

CORPORATE UPDATE-BUDGET SPECIAL

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TAX

DIRECT TAX

Changes as made in relation to direct taxes cover few changes in the tax rates applicable for individual, certain procedural changes, changes to overrule certain judgements of Courts (in some cases with retrospective effect) as well as few clarificatory amendments.

We have tried to list **Important Changes** (Refer Part - A) as well as **Other Changes** (Refer Part-B).

INCOME TAX

PART - A - IMPORTANT CHANGES

TAX RATES

1. (a) **Individuals**
 - (i) Exemption limit for individuals has been generally increased from the present level of INR. 110,000 to INR. 150,000. Changes also made in rates applicable to women tax payers and senior citizens.
 - (ii) Tax rates on various slabs have also been modified. Highest tax rate of 30% + surcharge + cess, would now be applicable to taxable income exceeding Rs.500,000 as against Rs.250,000 as hitherto applicable. The revised rates are as under:

New Tax rates shall be as follows:

Income (INR)	Tax Rate
Upto 1,50,000	Nil*
1,50,001 to 3,00,000	10%
3,00,001 to 5,00,000	20%
Above 5,00,000	30%

* **Basic exemption for women is INR 180,000 and for Senior Citizens is INR 225,000.**

(b) Corporates

No change has been proposed in the tax rates including surcharge and cess for corporates and other assessee.

2. Minimum Alternate Tax

Provision relating to payment of 'Minimum Alternate Tax' (MAT) have been amended, with retrospective effect from 1st April 2001, to clarify-

- (a) Amount debited towards deferred tax and provision therefor; and
- (b) Dividend distribution tax, interest charged under the provisions of the Act, levy of surcharge, cess, shall be added in the computation of book profits, liable to MAT. It may be noted that credit for amount paid under MAT provision, is available against the normal tax liability in subsequent years.

3. Dividend Distribution Tax

Dividend received by a domestic parent company from its domestic subsidiary, would not again suffer "dividend distribution tax" (DDT), as set off would now be available for the amount of dividend paid by the subsidiary company to the parent company provided such dividend has suffered DDT. This benefit shall be available at one level only. This benefit shall however be not available, if the domestic parent company is a subsidiary of another parent company.

4. Short term capital gain

Short term gains derived on sale of shares, listed on a stock exchange and chargeable to securities transaction tax, would now be taxable at the rate of 15% as against 10% earlier.

5. Amortization of Preliminary Expenses

Preliminary Expenses incurred towards extension or set up of undertakings after the commencement of business will be allowed as deduction subject to prescribed conditions to all sectors including the service sector. Earlier it was allowed only to Industrial Sector.

6. Disallowance of cash Expenditure

Cash payment in excess of Rs.20, 000/- is disallowed as expenditure. It has been judicial understanding that it applies for each payment irrespective of number of payments in a day. Now, it is proposed to apply this limit to aggregate of payments made in a day. For example, payment of Rs.15, 000/-, 16000/- and Rs.9000/- by cash to a person in a day was not hit by the provisions of section 40A (3). Now it is proposed to cover such payments.

7. Due date for filing of return.

Date of filing return of income; in case of companies & assessee whose Accounts is required to be audited is being preponed from 31st October to 30th September.

This amendment is w.e.f. AY 2008-09 (FY 2007-08).

8. FBT/STT/CTT/BCTT

➤ **Fringe Benefit Tax (FBT)**

- Expenditure on or payment through pre-paid electronic meal card will be excluded from the hospitality expenditure for calculation of value of FBT.

- The following expenditure will not be considered as 'employees welfare' expenditure for FBT:-
 - a. Creche Facility for the children of employees.
 - b. Sponsoring a sportsman, being an employee; or
 - c. Organizing sports event for employees.
- Guest house expenditure will no longer be liable to FBT.
- The Valuation for the purpose of FBT of Festival Celebration will be 20% of such expenditure instead of 50%.
- Definition of "Specified Security for ESOPs" amended to include securities offered under ESOP where ESOP granted.

➤ **Securities Transaction Tax (STT)**

In case the transactions are in nature of business transactions, the STT shall be allowable as 'deduction' u/s.36 instead of 'rebate' u/s.88E.

➤ **Commodities Transaction Tax (CTT)**

A new tax, Commodities Transaction Tax (CTT) has been introduced on the same lines as Securities Transaction Tax mentioned above. The same shall be charged from a date that is to be notified.

➤ **Banking Cash Transaction Tax (BCTT)**

BCTT is being withdrawn with effect from 1.4.2009.

PART-B - OTHER CHANGES

EXEMPTIONS & DEDUCTIONS

Exemptions

- The definition of "Agricultural Income" amended to include the income from Saplings & Seedlings grown in nursery.
- Income of "Sikkimese" individual from any source in the State of Sikkim; or income by way of dividend or interest on securities is exempt. Exemption not available to Sikkimese woman who marries a non-sikkimese individual.
- Income of Coir Board has been made Exempt.
- In Reverse Mortgage Scheme, receipt of loan will be exempt from income-tax . This amendment will take effect retrospectively from 1.4.2007.
- Not for Profit entities with object of general public utility involving carrying on of activity in the nature of business or rendering any service in relation thereof for any consideration; object not a charitable purpose u/s.2(15); hence exemption withdrawn.

Enlargement of the scope of saving instrument in section 80C

The following investments will also be eligible within the overall limit of INR. One lac as deduction under section 80C:-

1. Five-year time deposit in an account under Post Office Time Deposit Rules 1981.
2. Deposit in an account under the Senior Citizen Savings Scheme Rules 2004.

The above deposits will be with a lock in period of 5 years. If the amount is withdrawn before the end of 5 years, the same will be taxable in the year of withdrawal. This amendment is w.e.f. AY 2008-09 (FY 2007-08)

Additional deduction for health Insurance premium paid for parents

As per section 80D, there will be additional deduction of Rs.15,000/- (Rs.20,000/- in case of senior citizen parents) to the assessee on any payment made to effect or to keep in force an insurance on the health of his parent or parents.

Condition of 'dependent' with respect to parents is being dispensed with.

Tax Holiday to Hospital u/s.80-IB (11C)

Five year tax holiday has been made available to Hospitals having at least 100 beds located any where in India except the Specified Urban Agglomerations & should start operation before 31-03-2013.

Tax Holiday to Hotels in World Heritage

Tax holiday for 5 years u/s.80ID to be extended to 2/3/4 star hotels to be set up in specified district having a World Heritage site subject to certain conditions.

Deduction Discontinued u/s. 80-IB

No deduction will be available to undertakings engaged in refining of mineral oil, if they begin refining on or after 01.04.09.

Deduction for Scientific Research u/s 35

A new clause (ia) has been inserted to Section 35 (1) according to which the payment made to a domestic company with main object as scientific research & development and approved by prescribed authority will be eligible for weighted deduction of 125% of the payments made for scientific research to the payer.

Company approved under the above provision will not be entitled to claim weighted deduction of 150% u/s 35(2AB). However, deduction equal to the revenue expenditure @ 100% will be allowed.

Adjustment in return of income

Under the existing provisions, there is no provision for correcting the arithmetical mistakes or internal inconsistencies. Therefore, it has now been amended to provide that the total Income of the assessee shall be computed by the assessing officer (AO) after the following adjustments:

- a. Any arithmetical error in the return
- b. Incorrect claim, if such claim apparent from information in return.

These adjustments will be made only in the course of computerized processing. This amendment will be effective from AY 2008-09 (FY 2007-08)

Now intimation will be sent if returned loss is reduced.

Time limit for issue of notice for assessment

The time limit for service being changed; notice can be served within 6 months from end of the financial year in which the return is filed. Presently, the time limit is 1 year from the end of the month in which return is filed.

Deemed service of Notice

New Section 292BB has been inserted to provide that if the assessee has appeared and taken part in the proceedings, he shall be precluded to claim that the notice was not served or was not served in time or was served in an improper manner.

Presumption as to books of account, other documents and specified assets

Presently, the presumption that the books of accounts, other documents and specified assets found in the possession or control of the person belong to such person and such books of account and documents are correct, applies in cases of a search. Now such presumption has been extended to survey operations also.

This amendment will take effect retrospectively from 1st June 2002.

The above presumption will also extend to books of account, other documents and assets delivered to the requisitioning officer.

This amendment will take effect retrospectively from 1st October 1975.

Penalty Proceedings

Section 271(1) empowers the Assessing Officer (AO) to levy penalty for the offences listed under the sub section. However, the AO has to be satisfied before such penalty is levied, which needs to be recorded as per High Court decisions. Now after the amendment, where assessment order contains direction for initiation of penalty proceedings u/s.271(1)(c); order of assessment/reassessment shall be deemed to constitute satisfaction for initiation.

This amendment will take effect retrospectively from 01.04.1989.

Reassessment u/s.148

It is being provided that the assessing officer may assess or reassess an income, which is chargeable to tax and has escaped assessment and has not been subject matter of any appeal, reference or revision.

By amending section 151, it is being clarified that JCIT, CIT or CCIT need not issue notice himself. They need to be only satisfied for issue of the notice.

Authentication of documents/notices/letters

New section 282A, where any notice or other document required to be issued, served or given; it will be taken as authenticated if name & office of Income tax authority printed, stamped or written.

Assessment in case of Annulment

If any proceedings initiated u/s.153A or assessment/reassessment order is annulled in any appeal or legal proceedings; the abated assessment or reassessment shall stand revived & if annulment is set aside then revival cease to exist.

The time period for completion of revived assessment will be one year from the end of month in which abated assessment revives.

For calculating the limitation period; the period from the date of annulment till the date of order setting aside the annulment order shall be excluded.

Stay of demand by ITAT

The ITAT cannot grant stay of demand for a period beyond 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

Settlement Commission

Commissioner of Income Tax may provide immunity from Penalty and prosecution in situation of abatement of settlement proceedings.

The application for the immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax. This amendment will take effect from AY 2008-09 (FY 2007-08)

Special audit of accounts

The assessing officer may suo motto extend the period of furnishing the report to maximum of 180 days from the date of issuance of direction for special audit. This amendment will take effect from 1.4.2007.

Amendment to definition of Written Down Value

In computing the taxable income of an assessee who was not required to compute his total income for any prior year, the written down value of the assets would be required to be computed as follows:

- a. The actual cost of the asset shall be adjusted by the amount attributable to revaluation, if any, in the books of account;
- b. The total amount of depreciation provided in the books of account shall be deemed to be the tax depreciation actually allowed; and
- c. The tax depreciation actually allowed above shall be adjusted by the amount of depreciation attributable to the revaluation.

The above amendment will take effect retrospectively from 1.4.2002.

Conversion of Foreign Currency Exchangeable Bonds(FCEBs)

Conversion of FCEBs into shares or debentures of any company will not be considered as 'Transfer' Cost of acquisition of FCEBs will be deemed to be the cost of acquisition of the shares/debentures issued pursuant to the conversion of FCEBs.

This amendment will take effect retrospectively from AY 2008-09

***Note:** Most of the direct tax proposals are effective from the financial year commencing on 1st April, 2008 unless otherwise specified.*

INDIRECT TAX

Customs - Important Changes

- There is no change in the peak rate of customs duty of 10%.
- Effective rate of Custom Duty has been reduced from 34.13% to 31.70% on peak rate of 10%. This reduction is on account of reduction of CVD from 16% to 14%, consequent upon reduction of Cenvat from 16% to 14%.
- Custom duty on Project Imports has been reduced from 7.5 % to 5 %. However, 4% additional duty of customs in lieu of sales tax/VAT has been imposed on a few specified projects in the power sector, which were earlier exempted from this duty. The power sector projects in respect of which this exemption is withdrawn include the following:

Power generation projects including gas turbine projects, power transmission and distribution projects.

In addition, on specified goods also the exemption has been withdrawn.

- BCD @ Rs. 2000 per 1000 kWh has been prescribed for 'electrical energy'. However it is being exempted from BCD so as to maintain nil effective rate for electrical energy.
- Custom duty has been reduced from 10 % to 5 % on certain specified life saving drugs and on the bulk drugs used for the manufacture of such drugs. They are also being exempted from CVD (Excise duty exemption).
- Custom Duty on Polyester tyre cord fabric has been reduced from 10% to 5%.
- Customs duty on steel melting scrap and aluminium scrap reduced from 5% to nil.
- Export duty on chromium ores and concentrates, all sorts, has been increased from Rs.2, 000 per metric tonne to Rs.3, 000 per metric tonne.
- The period of re-export of leased equipment and machinery, imported for temporary use in contracts, has been increased from 12 to 18 months. The slab rates of duty applicable on such imports have now been provided for on a quarterly basis, as against the half yearly basis provided for earlier. The rates have also been aligned with the rates of drawback admissible u/s. 74(2) of Customs Act, 1962, depending on the period of retention of goods in India. No drawback, however, will be admissible when such leased goods are re-exported.
- The rates of drawback in respect of goods which have been used after importation have been aligned with the rates prescribed for duty payable on leased equipment and machinery, imported for temporary use in contracts, depending upon the period of retention in India. The maximum period of retention of such goods, for admissibility of drawback, has been reduced from 36 to 18 months.

- Section 28B of Customs Act, 1962 is being amended to enable the Central Govt. to recover any amount collected on customs duty in excess of duty assessed or customs duty collected on goods wholly exempt or chargeable to “NIL rate of duty.
- Section 117 of Customs Act, 1962 is being amended to increase the existing maximum amount of penalty from Rs. 10,000/- to Rs.1, 00,000/- for contravention of any provision of the act where no express penalty is provided.
- Section 158 of Customs Act, 1962 is being amended to increase the maximum amount of penalty from Rs. 500/- to Rs. 50, 000/- for contravention of any of the rules, and from Rs. 200/- to Rs. 50, 000/- for contravention of regulations.

Note: (1) *The changes in rates of duty, withdrawal of exemption have come into force from 1st March, 2008;*

(2) *All other changes as proposed shall come into force from the date of enactment of the Finance Bill, 2008.*

Central Excise - Important Changes

- General Central Excise (CENVAT) rate on all goods reduced from 16 % to 14 %. The general effective rate thus reduced from 16.48 % to 14.42 % inclusive of cess.
- Domestic sales by EOU, etc made costlier as the rate of duty applicable to clearance of goods from EOU, STP, EHTP, etc to DTA has been revised from “25% of BCD + Excise Duty payable on like goods” to “50% of BCD + Excise Duty payable on like goods”.

- Auto Sector : Excise Duty reduced on
 - Small Cars – From 16% to 12%
 - Hybrid Cars – From 24% to 14%
 - Electric Cars – From 8% to Nil.
 - Specified Part of Electric Cars – From 16% to Nil on end use basis.
 - Buses and other vehicle for transport of more than 13 persons from 16% to 12%, and on the chassis of such vehicles from '16% + Rs. 10,000/-' to '12% + Rs. 10,000'.
 - Two Wheelers and passenger three-wheelers (upto 7 persons) – From 16% to 12%

- Information Technology & Communication Sector :

- Excise Duty on Packaged Software increased from 8% to 12%

- Cement :

- Excise duty on bulk cement and packaged cement brought on par; Bulk cement to attract excise duty of Rs.400 per Metric Tonne or 14% ad valorem, whichever is higher
- Excise duty on Cement clinkers increased from Rs.350 per Metric Tonne to Rs.450 per Metric Tonne.

- Excise duty on all goods produced in the Pharmaceutical sector reduced from 16% to 8% and the same is fully exempt for specified drugs.
- NCCD of 1 % removed on polyester filament yarn. NCCD of 1% imposed on cellular mobile phones.

Changes in the Central Excise Act

- Explanation inserted in Sec. 2 to provide goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. It will remove the ambiguity occurred due to the judgments in certain cases regarding the marketability of goods and it will be applicable prospectively (to be effective on enactment of Finance Bill, 2008).

- A new Section 3A is being inserted in CEA, 1944 empowering Central government to charge Excise Duty on the basis of Annual Capacity of production in respect of notified goods, and also to notify the procedure for the same (to be effective on enactment of Finance Bill, 2008).
- Section 11D & 11DD of CEA, 1944 are being amended to enable the Central Government to recover any amount (along with interest) collected as ED in excess of duty assessed or ED collected on goods wholly exempt or chargeable to "NIL" rate of duty (to be effective on enactment of Finance Bill 2008).
- The CENVAT Credit Rules, 2004 are being amended. Some of the amendments relate to amendment of Rule 6 providing following options to a manufacturer, using common inputs or input services for manufacture of dutiable as well as exempted goods and opting not to maintain separate accounts. Such manufacturers can either
 - (i.) reverse the credit attributable (to be worked out in a manner prescribed in the rule) to the inputs and input services used in the manufacture of exempted goods; or
 - (ii.) pay 10% amount of the value (to be determined in accordance with the provision of section 4/4A of the Central Excise Act, 1944) of the exempted goods.

This change shall come into effect from 1st April, 2008.

- A new rule 15A is being inserted to provide for general penalty upto Rs.5000/- in case of contravention of any of the provisions of the CENVAT Rules, 2004, for which no specific penal provision exists. These changes have come into effect from 1st March, 2008.
- The Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008 have been issued under section 4A(4) of the CEA, 1944 to provide the manner of determination of retail sale price, where the same is not declared on the packages or where the same is tampered or altered or obliterated. These Rules have come into effect from 1st March, 2008. It may be noted that these Rules have been notified for the first time.

Service Tax - Important Changes

- There is **No change in Rate of Service tax**, which continues to be at 12.36% including education cess and secondary & higher secondary education cess.
- Rate of Tax under composition scheme of Works Contract increased from 2% to 4%.
- Following **New Services** are covered under the service tax net, from a date to be notified after enactment of Finance Bill ,2007:
 - a. Services provided in relation to information technology software for use in the course, of furtherance, of business or commerce.
 - b. Services provided in relation to management of investment under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme;
 - c. Services provided by a recognised stock exchange in relation to securities;
 - d. Services provided by a recognised association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts;
 - e. Services provided by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts;
 - f. Services provided in relation to supply of tangible goods, without transferring right of possession and effective control of the tangible goods;
 - g. Services provided in relation to internet telecommunication. Consequently, reference to services provided in relation to internet telephony, being covered as part of Internet Telecommunication, shall be omitted.
- **Scope of specified existing taxable services** is being amended as follows, from a date to be notified after enactment of Finance Bill ,2007:
 - (a) To include,—
 - (i.) purchase or sale of foreign currency, including money changing, by an authorized dealer or an authorized money changer, under banking and other financial service;

- (ii.) purchase or sale of foreign currency, including money changing, by an authorized dealer or authorized money changer, under foreign exchange broker services provided by individual;
 - (iii.) packing together with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking, under cargo handling service;
 - (iv.) testing or analysis of information technology software under technical testing and analysis service;
 - (v.) inspection, examination and certification of information technology software under technical inspection and certification service;
 - (vi.) services provided in relation to a journey from one place to another in a contract carriage vehicle, under tour operator service. However, such services provided for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field shall be excluded. Service provided in relation to a journey from one place to another in a tourist vehicle is already leviable to service tax under tour operator service;
- (b) To clarify that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under consulting engineer service;
- (c) To clarify by way of removal of doubt that, –
- (i.) "service in relation to promotion or marketing of service provided by the client" under business auxiliary service includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client;
 - (ii.) renting of immovable property service includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property;
 - (iii.) "properties" referred to in management, maintenance or repair service includes information technology software.

Other Changes

Effective from 1st March 2008 issued vide Budget Notifications

- The following key exemption introduced-
 - a. Services provided by a person outside India to a customer located outside India in relation to booking of accommodation in a hotel located in India.
 - b. Recipient of goods transport agency will be eligible for 75% abatement without any condition. Goods Transport Agency Services excluded from the definition of "Output Services".
- Time for filing revised return increased from 60 days to 90 days.
- Under Export of Services, the following services will be treated as export of services even if provided through internet or electronic network, (in relation to goods, material or immovable property) namely:
 - a. Management, maintenance or repair services
 - b. Technical testing and analysis services.
 - c. Technical inspection or certification services.
- Similarly the services referred immediately above will become taxable under reverse charge method under Import of Services.

Effective from 1st April 2008 issued vide Budget Notifications

- Threshold Exemption limit for Small Scale service provider increased from 8 Lakhs to 10 Lakhs and for registration from Rs 7 lakhs to Rs 9 lakhs.
- Amendment in **CENVAT Credit Rule 2004**
 - a. To provide removal of capital goods outside the premises of provider of output services without any time limit restriction.
 - b. For assessee not maintaining separate accounts and providing both taxable and exempted services, two options have been provided (Rule 6) (instead of restricting the credit to 20 % of the service tax payable):
 - i. Either to reverse the credit attributable to input services and input used to provide exempted services (A detailed procedure for the purpose has been laid down in CENVAT Credit Rules); or
 - ii. Pay 8% on amount of value for exempted services.

- c. A New Rule 7A inserted to claim CENVAT Credit on invoice issued by other office of the assessee which can now act as input service distributor.

Changes Applicable from date of enactment of Finance Bill 2008

Amendment in Act and Rules

- Explanation (c) in Section 67 to be amended to provide “ that gross amount charged includes book adjustment, and any amount credited or debited as the case may be to any account, whether called “suspense account” or by any other name, in the books of account of a person liable to pay service tax where transaction of taxable service is with any associated Enterprise as defined under Section 92 A of the Income tax Act ,1961.*Thus service tax is now leviable on taxable services provided by the person liable to pay service tax even if the amount is not actually received ,but the amount is credited or debited in the books of account of the service provider.*

In other words, Service tax is required to be paid after receipt of payment or crediting/debiting of the amount in the books of accounts whichever is earlier in the case of Associated Enterprises.

The term ‘Associate Enterprises’ shall have the same meaning as in Section 92A of the Income Tax Act 1961

- Best Judgment assessment reintroduced through Section 72.

Central Sales Tax

Central Sales Tax rate is proposed to be reduced from 3 percent to 2 percent from April 1, 2008.

Roadmap for Goods and Service Tax is being prepared for introduction of GST from April 1, 2010.