facilitating filing of annexure-less return of income in electronic form by certain class of income-tax assessee.
- In order to facilitate e-filing of annexure-less return of net wealth, it is proposed to insert sections 14A and 14B in the Wealth Tax Act on similar lines.
- This amendment will take effect from June 1, 2013.

## National Children's Fund

### Donation to National Children's Fund eligible for 100% deduction.

- Under the existing provisions of section 80G, an assessee is allowed 50% deduction from his total income in respect of donations made by him to certain funds and institutions as specified by the Act.
- Donations made to the National Children's Fund, deduction is allowed at the rate of fifty per cent of the amount so donated.
- Since, the National Children's Fund is a Fund of national importance it is proposed to allow 100% deduction in respect of any sum paid to the Fund in computing the total income of an assessee.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

## 2.5 immovable Property

### Income from House Property

#### Additional deduction of ₹100K in respect of Interest on loan sanctioned during Financial Year 2013-2014 for acquiring residential house property.

- Under the existing provisions of Section 24 of the Act, income chargeable under the head 'Income from House Property' is computed after making the deductions with regards to interest payable on borrowed capital for a maximum of ₹150K, where the property has been acquired, constructed, repaired, renewed or reconstructed with such borrowed capital.
- To supplement, the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new Section 80EE in the Act.
- The proposed new section 80EE seeks to provide an additional deduction in computing the total income of an individual assessee for the interest payable on loan taken by him from any financial institution for the acquisition of a residential house property.
- It is further provided that the deduction under the proposed section shall not exceed ₹100K and shall be allowed for the Assessment Year beginning on April 1, 2014. The un-availed amount of Previous Year 2013-2014 shall be allowed to be carried forward in the Previous Year 2014-2015.
- It is provided that the deduction shall be subject to the following conditions:-
- The loan is sanctioned by the financial institution during the period beginning on April 1, 2013 and ending on March 31, 2014.
- The amount of loan sanctioned for acquisition of the residential house property does not exceed ₹ 2.5 Million.
- The value of the residential house property does not exceed ₹ 4.0 Million.
- The assessee does not own any residential house property on the date of sanction of such loan.
- This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015 and subsequent Assessment Years.

### Immovable Property – TDS

#### 1% Tax Deduction at Source (TDS) on the value of transfer of Immovable Properties (excluding agricultural land), where consideration exceeds ₹ 5.0 Million.

- Under the existing provisions of the Act, on transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in case of compulsory acquisition of certain immovable properties.
- In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new section 194-IA.

- Section 194-IA proposes that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax at source at the rate of 1%.
- Further, to reduce compliance burden for small taxpayers, no deduction of tax shall be made where the total amount of consideration for the transfer of an immovable property is less than ₹ 5.0 Million
- This amendment will take effect from June 1, 2013.

## Immovable Property – PGBP

### Computation of Income under the head “Profits and Gains of Business or Profession (PGBP)” for transfer of Immovable Property in certain cases.

- Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted/assessed/assessable by any authority of a State Government for the purpose of stamp duty, then such stamp duty value is taken as full value of consideration under section 50C. These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade.
- It is proposed to insert a new section 43CA that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted/assessed/assessable shall be deemed to be the full value of the consideration for the purposes of computing income under the head PGBP.

## Immovable Property - IFOS

### Consideration for transfer of Immovable Property in excess of Stamp Duty value is taxable as “Income from Other Sources (IFOS)”.

- The existing provisions of section 56(2)(b)(vii) of the Act, inter alia, provide that where any immovable property is received by an individual or Hindu Undivided Family (HUF) without consideration, the stamp duty value of which exceeds ₹ 50K, the stamp duty value would be charged to tax as IFOS.
- The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration.
- It is proposed to provide that where any immovable property is received for a consideration which is less than the stamp duty value of property by an amount exceeding ₹ 50K, the stamp duty value as exceeds such consideration, shall be chargeable as IFOS.
- It is proposed to provide under above provisions that where the date of agreement and date of registration are not same, the stamp duty value may be taken as on the date of agreement only. However, this exception shall apply only in those cases where amount of consideration (a part thereof) has been received by any mode other than cash on or before the date of agreement.
- These amendments will take effect from April 1, 2014 and will apply in relation to Assessment Year 2014-15.

## Meaning of Capital Asset

### Amendment in the definition of Capital Asset

- The existing provisions contained in Section 2(14) of the Act define the term “Capital Asset” as property of any kind held by an assessee, whether or not connected with his business or profession. Certain categories of properties including agricultural land have been excluded from this definition.

The proposed amendment vis-à-vis existing provisions are given hereunder:-

Existing Provisions	Proposed Provisions
<p>As per Section 2(14)(iii)</p> <ul style="list-style-type: none"> <li>▶ (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than 10K according to last preceding census, or</li> <li>▶ (b) agricultural land situated in any area within such distance not exceeding 8 Km from the local limits of any municipality or cantonment board, as notified by the Central Government having regard to the extent and scope of urbanization and other relevant factors,</li> </ul> <p>forms part of capital asset.</p>	<p>It is proposed to amend item (b) so as to provide that the land situated in any area within the distance, measured aerially (shortest aerial distance),</p> <ul style="list-style-type: none"> <li>▶ not being more than 2 Km, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 10K but not exceeding 100K; or</li> <li>▶ not being more than 6 Km, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 100K but not exceeding 1 Million; or</li> <li>▶ not being more than 8 Km, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 1 Million.</li> </ul> <p>shall form part of capital asset.</p>

### Amendment in the definition of Capital Asset

- It is also proposed to define the expression “Population” to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
- Similar amendments are also proposed in section 2(1A) of the Income-Tax Act, 1961 relating to the definition of “Agricultural Income” and in respect of the definition of “Urban Land” in the Wealth-tax Act, 1957.

This amendment will take effect from April 1, 2014 and will, accordingly, apply in relation to Assessment Year 2014-2015.



## 2.6 Tax Assessments

### Tax Recovery

**“Tax due” for the purposes of recovery shall include penalty, interest and other sum payable.**

- Section 179 provides that where the tax due from a private company cannot be recovered from such company, then the director (who was the director of such company during the previous year to which such non-recovery relates) shall be jointly/severally liable for payment of such tax unless he proves that non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part.
- This provision is intended to recover outstanding demand from the directors of private company. However, some courts have interpreted the phrase 'tax due' does not include penalty, interest and other sum payable under the Act.
- In view of the above, it is proposed to clarify that for the purposes of this section, the expression “tax due” shall include penalty, interest or any other sum payable under the Act.
- These amendments will take effect from June 1, 2013.

### Defective Return

**Return of Income filed without payment of Self- Assessment Tax is to be treated as defective return.**

- Section 139(9) provides that where the Assessing Officer (AO) considers that the Return of Income (ROI) furnished is defective, he may intimate the defect and give an opportunity to rectify the defect within 15 days. If the defect is not rectified within 15 days, the return is treated as an invalid return.
- Section 140A provides that assessee shall be liable to pay such tax together with interest payable for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return.
- It is found that a large number of assessee are filing their returns without payment of self-assessment tax.
- It is proposed to provide that ROI shall be regarded as defective unless the tax together with interest, if any, payable as per provisions of section 140A has been paid on or before the date of furnishing the ROI.
- These amendments will take effect from June 1, 2013.

### Search & Seizure

#### Application of seized assets under Section 132B does not includes Advance Tax

- Section 132B of the Act, inter alia, provide that seized assets may be adjusted against any “Existing Liability” under the provisions of Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable.
- Various courts have taken a view that the term “Existing Liability” includes advance tax liability.
- The legislative intent behind this provision is to ensure the recovery of outstanding tax / interest / penalty and also to provide for recovery of taxes / interest / penalty, which may arise subsequent to the assessment pursuant to search.
- Accordingly, it is proposed to clarify that the existing liability does not include advance tax as the provisions of Part C of Chapter XVII of the Act.
- These amendments will take effect from June 1, 2013.

### Special Audit

#### Added grounds for direction to conduct special audit under Section 142(2A)

- The existing provisions contained in section 142(2A) of the Act, inter alia, provides that if at any stage of the income tax proceedings, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such special audit.
- The expression “Nature and Complexity of the Accounts” has been interpreted in a very restrictive manner by various courts.
- It is, therefore, proposed to provide and include expressions like ‘volume of the accounts’, ‘doubts about the correctness of the accounts’, ‘multiplicity of transactions in the accounts’ or ‘specialized nature of business activity of the assessee’ etc.
- These amendments will take effect from June 1, 2013.

## Assessments and Reassessments

### Exclusion of time in computing the Period of Limitation for completion of assessments and reassessments

- Section 153, inter alia, provide the time limit for completion of assessment / reassessment by Assessing Officer (AO).
- Explanation to Section 153 provides that certain periods specified therein shall be excluded while computing the period of limitation for the purpose of assessment / reassessments.
- Under the existing provisions of clause (iii) of Explanation 1 to section 153, the period of special audit under section 142(2A) is excluded in computing the period of limitation.
- However, the existing provision does not provide for the exclusion of time in case the direction of the AO is set aside by the court.
- It is proposed to amend clause (iii) of Explanation 1 to section 153 to provide that where such directions are challenged before a court, ending with the date on which the order setting aside such directions is received by the commissioner, shall be excluded in computing the period of limitation
- Similarly, the provisions contained in clause (viii) of Explanation 1 to section 153 are amended to provide that where reference / first reference for exchange of information is made under section 90/90A, the period of limitation shall exclude the period commencing from the date on which a reference for exchange of information is made and ending with the date on which the information so requested is last received by the Commissioner or a period of 1 year which ever is less.
- Similar amendments are also proposed in the Explanation to section 153B of the Income-tax Act relating to time limit for completion of search assessment.
- These amendments will take effect from June 1, 2013.

## 2.7 General Anti Avoidance Rules (GAAR)

### Modified provisions of General Anti Avoidance Rules (GAAR) will come into effect from April 1, 2016

- The General Anti Avoidance Rule (GAAR) was introduced in the Act by Finance Act, 2012. The substantive provisions relating to GAAR are contained in Chapter X-A (Sections 95 to 102) of the Act and procedural provisions are provided in section 144BA, which would have come into force with effect from April 1, 2014.
- A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government, who gave recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR.

- The major recommendations of the Expert Committee have been accepted by the Government, with some modifications. Some of the recommendations accepted by the Government require amendment in the provisions of Chapter X-A and section 144BA.
- In order to give effect to the recommendations, the following amendments have been made in GAAR provisions currently provided in the Act:-

Proposed Provisions	Existing Provisions
Effective from April 1, 2016 (Assessment Year 2016-17)	Effective from April 1, 2014 (Assessment Year 2014-15)
An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement.	Section 96 provides that it should be "the main purpose or one of the main purposes"
The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement.	Section 97 provides that these factors would not be relevant.
An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained.	No provisions are outlined in Section 97 which relates lack of commercial substance due to business risks, net cash flows etc.
The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices.	Section 144BA provides that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service.
The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act.	Section 144BA provides that the direction of the Approving Panel will be binding only on the Assessing Officer.
The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years.	Section 144BA is silent on these issues.
The two separate definitions in the current provisions of section 102, namely, "associated person" and "connected person" will be combined and there will be only one inclusive provision defining a 'connected person'.	Section 102 contains two separate definitions.



# INDIRECT TAX PROPOSALS

## 3.1 Overview

- The Union Budget, 2013 ("Budget") was recently announced by the Hon'ble Finance Minister on February 28, 2013.
- While certain changes have been prescribed by the Budget, there has been no change in the standard rate of taxes which remain as under:
  - Standard rate of basic customs duty remains unchanged at 10%
  - Standard rate of excise duty remains unchanged at 12%
  - Standard rate of service tax remains unchanged at 12%
  - Rate of Education Cess and Secondary and Higher Education Cess also remains unchanged at 2% and 1% respectively.
- Further, while there was no announcement on the date of implementation of Goods and Services Tax ("GST"), the Hon'ble Finance Minister mentioned that broad consensus has been achieved with State Governments on various issues there under. He stated that the Centre would compensate the States for their loss, upto ₹ 90 Million, on account of reduction in the rate of Central Sales Tax.
- The Constitution Amendment Bill is pending clearance from the Standing Committee of the Parliament and a Draft GST Bill will be drafted by the State Finance Ministers and the GST Council.
- The Hon'ble Finance Minister also assured his support to measures that will be undertaken to boost export and import of goods through changes in the Foreign Trade Policy.

## 3.2 Service Tax

- Service tax is regulated in India vide Finance Act, 1994 ("Finance Act") and the rules framed there under. The standard rate of service tax is 12.36%. (including 2% education cess and 1% secondary and higher education cess).
- Prior to July 1, 2012, only services specified in the Finance Act were taxable. However, with effect from July 1, 2012, services are being taxed on a comprehensive basis subject to certain exclusions provided in the Negative List (Section 66D of the Finance Act).
- Moreover, certain taxable services are exempt from payment of service tax vide Notification No. 25/2012 – ST dated June 20, 2012 ("Mega Exemption Notification").
- Additionally, certain abatements have also been prescribed vide Notification No. 26/2012 – ST dated June 20, 2012 ("Abatement Notification") for determining the taxable base on which service tax is to be levied.
- Recently, the Budget sought to amend certain provisions of the Finance Act, rules framed there under and the Notifications. The key proposals in this regard are discussed in the subsequent paras.

### Amendments in Negative List

#### Service of imparting vocational training

- Currently, the Negative List inter alia comprise services in relation to specified vocational education courses provided by an industrial training institute / centre affiliated to the National Council for Vocational Training.
- The Budget proposals seek to enlarge the scope of said vocational education so as to include similar services provided by an industrial training institute / centre affiliated to the State Council for Vocational Training.
- The Budget proposals further seeks to omit the vocational education courses run by institutes affiliated to National Skill Development Corporation.

#### Manufacture or production of goods

- Currently, Negative List inter alia includes process amounting to manufacture or production of goods on which duties of excise are leviable under the Central / State Excise Acts. This entry does not exclude leviability of service tax on production or manufacture of goods on which excise duty is leviable under other Acts.
- The Budget proposals seek to enlarge the scope of this entry so as to include processes which amount to manufacture or production of goods on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) year of Act i.e - 1955.

#### Service of testing related to agriculture

- Currently, the Negative List inter alia comprise services in relation to agriculture and agricultural produce including seed testing.

- The Budget proposals seek to enlarge the scope of this entry so as to include testing activities directly related to any agricultural produce.

**'The amendments in Negative List would be applicable from the date of enactment of the Finance Bill.**

## Changes in Mega Exemption Notification

### Services of repair or maintenance of aircraft

- Hitherto, services provided to the Government, a local authority or a government authority by way of repair or maintenance of a vessel or an aircraft was exempt from payment of service tax.
- The Budget proposals seek to partially withdraw the exemption to the extent of provision of services of repair and maintenance of an aircraft.
- Hence, with effect from April 1, 2013, services provided to the Government, a local authority or a government authority by way of repair or maintenance of an aircraft would be liable to service tax.

### Services of vehicle parking to general public

- Hitherto, services by way of vehicle parking to the general public were exempt from payment of service tax.
- The Budget proposals seek to withdraw the said exemption. Hence, services by way of parking of vehicles is liable to service tax with effect from April 1, 2013.

### Services provided by educational institutions

- Hitherto, following services provided to or by an educational institution in respect of education were exempt from payment of service tax:
  - ▶ auxiliary education services; and
  - ▶ renting of immovable property
- The Budget proposals seek to partially withdraw the above exemption to the extent of services provided by an educational institution.
- Hence, with effect from April 1, 2013, auxiliary education services provided by educational institutions and renting of immovable property by educational institutions would not be exempt from payment of service tax.

### Temporary transfer or permitting the use or enjoyment of cinematograph films

- Hitherto, temporary transfer or permitting the use or enjoyment of copyrights relating to cinematograph films was exempt from payment of service tax.
- Since the blanket exemption to such temporary transfer or permitting the use or enjoyment of copyright was resulting in break in credit chain in certain cases, there were representations by the industry to rationalize the exemption.
- Accordingly, the Budget proposals seek to restrict the above exemption to the extent of temporary transfer or permitting the use or enjoyment of copyright of cinematograph films for exhibition in a cinema hall or a cinema theatre.
- Hence, with effect from April 1, 2013, temporary transfer or permitting the use or enjoyment of copyright of cinematograph films other than for the purpose of exhibition in a cinema hall or cinema theatre, would be liable to service tax.

### Services provided by air conditioned restaurant not having a license to serve alcoholic beverages

- Hitherto, services provided by a restaurant and other eating places were exempt from payment of service tax. However, the exemption was not available to restaurants and eating places:
  - ▶ having air conditioning or central air-heating in any part of the establishment at any time during the year; and
  - ▶ having a liquor license
- The condition of the restaurant and eating places having a liquor license for services to be taxable has been dispensed with in the Budget proposals.
- Hence, with effect from April 1, 2013, all restaurants which have air conditioning or central air-heating (with or without liquor license) would be liable to service tax.

### Transportation of goods by rail or vessel within India

- Hitherto, services of transportation of specified goods, by rail or vessel within India were exempt from payment of service tax.
- The Budget proposals seek to withdraw the above exemption to the extent of transportation of the following:
  - ▶ certain categories of petroleum and petroleum products;
  - ▶ postal mail or mail bags; and
  - ▶ household effects
- Hence, with effect from April 1, 2013, transportation of the above mentioned goods by rail or vessel would be liable to service tax.



### Services provided by goods transport agency

- Hitherto, specified services provided by a goods transport agency were exempt from payment of service tax.
- The scope of the above entry is being expanded to include transportation of:
  - ▶ agricultural produce
  - ▶ certain specified foodstuff
  - ▶ chemical fertilizers and oil cakes
  - ▶ newspapers and magazines registered with the Registrar of Newspapers
  - ▶ relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishaps
  - ▶ defence or military equipments
- Hence, with effect from April 1, 2013, transportation of the above goods by a goods transport agency would not be liable to service tax.

### Changes in Abatement Notification

#### Services of construction of complex, building, civil structure or part thereof

- Hitherto, subject to fulfillment of prescribed conditions, service tax was required to be paid only on 25% of consideration received towards construction of complex. Hence, an abatement of 75% was available in case of construction of all complexes, buildings, etc.
- The Budget has amended the Abatement Notification such that the abatement, with effect from March 1, 2013, is available in the following manner:
  - a) for residential unit having carpet area upto 2000 square feet / where amount charged is less than ₹ 10 Million – abatement of 75% is available
  - b) in all other cases, abatement of 70% is available
- Hence effective rate of service tax on construction services other than (a) above, has been increased from 3.09% to 3.71%.

### Advance Ruling

#### Resident public limited company can now seek an Advance Ruling

- The Finance Act prescribes certain categories of applicants who can seek an Advance Ruling from the Authority for Advance Rulings.
- The Budget proposals seek to expand the eligible categories of applicants who can seek advance ruling by proposing inclusion of 'resident public limited companies'.
- Hence, post enactment of the Finance Bill, 2013, a resident public limited company would be entitled to seek an Advance Ruling under the Finance Act.

## Penalties and Prosecution

### More stringent penalty and prosecution provisions

- The Budget proposes to cap the limit of ₹10K upto which penalty for failing to take registration under the Finance Act can be imposed. The Budget also proposes to impose penalty upto ₹100K on concerned directors and specified officers of the Company who knowingly contravene the provisions of the Finance Act.
- The Budget further proposes to make the criminal prosecution related provisions stringent insofar as they relate to commission of grave offences under the Finance Act. The amount involved for the purpose of punishment has been increased from ₹3 Million to ₹5 Million
- Further, the offences have been categorized as:
  - ▶ cognizable offences (for grave cases – requires production of person before a Magistrate after arrest)
  - ▶ non-cognizable and bailable offences (for trivial cases – Specified officers can grant bail after arrest)

## Voluntary Compliance Encouragement Scheme

### Amnesty scheme for specified defaulters proposed

- With a view to encourage compliance in payment of tax, the Budget proposes to launch a one time amnesty scheme. Benefits under the scheme include waiver from payment of interest and penalties, and immunity from launching of prosecution. Such benefits can be availed by a person who has not filed returns or who has not made appropriate disclosures in the filed return.
- Under this scheme, persons having failed to pay tax till March 31, 2013 for the period October 1, 2007 to December 31, 2012, may make true and correct declaration before the designated authority of his tax dues in respect of which no notice has been issued, and no audit / inquiry / investigation or other proceedings have been initiated under the Finance Act prior to March 1, 2013.
- Declaration needs to be made and half of the tax dues need to be paid by December 31, 2013. The remaining tax dues need to be paid:
  - ▶ by June 30, 2014 without interest; or
  - ▶ by December 31, 2014 with interest from July 1, 2014 onwards
- Upon acknowledgement of discharge of tax liability by the competent Authority, the declarant shall be immune from all other liabilities and proceedings stand concluded, unless his declaration is found to be substantially false.
- The scheme will be operational from the date of enactment of the Finance Bill and will close on December 31, 2013.

## 3.3 Customs Duty

### Overview

- Export or import of goods from or into India is regulated vide the Customs Act, 1962 (“Customs Act”) and the rules framed there under. The rates at which customs duty is to be levied have been prescribed under the Customs Tariff Act, 1975 (“Customs Tariff Act”).
- Typically, export of goods from India is exempt from levy of customs duty.
- However, import of most goods into India attracts customs duty. This primarily consists of the following components:
  - ▶ Basic customs duty (“BCD”) – standard rate 10%
  - ▶ Additional duty of customs in lieu of excise duty (“CVD”) – standard rate 12%
  - ▶ Additional duty of customs in lieu of VAT (“ACD”) – standard rate 4%
  - ▶ Customs cess (including secondary and higher education cess) – standard rate 3%

Additional duties of customs are also applicable on import of certain specified goods into India.

- The policy relating to exports and imports is governed by the Foreign Trade Policy issued under the Foreign Trade (Development and Regulation) Act, 1992. In order to implement the Foreign Trade Policy, relevant changes are made to the customs laws and rules / notifications made / issued there under.
- With a view to encourage trade and free flow of goods, India has also entered into bilateral agreements with various countries. Under these agreements, imports and exports can be made at preferential rates subject to fulfillment of prescribed conditions.
- At the same time, in order to protect the domestic industry from injury, the Government is also empowered to impose anti – dumping and safeguard duties on import of goods.
- Recently, the Budget sought to amend certain provisions of the Customs Act, the Customs Tariff Act and the rules framed there under as well as the Notifications. The key proposals in this regard are discussed in the subsequent paras.

### Legislative changes

#### Warehousing of goods

- Currently, the Customs Act permits warehousing of goods imported into India which are pending customs clearance for home consumption. Such warehousing is allowed in a public / private warehouse without any limit on the period for which the goods are warehoused.
- The Budget proposes to limit the period of such warehousing pending clearance of imported goods for home consumption upto a period of thirty days.

### Export of warehoused goods by post

- Currently, the Customs Act does not permit export of warehoused goods basis the label or declarations through post.
- The Budget proposes to permit export of warehoused goods basis such labels or declarations through post.

### Electronic filing of import /export manifest

- Currently, the Customs Act is silent on the mode of delivery / filing of import / export manifest by the person in charge of a vessel, aircraft or a vehicle carrying goods for importation into / exportation out of India.
- The Budget proposes mandatory filing of import or export manifest electronically, unless not feasible.

### Reduction in interest free period for payment of Customs duty

- Presently, an importer is allowed 5 days time for payment of customs duty from the date of assessment of bill of entry without charging interest.
- The Budget proposes to reduce the above interest free period for payment of customs duty from five days to two days.

### List of specified activities for seeking Advance Ruling expanded

- The Authority for Advance Ruling, set up under the Customs Act, currently determines specified issues of eligible applicants relating to their proposed business activities.
- The Budget proposes to expand the scope of activities for which eligible applicants can seek an Advance Ruling for specified issues.
- Post enactment of the Finance Bill, eligible applicants having existing businesses would be entitled to seek Advance Rulings for determination of specified issues with respect to their new / proposed activities.

### Automatic vacation of stay orders passed by Tribunal

- Presently, in cases where an appeal is pending before the Tribunal and a stay has been granted in the matter, the stay order remains valid for a period of 180 days only.
- The Budget proposes to empower the Tribunal to extend the stay order for a further period of 185 days if delay in disposing off the appeal is not attributable to the applicant party.
- The Budget further proposes that if the appeal is not disposed off by the Tribunal within 365 days from the date of grant of the original stay, the stay order will automatically vacate.

### Arrest provisions made stringent

- The Supreme Court in the case of Om Prakash v. Union of India held that offences under the Customs Act are cognizable and bailable. This meant that after arrest, customs officers were required to grant bail to the accused persons.
- In order to make arrest provisions stringent, Budget proposes to make the following offences non-bailable:
  - ▶ evasion or attempted evasion of customs duty exceeding ₹ 5 Million
  - ▶ import or export of prohibited goods
  - ▶ non declaration of imports or exports of goods exceeding value ₹ 10 Million
  - ▶ fraudulently availing and attempt to avail any exemption or drawback exceeding ₹ 5 Million
- Offences other than those mentioned above, would be bailable offences.

### Prosecution provisions

- The value of customs duty evasion and fraudulently availing drawback or exemption of ₹ 3 Million for punishment purposes has been proposed to be enhanced to ₹ 5 Million vide the Budget.

### Recovery of dues from third party

- Presently, in case of default in payment of customs duty, customs authorities can initiate recovery proceedings only against the defaulter.
- The Budget proposes to introduce provisions whereby customs authorities can recover such dues from third persons who owe money to the defaulter.
- The proposal allows the customs officers to issue notices to third parties who hold money on account of the person liable to deposit customs dues, requiring them to deposit the same to the credit of Central Government.
- In case the third parties to whom notice has been issued, fail to make the payment, they shall be deemed to be persons in default. Consequently, recovery proceedings can be initiated by the customs authorities against such third persons.
- The Legislative changes would be applicable from the date of enactment of the Finance Bill.

### **Baggage Rules amended enhancing limit of duty free import of jewelry in certain cases**

- Hitherto, in cases of transfer of residence or in cases involving stay outside India in excess of one year, the Baggage Rules allowed duty free import of jewelry to a male passenger of ₹ 10K to a female passenger of ₹ 20K.
- Effective March 1, 2013, vide the Budget, the above limit has been enhanced to ₹ 50K for qualified male passengers and ₹ 100K for qualified female passengers.

### **Changes in exemptions from customs duties**

#### **Customs duty exemption on import of aircrafts and parts thereof**

- With effect from March 1, 2013, exemption from education cess on import of aircrafts and parts which was hitherto available, has been withdrawn vide the Budget.
- Hitherto, import of parts or testing equipments for maintenance, repair and overhauling ("MRO") of aircrafts was exempt from customs duties subject to conditions which inter alia included use of the goods for specified purpose within 3 months from the date of importation. The Budget has enhanced the said period of usage from 3 months to one year.
- The Budget has further allowed customs duty exemption on import of parts and testing equipment for MRO of aircraft parts.
- The Budget has also allowed exemption from BCD on import of parts and testing equipment for MRO of private aircrafts.
- It has also been clarified that foreign airlines meeting the definition of scheduled air transport / cargo service operator, would also be eligible for the duty exemptions.
- In the context of MRO of a foreign registered non-scheduled aircraft while on 'a flight to or across India', it has been clarified that 'a flight to India' means completion of itinerary (which may include multiple destinations). That is, such an aircraft can complete its itinerary and receive MRO services subject to leaving India within stipulated period. In such a case, the MRO operator would be eligible for customs duty exemptions for the parts and test equipment used for such MRO activity.

#### **Customs duty exemptions on import of ships and vessels and parts thereof**

- With effect from March 1, 2013, exemption from excise duty has been provided on ships, vessels, tugs, dredgers and parts thereof under the central excise notification. Accordingly, there would be no CVD on import of such goods. Consequently, the entries relating to CVD exemptions in customs notifications have been deleted, having become redundant.
- Hitherto, import of parts or testing equipments for MRO of ships, vessels, etc was exempt from customs duties subject to conditions which inter alia included use of the goods for specified purpose within 3 months from the date of importation. The Budget has enhanced the said period of usage from 3 months to one year.

### Extension on exemption from BCD relating to hybrid and electric vehicles

- Hitherto, exemption from BCD on import of hybrid and electric vehicles was available only till March 31, 2013.
- The Budget has extended the period till which such exemption would be available by two years i.e. till March 31, 2015.
- Further, the Budget has allowed BCD exemption on import of lithium ion automotive battery for manufacture of lithium ion battery packs for supply to the manufacturers of hybrid and electric cars.

### Clarification on BCD exemption relating to chemicals and parts required for manufacture of solar panels

- It has been clarified that exemption from BCD is available to all goods including chemicals and electronic parts required for the manufacture of solar cells whether or not assembled in modules or panels.
- Incentives to semi conductor wafer fab manufacturing facilities.
- The Hon'ble Finance Minister also proposed that appropriate incentives would be provided to semi-conductor wafer fab manufacturing facilities including zero customs duty for plant and machinery. However, details of this are yet to be announced.

## Changes in rate of customs duty in case of imports

### Rate of BCD reduced for certain products

Product	Old rate	New rate wef March 1, 2013
Pre-forms of precious and semi-precious stones	10%	2%
Bituminous coal	5%	2%
Specified machinery for leather and footwear industry	7.5%	5%
Textile Machinery and parts thereof	7.5%	5%
Stainless steel wire cloth stripe for use in manufacture of catalytic converters and their parts	10%	5%
Wash coat for use in manufacture of catalytic converters and their parts	7.5%	5%
Hazel nuts	30%	10%
De-hulled oat grain	30%	15%

## Rate of BCD increased for certain products

\*Motor cars exceeding CIF value of USD 40K or engine capacity of 3000cc for petrol engine or 2500cc for diesel engine

\*\*Motor cycle exceeding engine capacity of 800cc

Product	Old rate	New rate wef March 1, 2013
New Motor Car*	75%	100%
Old Motor Car	100%	125%
New Motor Cycle**	60%	75%
Yachts and other vessels	10%	25%
Steam Coal	Nil	2%
Raw silk	5%	15%
Set Top Box (Integrated Decoder Receiver)	5%	10%

## Changes in rate of customs duty in case of exports

### Increase in rate of export duty

Product	Old rate	New rate wef March 1, 2013
Bauxite (calcined or not calcined)	Nil	10%
Ilmenite, unprocessed	Nil	10%
Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground)	Nil	5%

## 3.4 Excise Duty

### Overview

- Excise duty is levied on production or manufacture of goods in India and is regulated by the Central Excise Act, 1944 ("Central Excise Act"). The rates at which excise duty is to be levied have been prescribed under the Excise Tariff Act, 1985 ("Excise Tariff Act").
- Standard rate of excise duty is 12.36% (including 2% education cess and 1% secondary and higher education cess). However, the specific rate of excise duty depends upon the description and classification of goods under Excise Tariff Act.
- Excise duty is generally levied on the transaction value of goods. However, in case of certain goods, excise duty is to be levied on the maximum retail price of goods less prescribed abatements.
- With a view to boost certain specific industries or to develop specific areas, exemption from payment of excise duty has been granted vide notifications.
- Recently, the Budget sought to amend certain provisions of the Central Excise Act, the Excise Tariff Act and the rules framed there under as well as the Notifications. The key proposals in this regard are discussed in the subsequent paras.



## Legislative changes

### Offence and penalties

- The value of excise duty evasion of ₹ 3 Million for punishment purposes has been proposed to be enhanced to ₹ 5 Million vide the Budget.
- Further, the Budget proposes to make the following offences cognizable and non – bailable where the duty liability exceeds ₹ 5 Million :
  - ▶ evasion of payment of duty
  - ▶ wrongful utilization of credit for payment of excise duty
- Further, the offences have been categorized as:
  - ▶ cognizable offences (for grave cases – requires production before a Magistrate after arrest)
  - ▶ non-cognizable (for trivial cases – Specified officers can grant bail after arrest).

### Recovery of dues from third party

- Presently, in case of default in payment of excise duty, excise authorities can initiate recovery proceedings only against the defaulter.
- The Budget proposes to introduce provisions whereby excise authorities can recover such dues from third persons who owe money to the defaulter.
- The proposal allows the excise officers to issue notices to third parties who hold money on account of the person liable to pay excise duty, requiring them to deposit the same to the credit of Central Government.
- In case the third parties to whom notice has been issued, fail to make the payment, they shall be deemed to be persons in default. Consequently, recovery proceedings can be initiated by the excise authorities against such third persons.

### List of specified activities for seeking Advance Ruling expanded

- The Authority for Advance Ruling, set up under the Central Excise, currently determines specified issues of eligible applicants relating to their proposed business activities.
- The Budget proposes to expand the scope of activities for which eligible applicants can seek an Advance Ruling for specified issues.
- Post enactment of the Finance Bill, eligible applicants having existing businesses of production or manufacture of goods would be entitled to seek Advance Rulings for determination of specified issues with respect to their new / proposed activities.

### List of specified issues for seeking Advance Ruling expanded to include credit availability of input services

- Presently, the issues with respect to which an Advance Ruling may be sought includes only admissibility of credit of excise duty.

- The Budget proposes to expand the scope of issues by including issues relating to admissibility of credit of service tax paid or deemed to have been paid on input services.

### Automatic vacation of stay orders passed by Tribunal

- Presently, in cases where an appeal is pending before the Tribunal and a stay has been granted in the matter, the stay order remains valid for a period of 180 days only.
- The Budget proposes to empower the Tribunal to extend the stay order for a further period of 185 days if delay in disposing off the appeal is not attributable to the applicant party.
- The Budget further proposes that if the appeal is not disposed off by the Tribunal within 365 days from the date of grant of the original stay, the stay order will automatically vacate.

The Legislative changes would be applicable from the date of enactment of the Finance Bill.

### Exemption from excise duty

- Readymade garments and made ups bearing or sold under a 'brand name' have been exempted from payment of excise duty with effect from March 1, 2013.

However, with respect to all goods of cotton not containing any other material, the manufacturer has been given an option to pay excise duty at the concessional rate of 6% and avail input credit.

- Ships, tugs, pusher craft, dredgers and other specified vessels have also been exempted from payment of excise duty with effect from March 1, 2013.
- All handmade carpets and carpets / other textile floor coverings of coir and jute whether hand made or not have been exempted from payment of excise duty with effect from March 1, 2013.
- With effect from March 1, 2013 complete exemption from excise duty has been provided on goods manufactured and captively consumed in the manufacture of final product in respect of which area based exemption in Himachal Pradesh and Uttrakhand is being availed.
- Tapioca starch manufactured and consumed captively in the manufacture of tapioca sago has been exempted from excise duty with effect from March 1, 2013. Further, manufacture of tapioca sago has also been exempted from payment of excise duty.

### Extension of exemption from excise duty relating to hybrid and electric vehicles

- Hitherto, exemption from excise duty on manufacture of specified parts of hybrid and electric vehicles was available only till March 31, 2013. The Budget has extended the period till which such exemption would be available by two years ie till March 31, 2015.

### MRP based valuation introduced for certain non – allopathic medicaments

- With effect from March 31, 2013, excise duty on branded and generic Ayurvedic, Unani, Siddha, Homeopathic and Bio – chemic medicaments is to be determined on the basis of MRP valuation less 35% abatement.

### Recovery of Cenvat credit liable to be reversed on removal of inputs and capital goods from factory or premises of service providers

- The manufacturer of goods or provider of output services, is liable to deposit an amount equivalent to amount of credit taken or amount as reduced by specific percentage in respect of following cases:
  - ▶ Removal of inputs or capital goods as such or after use from the factory of manufacturer or provider of output service
  - ▶ Writing off of inputs or capital goods from books of accounts
- The Budget proposes that in case the manufacturer of goods or provider of output service fails to deposit the same, it shall be recovered as if the duties or tax have not been levied or short paid or erroneously refunded.

### Changes in rate of excise duties

#### Increase in excise duty

Product	Old rate	New rate wef March 1, 2013
Mobile handsets having retail sale price of more than ₹ 2K	1%	6%
Motor vehicles of engine capacity exceeding 1500 cc commonly known as Special Utility Vehicles including utility vehicles. An SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm and above. However, refund of additional excise duty would be available with respect to SUVs used as taxis.	27%	30%
Marble slabs and tiles	₹ 30 / square metre	₹ 60 / square metre
Stainless steel patta – patti under the Compounded Levy Scheme	₹ 30K / machine / month	₹ 40K / machine / month

#### Reduction in excise duty

Product	Old rate	New rate wef March 1, 2013
Chassis of diesel motor vehicles meant for transportation of goods	14%	13%







## About Mazars

*Mazars is an international, integrated and independent organisation specializing in audit, consulting, accounting, tax and legal services. Directly present in 71 countries, Mazars unites the skills of 13,500 professionals. Through correspondence and the offices of representation agreements, Mazars also serves clients in 21 additional countries, with teams of professionals who are at the forefront of technical and ethical standards. Mazars is a founding member of the international alliance Praxity, comprising over 70 independent organisations of audit and consulting, bringing together over 28,000 professionals. Mazars has the ambition to constantly expand its services for the benefit of its clients - which range from large international organisations, SMEs to public organisations by providing global solutions that are customized to help clients find dynamic solutions for sustainable growth.*

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