Salient Features of the Finance Bill, 2011

DIRECT TAXES

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INTRODUCTION

The Finance Minister, Mr. Pranab Mukherjee presented the budget for the year 2011-12 on 28th February, 2011. As against the budget for the year 2010-11, when there were doubts about the growth of Indian economy due to global crisis, this year the Finance Minister has had an easy task as the Indian economy has shown considerable resilience and during the year 2010-11 was back to its pre-global melt-down growth trajectory. The Gross Domestic Project is estimated to grow by 8.6 per cent in the year 2010-11 with impressive growth in agriculture by 5.4 per cent.

Despite the growth in the economy there were challenges before the Finance Minister in the form of inflation management, implementation gaps, drift in governance, gap in public accountability and corruption. The continued high food prices have also been a cause of concern.

The 2011-12 budget gives many positive indications so far fiscal consolidation is concerned. The fiscal deficit of 5.1 per cent of GDP for the year 2010-11 as against 5.5 per cent projected in the last budget and the projection of 4.6 per cent for the next year 2011-12 is a very positive sign. Similarly, the projection of Central Government debt as a proportion of GDP at 44.2 per cent for the year 2011-12 as against 52.5 per cent recommended by the Thirteenth Finance Commission shows a strong commitment of the government to adhere to fiscal discipline and that too without much increase in tax rates.

The growth in tax revenue in the year 2010-11 has been impressive. The total tax collections for the year 2010-11 are expected to be at Rs.7,86,888 Crores as against Rs.7,46,651 Crores projected in the budget mainly because of higher collection of income tax from individuals and of customs duty. The estimates for the year 2011-12 of a total tax collection at Rs.9,32,440 Crores projecting a growth of over 24 per cent over the last year's budget estimates seems to be optimistic.

Estimates for the year 2011-12 from direct taxes at Rs.5,32,651 Crores as against revised estimates of Rs.4,46,000 Crores for the year 2010-11 constitute about 57 per cent of total tax collections i.e. an increase of 21 per cent. The estimates of corporate income tax at Rs.3,59,990 Crores for the year 20011-12 as against revised estimates of Rs.2,96,377 for the year 2010-11 are 67.5 per cent of the total direct taxes whereas estimates of personal income tax of Rs.1,72,661 for the year 2011-12 as against revised estimates of Rs.1,49,623 Crores are 32.5 per cent of the total direct taxes. A noticeable feature of the tax collection for year 2010-11 is that personal income tax collections have improved from Rs.1,28,669 Crores projected in the budget estimates of the year 2010-11 to Rs.1,49,624 Crores as per revised estimates despite drastic restructuring of personal tax rate slabs last year whereby the slab rate of 10 per cent applicable up to income of Rs.3,00,000 was increased up to Rs.5,00,000 and the slab rate of 20 per cent applicable on income between Rs.3,00,000 to Rs.5,00,000 was increased from Rs.5,00,000 to Rs.8,00,000. This confirms the belief that moderate tax rates help in improving tax compliance and lowering of tax rates does not lead to fall in tax collection.

Another noticeable feature of the income tax collection from Corporates is that 55.75 per cent of the same is contributed by just 216 companies and another 17.80 per cent is contributed by 692 companies only, meaning thereby that 908 companies contribute around 74 per cent of income tax collection from Corporates. Out of the total 4,27,811 companies filing tax returns, 1,77,834 companies do not pay any income tax and 2,23,888 companies pay only 3 per cent of the income tax of Corporates.

As is usual, the Finance Minister in this Budget has proposed thirty-four clauses in the Finance Bill, 2011 to amend the various provisions of the Income Tax Act and the Wealth Tax Act. The various amendments proposed in the Finance Bill, 2011 are analyzed below. Unless otherwise stated, all these amendments are proposed to be effective from April 1, 2012 i.e. assessment year 2012-13 relevant to the income earned in the financial year 2011-12.

A. TAX RATES

1. Increase in the Threshold Limit

The threshold limit for every individual, HUF, Association of Persons, Body of Individuals and Artificial Juridical Persons is being increased from Rs.1,60,000 to Rs.1,80,000.

The new tax rates proposed are as under:

Income	**Tax Rates**
Up to Rs.1,80,000	NIL
Rs.1,80,001 – 5,00,000	10%
Rs.5,00,001 – 8,00,000	20%
Above Rs.8,00,000	30%

No surcharge shall be applicable. However, educational cess and higher education cess at the rate of 2% and 1% respectively shall be applicable. The threshold limit for a woman resident in India will continue to be Rs.1,90,000. Accordingly, the benefit of increase in threshold limit by Rs.20,000 shall be available to male assessees only. The threshold age limit of 65 years for being eligible as a senior citizen is being reduced from 65 years to 60 years. Senior resident citizens above 60 years of age need not pay any tax on income up to Rs.2,50,000, an increase of Rs.10,000 only on the existing threshold limit of Rs.2,40,000 as against the general increase of Rs.20,000. A new category of very senior citizens above 80 years is being created. Such resident very senior citizens i.e. above 80 years of age need not pay tax on income up to Rs.5,00,000.

2. Surcharge on Corporates being reduced from 7.5% to 5%

The surcharge applicable to a domestic company having income above Rs.1 Crore is being reduced from 7.5% to 5%. No surcharge is applicable on a domestic company having income up to Rs.1 Crore. In the case of foreign companies the surcharge is being reduced from 2.5% to 2%. The Finance Minister is gradually reducing the surcharge. One can expect that on the introduction of Direct Taxes Code next year, the surcharge applicable to companies will be fully withdrawn. Similarly, the reduction in corporate tax rate from 30 per cent to 25 per cent may be spread over the years in the coming budgets.

3. Minimum Alternate Tax being increased to 18.5%

To offset the loss arising from the reduction of surcharge from 7.5% to 5% in the case of companies, the Finance Bill proposes to enhance the Minimum Alternate Tax (MAT) rate from 18% to 18.5%. In recent years there has been a steep increase in rate of MAT. Starting from 7.5 per cent, the MAT rate was increased to 10 per cent with effect from 1.4.2007, (Assessment year 2007-08), increased to 15 per cent with effect from 1.4.2010 (Assessment year 2010-11), and further increased to 18 per cent with effect from 1.4.2011 (Assessment year 2011-12); and it is now being increased still further to 18.5 per cent from 1.4.2012 (Assessment year 2012-13).

This MAT affects all companies claiming deduction in respect of income from infrastructure facilities, telecom, power generation etc. under Section 80-IA; companies claiming deduction in respect of income from multiplex theatre, convention centre, housing projects, hospitals etc., under Section 80-IB; companies claiming exemption in respect of undertakings in the State of Himachal Pradesh and Uttaranchal under Section 80-IC; and companies claiming exemption in respect of undertakings in North Eastern States under Section 80-IE of the Act. The only consolation for these companies is that in the subsequent years they will be eligible to take credit of the MAT paid in earlier years. Thus in a way MAT is not an additional tax in the real sense but an advance tax paid for subsequent years

An interesting feature of liability under MAT is in respect of long-term capital gain on non-Securities Transactions Tax (STT) paid equity shares. Such long-term capital gain without any indexation benefit will be liable for MAT at the rate of 18.5% as against the rate of 20% applicable after indexation in respect of non-STT paid Long Term Capital Gain. Thus, the MAT liability can be more than the normal tax liability in case such a company does not have the possibility of claiming credit of the MAT in future. The net effect of this is not only double taxation by way of STT and MAT but the 2MAT rate goes beyond the normal tax rate. Similar will be the case in respect of Short-Term Capital Gain arising on STT paid equity shares where normal tax rate applicable is 15% under Section 111A of the Act. Thus, this the MAT makes the provision of Section 10(38) exempting Long-Term Capital Gain in respect of STT-paid shares, Section 48 allowing indexed cost of acquisition consequent to cost inflation index, Section 111A taxing Short-Term Capital on STT paid shares @ 15% and Section 112 taxing Long-Term Capital Gain after indexation @ 20% virtually redundant in the case of a company which does not have other income chargeable to tax.

To avoid this anomaly, it will be more appropriate to change the present mode of levying MAT on the basis of Book Profit as per Companies Act by making adjustment in the taxable income by way of addition of exempted income as is proposed for Limited Liability Partnership.

4. Minimum Alternate Tax to be applicable to Units in Special Economic Zones (SEZ)

Units in Special Economic Zones (SEZ) will now also be liable for MAT. The exemption from MAT and dividend distribution tax available to income arising from any business carried on or services rendered by an entrepreneur or a Developer in a unit or Special Economic Zones are being withdrawn from assessment year 2012-13. Profit and gains derived from such units located in SEZ will not be deducted while computing book profit for the purposes of levy of Minimum Alternate Tax.

Similarly, the exemption available from Dividend Distribution Tax under Section 115-O. in respect of income of SEZ shall not be available in respect of the dividend declared, distributed or paid on or after 1st June, 2011. The implication of this amendment to Section 115-O is that not only the profit earned subsequent to 1st June, 2011 but also the profit earned in earlier years but not distributed so far, will also be liable for Dividend Distribution Tax. Accordingly, all such SEZ units will be well advised to distribute the accumulated profit available for distribution before 1st June, 2011 to avoid levy of Dividend Distribution Tax in respect of accumulated profit of earlier years.

5. Scope of Minimum Alternate Tax being widened

Minimum Alternate Tax, renamed as Alternate Minimum Tax, shall be applicable on Limited Liability Partnerships (LLP). For this new Sections 115 JC to 115 JF are being introduced. The mode for levy of this Alternate Minimum Tax is different from that applicable on companies. In the case of LLP, it is not the book profit but the taxable income computed as per provisions of the Act which will be the basis. To this exempt income under Chapter VI-A i.e. mainly exemption under Section 80-1A, 80-1AB, 80-1B and 80-1C, 80-IC, 80-1D, 80-1E and exemption available under Section 10 AA in respect of Special Economic Zones (SEZ) will be added. The applicable tax rate will be 18.5 per cent on such income. This has been done to discourage companies getting converted to LLP to avoid MAT. Credit of tax so paid shall be allowed to be set off over a period of next ten years in respect of tax payable over and above the Alternate Minimum Tax for that year. As in the case of a company, every such LLP shall be required to obtain a report from a Chartered Accountant and furnish the same before the due date of filing the return.

6. Tax rate applicable on Distribution of Income by Mutual Fund to Corporates being increased

The rate of tax under Section 115R(2) in respect of income distributed by the money market mutual fund or liquid fund is being increased from 25% to 30% in respect of any person i.e. Corporates other than an individual or HUF. However, in respect of an individual or an HUF, the rate of tax on income distributed by a money market mutual fund or a liquid fund shall continue to be 25%. Similarly, the rate of tax on income distributed to any person i.e. Corporates other than an individual or an HUF by a fund other than a money market fund or a liquid fund is being increased from 20% to 30%. This will cover all debt funds on which tax rate applicable at present is 20 per cent. The tax rate on debt fund in respect of an individual or an HUF shall continue to be 12.5%. This amendment shall be applicable on income distributed on or after 1st June, 2011. Accordingly, it will be advisable for such mutual funds to distribute their income of debt fund before 1st June, 2011 so as to avail themselves of the benefit of a lower rate of tax.

B. INTERNATIONAL TAXATION

1. Dividend received from foreign subsidiary to be taxed at the concessional rate of 15%

The Finance Bill, 2011 proposes to insert a new Section 115BBD to provide that in the case of an Indian company where its income includes any income by way of dividends from a foreign subsidiary company, such dividend shall be taxable at the rate of 15% with applicable surcharge and cess on the gross amount of dividends without any deduction of any expenditure. A subsidiary foreign company has been defined to mean a foreign company in which an Indian company holds more than half the nominal value of the equity share capital of the company.

The Finance Minister in his budget speech has stated that this provision is being introduced to encourage Indian companies to repatriate more dividends so as to bring more funds in India rather than continue to remain invested abroad. However, this benefit has been limited only for the dividends received by an Indian company from its foreign subsidiary company. There may be many foreign companies where Indian companies had made investment but the holding in these companies may not be more than 50%. The proposed amendment does not take into consideration that in many joint ventures an Indian company may not be holding more than 50% equity of the foreign company, may be because of local laws (on the line Indian Foreign Direct Investment {FDI} Regulations), restricting investment beyond a fixed percentage. It also ignores the fact that there may be more than two partners in the joint venture and each of the partners may not be holding more than 50% equity. Further, even the Indian entity may have made investment through group companies and each of these companies may not be holding more than 50% equity of the foreign company though as a group the holding may be more than 50%. Moreover, the proposal in the present form makes a discrimination about the same nature of income i.e. dividend from a foreign company. In one case where holding is more than 50 per cent such dividend income shall be taxable at the rate of 15% and in the other case where holding is less than 50 per cent the same dividend income shall be taxable at the rate of 30%. Looking to the objective explained by the Finance Minister in the budget speech, it would be more appropriate had the concessional rate of tax of 15 per cent been made applicable in respect of dividends received from any foreign company without condition of being a subsidiary company. This will also bring parity with taxation of dividend income received from Indian company where dividend distribution tax at the rate of 15% is applicable. This is also justified considering the fact that taxing dividend income is tantamount to double taxation. This provision still is very attractive as the dividend received even from companies established in tax haven countries will be subject to the concessional rate of tax of 15 per cent only. The only requirement to be eligible for the concessional rate of 15 per cent is that the income should be by way of dividend from a foreign subsidiary company.

2. Income from Infrastructure Bonds to be taxed at concessional rate of 5 per cent

The Finance Bill, 2011 proposes to create special vehicles in the form of infrastructure debt funds to attract foreign funds for financing the infrastructure needs of the country. The interesting feature of these funds is that the tax rate applicable on interest payment from such bonds will only be 5 per cent as against rate of 20 per cent otherwise applicable on interest income in the hands of non-residents. Further such a tax of 5 per cent will be deducted at source under Section 194 LB of the Act, with the result that no return of income needs to be filed if there is no other income in view of exemption from filing return of income under Section 115 A(5) of the Act.

The bonds for borrowings by these funds will be issued for non-residents and foreign companies. Residents will not be eligible for this exemption. This will give opportunity to many non-residents to invest in these bonds and avail themselves of the concessional rate of tax of 5 per cent.

The proposal is however silent about the rate of interest payable on such infrastructure debt funds**.** Probably these bonds will be issued from time to time providing a rate of interest that takes market conditions in consideration

The proposed amendment does not address the applicability of Section 206 AA whereby tax at the rate of 20 per cent is to be deducted in the absence of Permanent Account Number. Many of the non-residents and foreign companies may not have any other activity and as such may not be having and will also not be willing to obtain PAN, more so when there is no need to file tax return in view of Section 115A (5). It will be advisable that the position on this point is clarified in the Act itself to avoid confusion and litigation.

3. Liaison Offices of Foreign entities to submit Annual Information Return

At present the liaison offices of foreign companies, firms, association of individuals are not required to file their return of income with regard to their liaison offices since these liaison offices do not carry out any business activity in India.

In order to bring them within the network information the Finance Bill, 2011, proposes to insert Section 285 making it obligatory for every non-resident having a liaison office in India to file an annual information return providing such information as may be prescribed. This requirement is different from filing a return of income. This information is to be filed within a period of 60 days from the end of such financial year. This amendment is being made effective from 1st June, 2011. Since the period of 60 days shall stand expired as on 1st June, 2011 this amendment shall be applicable in respect of financial year 2011-12 and all liaison offices accordingly will be required to file the information by 30th May from next year onward.

4. Transactions with persons in tax haven countries to attract special provisions

The Finance Bill, 2011 proposes many amendments to provide tool box to counter tax evasion in respect of foreign transactions in tax haven countries.

(i) A new Section 94A is being introduced to provide tool box to discourage transaction by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India. As per this provision where an assessee enters into such a transaction, such a transaction shall be deemed to be an international transaction with associated enterprises and transfer pricing regulation shall be applicable to such a transaction.

(ii) No deduction in respect of any payment made to any financial institution shall be allowed unless the assessee authorizes the tax authorities to seek relevant information about it from such financial institutions.

(iii) No deduction in respect of any expenditure arising from the transaction with a person located in such jurisdictional area shall be allowed unless the assessee maintains the prescribed document and the information in respect thereof.

(iv) Further, if any money is received from such a person located in such area then it will be the onus of the assessee to explain the source of such money in the hands of the person and in case of his failure to do so the amount so received shall be deemed to be the income of the assessee.

(v) Any payment made to a person, on which tax is deductible at source, located in such jurisdictional area, the deduction of tax at source shall be made at the rate prescribed under the Act or at the rate of 30% whichever is higher.

In view of the above provisions, if the assessee incurs expenditure on or receives income from transactions in these countries, he will be required to establish that the expenditure incurred is as per the prevalent market rate; similarly, the income received in respect of sales or revenues is at the prevalent market rate. The assessee will also be required to allow verification of its transactions entered into with any financial institution. Failure to do so will lead to disallowance of the expenditure. Further, where any such capital, loan or advance etc is received by the assessee from a person located in such country, the onus to prove source on the lines of Section 68 will be that of the assessee. Failure to do so may lead to the addition of such capital, loan etc. as income of the assessee. Moreover, tax at source on payment to a person located in such country has to be at a higher rate of thirty per cent. However, this higher rate will be applicable only when such payment is liable for tax deduction i.e. such payment is chargeable to tax.

The above provisions shall be applicable from 1st June, 2011 and this will empower the Central Government to notify a country or territory outside India in relation to which the above provision shall be applicable. Accordingly, the transaction with tax haven countries will get covered under this provision and the onus to prove the genuineness of such transaction shall vest lie on the assessee in all such cases.

C. TRANSFER PRICING

1. Safe harbour of 5 per cent to be revisited and notified by the Central Government

The Finance Bill, 2011 proposes to amend Section 92C of the Income Tax Act whereby a safe harbour of 5% between the actual price of the transaction and the arm’s length price is allowed and no adjustment is made to the actual price if the variation is within 5%. Now the 5% variation will not be allowed across all segments of the business activity. The variation instead shall be such as may be notified by the Central government in this behalf. This may lead to more complexity in transfer pricing regime which is otherwise too complex as the Central Government may notify different variations for different segments of business activity at different points of time.

2. Transfer Pricing Officer to have power to survey

The provision of Section 92CA(7) is being widened to empower the Transfer Pricing Officer to carry out a survey under Section 133A of the Act for an on-the-spot enquiry and verification in addition to the existing power of calling for information under Section 133(6) or issuing summon under Section 131(1). Carrying out such a survey leads to the invasion of privacy and should be restricted to the rarest of rare cases and should not be allowed as a matter of routine. Even otherwise the determination of the arm’s length price by the Transfer Pricing Officer is an exercise of determination of the arm’s length price and he is requested to carry out a comparative analysis and for this to evaluate the data available in the public domain. Carrying out the survey at the premises of the person for whom the arm's length price is being determined will lead to more complexity. Further, the scope of the survey provided under Section 133A is limited.

3. The Transfer Pricing Officer to have power beyond the reference made by the Assessing Officer

The scope of Section 92CA is being widened to empower the Transfer Pricing Officer not only to determine the arm's length price in respect of the international transactions referred to him by the assessing officer but also such other international transactions which are noticed by him subsequently in the course of the proceedings before him. Thus, the Transfer Pricing Officer shall not only be determining the arm's length price of the international transactions referred to him but can find out other international transactions requiring determination of the arm's length prices. This provision assumes that determination of the arm's length prices by the Transfer Pricing Officer for each international transaction is mandatory ignoring the fact that Transfer Pricing Officer is to assist the assessing officer in respect of such international transactions as the Assessing Officer may deem fit. There may be instances where the Assessing Officer may be satisfied about the arm's length price in respect of other transactions declared by the assessee and may not require the assistance of the Transfer Pricing Officer.

4. Due date of filing return for corporate assessees having international transaction to be 30th November

The Finance Bill, 2011 in view of the extra time required by the assessee for carrying out the transfer pricing study and determination of the arm's length price proposes to extend the due date for filing of return of income from 30th September to 30th November each year. This new due date shall be applicable to Corporate assessees only who have international transactions and are required to file Transfer Pricing Audit Report. This provision shall be effective from 1st April, 2011. Accordingly, the return for the assessment year 2011-12 in such cases can be filed up to 30th November, 2011. It may be noted that this extended period upto 30th

November is only for companies; and for an assessee other than a company the due date shall continue to be 30th September despite such assessees having international transactions. Logically this extension should have been made applicable to both corporate as well as non-corporate assessees.

D. CHARITABLE TRUSTS / INSTITUTIONS

1. Receipt of commercial nature up to Rs.25 lakhs not to affect 'Charitable Status' of the Trust or Institution.

The Finance Bill, 2011 proposes to further address the hardship caused by the amendments made by the Finance Act, 2008 in the definition of 'charitable purpose' under Section 2(15) of the Act whereby an absolute restriction was placed in respect of receipts by a charitable trust or institution if it involved carrying on of any act in the nature of trade/commerce or business or any act of rendering any service for a cess or a fee or any other consideration. This has caused a lot of hardship to all Trusts and Institutions which have been providing valuable service to the society. The Finance Act, 2010 provided that such an organization will still be charitable if the total receipts of such nature do not exceed Rs. 10 lakhs in a year. The Finance Bill, 2011 proposes to further increase this amount to Rs.25 lakhs.

One has to be cautious about this provision and the ceiling of Rs.25 lakhs. It is not that receipts up to Rs.25 lakhs of such nature shall be exempt. A trust or institution will be charitable so long the total receipts of such nature do not exceed Rs.25 lakhs. The moment the receipts of such nature exceed Rs.25 lakhs, the trust / institution will lose its status of charitable trust or institution and the whole of its income will become chargeable to tax. Accordingly, the Trust/ Institution needs constantly to monitor such receipts and may have to stop accepting such receipts, when they are going to exceed Rs.25 lakhs so as to avail itself of the benefit of the status of 'charitable purpose'.

E. EXEMPTIONS

1. Income of Central Government / State Government Authority, Board, Trust, Commission to be exempt.

The Finance Bill, 2011 proposes to introduce sub-section (46) in Section 10 of the Act to exempt income of Authority, Board or Trust or Commission which has been set up or constituted under an Act by the Central Government or State Government with the object of regulating or administering any activity for the benefit of the general public and it is not engaged in any commercial activity. This exemption shall be available to such Authority, Board, Trust or Commission as may be notified and in respect of such incomes as may be specified in the notification issued by the Central Government. However, such Authority, Board, etc. shall be required to file a return of income. This amendment is being made to address the issue, which has arisen consequent to the withdrawal of exemption available under Section 10 (20) and 10 (20A) to such Authority or Board, etc. Many of such Authorities, Boards, etc. were engaged in administering public utility and were now being subjected to tax.

Under the new provision each of such authorities shall be required to make an application to the Central Government for seeking exemption and justify that it has been constituted with the object of regulating or administering activity for the benefit of the general public and that it is not engaged in any commercial activity.

An interesting feature of this amendment is that it is going to be effective from 1st June, 2011 and as such does not specify the assessment years from which this amendment shall be applicable. Accordingly, the Authority or Board or the Trust as the case may be on being notified by the Central government shall be eligible to claim exemption for the assessment years as may be stated in the notification. Since this amendment does not restrict the power of the Central government to notify the exemption for earlier assessment years, an eligible Authority, Board or Trust etc. should be in a position to seek exemption for earlier assessment years.

2. Deduction under Section 80CCD for contribution to New Pension Scheme to exclude Employer’s Contribution

Presently, under Section 80CCD contribution to pension scheme is allowed as deduction in respect of an employee’s contribution while computing the income of the employee. Further, under Section 80CCE there is an overall ceiling of Rs.1 lakh in respect of exemption under Section 80C i.e. on account of life insurance premium, provident fund, etc. under section 80CC i.e. on account of any annuity plan of Life Insurance Corporation or any other insurance and under Section 80CCD on account of contribution to pension scheme. Section 80 CCD refers to both the employee's as well as the employer's contribution. To remove confusion in respect of the contribution of the employer to the new pension scheme, the Finance Bill, 2011 proposes to amend the provision of Section 80CCE clarifying that this limit of Rs.1 lakh shall be exclusive of contribution made by the employer to the new pension scheme. This amendment is being made effective from the assessment year 2012-13 with the result that disputes in respect of contribution of the employer for earlier assessment year shall continue though the intention was never to include the employer's contribution to the new pension scheme for the purpose of the limit of Rs.1 lakh.

3. Benefit of exemption for setting up power generation, transmissions or distribution undertakings being extended by another year

The Finance Bill, 2011 proposes to extend terminal date by one year for claiming exemption under Section 80-IA(iv) in respect of undertakings for the generation and distribution of power; or which start transmission or distribution; or which undertake substantial renovation and modernization of existing network of transmissions or distribution up to 31st March, 2012. This exemption earlier was available up to 31st March, 2011. It is to be noted that the exemption under Section 80-IB is undertaking specific and not assessee specific. The exemption is applicable unit wise and not assessee wise. An assessee would be eligible to obtain the benefit of exemption in respect of units commissioned up till March 31, 2012 only. No benefit would be available for units commencing production after March 31, 2012. So, in case one plans for 10,000 MW, but is able to commission a unit of 100 MW only by March 31, 2012, it will be eligible to take the benefit of exemption for 100 MW unit only and not for the other units. However, once the unit becomes eligible it will be eligible to claim exemption for ten consecutive assessment years out of 15 assessment years.

4. No extension for exemption under Section 10A, 10B & 80IB-(10)

Exemption in respect of the following shall come to an end on 31st March, 2011 and hence the income shall be taxable from 1st April, 2011:-

- Undertakings in Free Trade Zone under Section 10A
- Export-oriented units under Section 10B
- Housing Projects under Section 80- IB(10)

5. No tax holiday for undertakings engaged in commercial production of mineral oil licensed after 31st March, 2011

The scope of Section 80IB(9) is being limited by inserting a sunset clause whereby tax holidays for undertakings engaged in commercial production of mineral oil will not be available for blocks licensed under a contract awarded after 31st March, 2011 under the new exploration licensing policy. By this amendment the existing undertakings which have obtained a license before 31st March, 2011 will continue to avail themselves of the benefit for a period of 7 years as provided under Section 80IB(A) and no new undertakings after 31st March, 2011 shall be eligible.

F. BUSINESS INCOME

1. Scope of investment-linked deduction under Section 35AD being widened

The Finance Bill, 2011 proposes to widen the scope of investment-linked deduction available under Section 35AD of the Act to include two new businesses, that of developing and building a housing project under a scheme for affordable housing framed by the Central or State Government and notified by CBDT and also of the production of fertilizer in India. The benefit of this shall be available for a new plant or for a newly installed capacity in an existing plant on or after 1st April, 2011. As per the provision of Section 35AD, the entire expenditure of a capital nature incurred for the purpose of a specified business other than expenditure on land, goodwill or financial instrument is allowed as deduction during the year in which such expenditure is incurred. However, it has been provided that such business shall not be eligible for claiming deduction under Chapter VIA nor shall the expenditure incurred be allowed deduction under any other provision of Income Tax Act. The loss of specified business shall also not be eligible for being set-off against any other income and the same will be carried forward for being set-off against income from any specified business only in the following assessment year. The net result of Section 35AD is that one can claim capital expenditure and carry forward the same which otherwise it could have claimed by way of depreciation. It may be further noted that this provision does not give any additional benefit. All it allows is accelerated depreciation by allowing 100 per cent of the capital expenditure in the year in which it is incurred. In some of the cases it may prove to be counter-productive with the restriction to carry forward the losses only upto eight years.

2. Loss of new hospital/hotel can be set off against income of existing hospital or hotel[The first part of the sub-heading doesn't read well.]

Further, a clarificatory amendment is being made to delete the word 'new' in respect of hotel and hospital so as to allow the benefit of loss of a specified business against the profit of another specified business whether or not such profit is eligible for deduction under Section 35AD. Hotels and hospitals were included in the Finance Act, 2010 in the list of eligible specified business. With this amendment an assessee who currently operates a hospital or a hotel would be able to set off the profit of such business against the losses if any of a new hospital or a new hotel which begins to operate after 1st April, 2010 and is eligible for deduction under Section 35AD.

3. Higher deduction for contribution to scientific research

The Finance Bill, 2011 in line with the last Finance Act, 2010 has further enhanced the weighted deduction from 175 per cent to 200 per cent under Section 35 (2AA) while computing business income in respect of contribution to a National Laboratory or to a University or Indian Institute of Technology to be used for an approved scientific research programme. The Finance Act, 2010 had increased the weighted deduction in respect of such contribution from 125% to 175%. Accordingly, any assessee who pays any sum, with a direction to use the amount for scientific research undertaken under a programme approved by the authority shall be eligible to claim double the amount of such sum as deduction while computing its income. With the tax rate of 30 per cent, this virtually means that 60 per cent of the cost of research is being borne by the government and 40 per cent is the cost to the assessee.

4. Contribution towards new pension scheme to be allowed as deduction

Section 36 is being amended by inserting clause (iva) to provide for deduction of amount paid by an assessee as the employer by way of contribution towards a pension scheme on account of the employee to the extent that such a contribution does not exceed 10% of the salary of the employee in the previous year, while computing its business income. Accordingly, contributions up to 10% of salary will be eligible for deduction and beyond that will be disallowed.

G. SETTLEMENT COMMISSION

1. Additional tax for Settlement application need not be Rs.50 lakhs for each applicant:

The condition of additional tax for filing the application for settlement of tax disputes in the case of search is being relaxed. The Finance Act, 2010 has allowed an application to be made before the Settlement Commission if the proceedings have been initiated against the applicant under Section 153A or under Section 153C as a result of search under Section 132 or requisition of books of accounts under section 132A of the Act with a condition that the additional amount of income tax payable by each applicant on the income disclosed in the application should exceed Rs.50 lakhs. This has created a practical problem whereby each of the applicant covered in the search was required to disclose a minimum such income which creates additional tax liability of Rs.50 lakhs.

The Finance Bill, 2011 proposes to relax this condition whereby only one applicant in such cases needs to declare income with an additional tax liability exceeding Rs.50 lakhs and other person related to such person can file application for settlement declaring income with an additional tax liability exceeding Rs.10 lakhs only instead of Rs.50 lakhs at present. This provision shall be effective from 1st June, 2011. With this amendment after 1st June, 2011 only one person will be required to pay additional tax exceeding Rs.50 lakhs and other related person will be eligible to file the application by paying an additional tax of Rs.10 lakhs only. The definition of the related person is quite exhaustive and by and large covers all connected cases which may get covered either under Section 153A or Section 153C. This will include company, firm, HUF, directors, partners, persons having more than 20% interest in such entities and relatives of such person.

This is a positive move for the settlement of the tax disputes which normally arise post-search in view of the complexities involved. It would have been more appropriate if an alternative option had also been provided whereby the entire group covered in a search could file an application and the condition of additional tax payable was fixed with reference to the entire group covered in the search rather than for each of the individual since in a group search there may be certain entities which may not be having additional income with tax liability of more than Rs.10 lakhs but for settlement of dispute, inclusion of such entities may be relevant. In cases where proceedings under Section 153A or 153C presently are on, the assessee can wait till 1st June, 2011, to file application for settlement thereafter to avail himself of the benefit of the amended provision.

2. Settlement Commission to have power of rectification

The Finance Bill, 2011 proposes to make an amendment whereby Settlement Commission shall have the power to rectify a mistake apparent from the record to amend its order within a period of six months from the date of its order. This amendment shall be effective from 1st June, 2011. A consequential amendment is also being made under the Wealth Tax Act. This amendment is being proposed in view of the judgment of the Supreme Court in the case of Brij Lal & Ors. Vs. Commissioner of Income Tax (2010) 235 CTR (SC) 417: (2010 46 DTR 153 whereby it has been held that the Settlement Commission does not have the power to rectify its order.

The interesting feature of the proposed amendment is that the time limitation to rectify its mistake has been restricted to only six months from the date of its order as against 4 years available to income tax authorities under Section 154 and to Income Tax Appellate Tribunal under Section 254(2) of the Act.

3. The Settlement Commission to have more Benches

The Finance Minister in his budget speech has proposed 3 more Benches of the Income Tax Settlement Commission to expedite the settlement of tax disputes. This is a welcome move. However, to make the Settlement Commission a more effective body, it will be better if the selection of members of the Settlement Commission is not restricted to retiring Revenue Officers only but is made more broad-based by including professionals with proven integrity and expertise as well.

H. MISCELLANEOUS

1. Time taken for obtaining information from tax authorities outside India to be excluded for the purpose of limitation to complete assessment / reassessment

At present under Section 153 and 153B, a time limit has been prescribed for completion of assessment and reassessment. The assessment has to be completed within a period of 21 months from the end of the assessment year and re-assessment is to be completed within a period of 9 months from the end of the year in which the notice for reassessment is served. Similarly, under Section 153B of the Act an assessment or reassessment in the case of a search is to be completed within a period of 21 months from the end of the financial year in which the last of authorization for search was executed. In order to provide additional time in cases where the information from countries outside India is sought by the assessing officer during assessment or reassessment, it is proposed to exclude the time so taken for computing the period of limitation. The period to be excluded shall be the period commencing from the date on which a reference for exchange of information is made by an authority competent under the tax treaty and ending on the date on which the information so requested is received by the Commissioner or a period of six months whichever is lesser. Thus the outer limit for exclusion is limited to six months only. This amendment shall be effective from 1st June, 2011 and accordingly will be applicable to all assessments pending on 1st June, 2011.

2. Indian tax authorities to collect information for tax authorities outside India

The Finance Bill, 2011 proposes to include provisions for collecting information on behalf of tax authorities outside India. For this the scope of Section 131 is being widened by inserting a new sub-clause (2) authorizing income tax authorities not below the rank of an Assistant Commissioner of Income Tax as may be notified by the Board in this behalf to exercise the power of issuing summons under Section 131(1)(i) notwithstanding that no proceeding with respect to such person or class of persons are pending before any income tax authorities. Such authority shall also have the power to impound and retain any books of accounts and other documents produced before it.

Such authority shall also have the power for calling for information under Section 133 of the Act. This power shall be limited to those countries with whom India has entered into tax treaty under Section 90 or 90A of the Act. This provision shall be applicable from 1st June, 2011. With the introduction of this provision, on receipt of a request for investigation from any country with whom India has entered into a tax treaty, the tax authorities will be in a position to call for information or summon such person so as to provide information to tax authorities of such other countries.

3. Salaried Employees may be exempted from filing returns of income

The Finance Bill, 2011 proposes to empower Central Government to exempt persons from the requirement of furnishing return of income having regard to such conditions as may be specified. The Finance Minister in his budget speech has proposed to exempt persons having salary income only. This is a welcome move as tax on salary income gets deducted at source and gets reported in the TDS return.

However, in order to make this provision really effective the exemption should be given to salary income and also income from other sources such as interest, rental income, etc. if the same is reported by the employee to the employer. For this a form can be notified on the line of return of income which every employee will need to submit to the employer with verification of true and full disclosure of the income. Based on this declaration, the employer can deduct tax at source by including such income with the salary income and report the same in the TDS return. As a matter of experiment, in the first stage, army personnel are likely to be notified for such exemption from filing return of income.

4. New 'Sugam' Income Tax Return Form for Small Business

The Finance Minister in his budget speech has proposed to introduce a new simplified return form 'Sugam' for the tax payers who are subject to presumptive taxation. As per Section 44 AD of Income Tax Act, resident individual, HUF and partnership firms having a total turnover or gross receipts of less than sixty lakhs rupees are covered under presumptive taxation whereby 8 per cent of the total turnover or the gross receipts is deemed to be income from such business. Similarly, under Section 44 AE transporters not having not more than 10 goods carriages are covered by presumptive taxation. For these tax payers instead of asking too much information only the information about the total turnover or gross receipts etc. may be asked for in this new 'Sugam' form.

5. No appeal by Tax Authorities for low tax effect

The Finance Minister in his budget speech has focused on measures to reduce litigation. In this direction instructions No. 3/2011 dated 9th February, 2011 have already been issued by the Central Board of Direct Taxes whereby Income Tax department will henceforth not file appeal where the tax effect is below the amount specified as under:

Appeal to Income Tax Appellate Tribunal	Rs.3,00,000
Appeal to High Court	Rs.10,00,000
Appeal to Supreme Court	Rs.25,00,000

For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which an appeal is intended to be filed. Further, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

6. Document Identification Number being deleted

The Finance (No.2) Act, 2009 had made it mandatory to allot document identification number to every document, letter, correspondence, notice issued or received by the department or on after 1st October, 2010. To make this effective, it was further provided that any notice, letter, correspondence issued by the income tax authorities or received by the income tax authorities, which does not bear the document identification number shall be treated as invalid and shall be deemed to have never been issued or received. The Finance Act, 2010 has extended this date to 1st July, 2011. In view of the practical impossibility of introducing such a mechanism, the Finance Bill, 2011 proposes to delete this provision in Section 282B of the Act. This would have helped avoiding controversies about the genuineness of the notice, letters issued or received and the timings of the same. The provision of Document Identification Number was a good move to bring fairness and transparency and ideally it would have been better to postpone the same rather than deleting a provision for it altogether.

7. Income of Infrastructure Funds to be exempt

The Finance Bill, 2011 further proposes to insert a new sub-section (47) in Section 10 exempting income of such infrastructure debt fund notified by the government to augment long term low cost funds from abroad for the infrastructure sector.

8. Allowance or perquisites of union public service commission chairman and members to be tax free

The Finance Bill, 2011 proposes to make an amendment by inserting sub-section 45 in Section 10 of the Act empowering the Central Government to notify allowances or perquisites of the Chairman and Members of the Union Public Service Commission to be tax free. This amendment is being proposed retrospectively from 1st April, 2008 i.e. assessment year 2008-09.

9. Central Processing of Returns date being extended

Consequent to the delay in setting up of the Central Processing Center by the Board, the period prescribed under Section 143(1B) is being extended from 31st March, 2011 to 31st March, 2012.

10. Need to allow adjustment of excess tax paid by the taxpayer on self-assessment basis

The Finance Minister in his budget speech placing greater relevance on self-compliance and has talked about a scheme to introduce self-assessment in customs, etc. and also about the robust IT Infrastructure and its deployment for enhanced tax-payer services. In this regard he has appreciated the measures taken by the Central Board of Direct Taxes towards on-line preparation and e-filing of income tax returns, e-payment of taxes, electronic clearing of refund, electronic processing of returns, etc.

One area which needs immediate attention and which has been left out is to allow the tax payer to adjust excess tax paid in any year against its tax obligations whether it is advance tax or self-assessment tax for subsequent years. As on date even if there is excess tax paid for any earlier year for which income tax return has been filed, a tax payer cannot make *suo motto* adjustment and is required to pay advance tax of subsequent years and in case of default liable to pay interest and penalty though the net result may be that he is not required to pay. This results in unnecessary blocking of working capital and also interest burden on the tax department in respect of such excess tax paid.

With computerization and on-line filing of returns, a tax payer be allowed to adjust excess tax paid for any year as per the return submitted against its tax obligations of subsequent years on self-assessment basis.

This will also ensure a level playing field both for the tax officer and the taxpayer since as on date the tax officer only has the right to make adjustment of excess tax paid in any year against the demand for any other year and not the taxpayer.

11. Need to increase transparency – Data regarding refund claims to be part of Receipts Budget

The Receipts Budget every year provides additional information about the Revenue (Taxes) Foregone consequent to various exemptions provided under the Act such as free trade zone, export oriented units, etc. so as to put in public domain the cost of each of such exemptions. This document also provides additional information about the tax arrears/ outstandings. To enhance transparency it would be proper to provide information about the total amount of refund claimed, refund paid and refund outstanding. Further, the information about the expenditure incurred consequent to interest paid to taxpayers on excess tax paid / delayed refund can also be part of this document.

12. Proposal to amend Indian Stamp Act, 1899

The Finance Minister in his budget speech has also indicated the need to review the long overdue Indian Stamps Act, 1899 and to introduce a Bill to amend the Act shortly. This is a welcome move. With the development of the economy and new technology and online transactions there is an urgent need to revisit the provisions of the Indian Stamps Act, 1899.