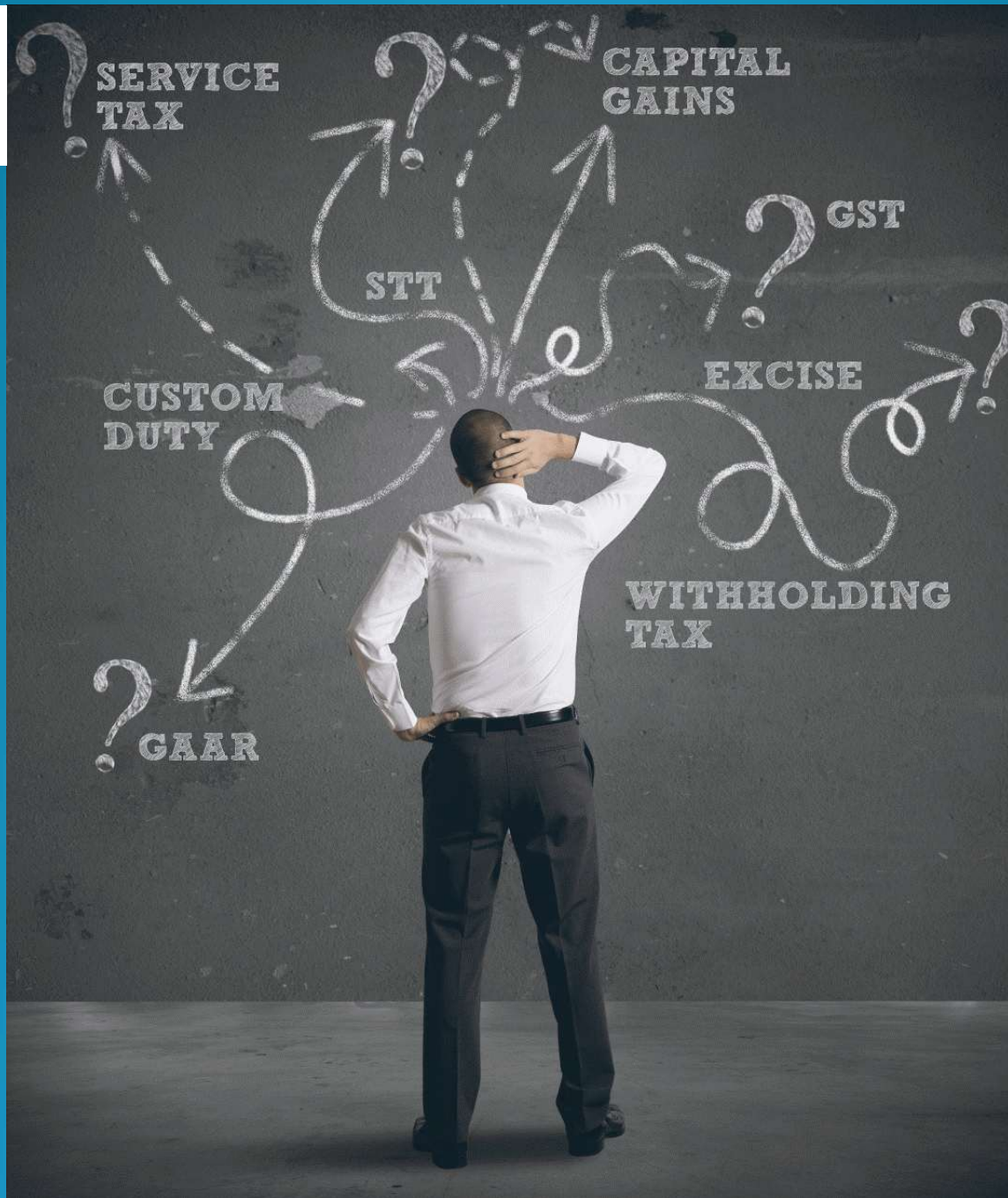


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# BUDGET 2013



# Direct Tax Proposals



## Tax Rates

- No change in slabs of income tax or tax rates
-  Surcharge re-introduced/increased
  - Individuals > INR 10 million 10%
  - Domestic Company > INR 100 million 10%
  - Foreign Company > INR 100 million 5%
  - Firms/LLPs/Trusts > INR 10 million 10%
- Securities Transaction Tax (STT) reduced in some cases and Commodity Transaction Tax (CTT) introduced
- Tax credit/rebate of INR 2,000 for individuals earning less than INR 0.50 million
- Dividend Distribution Tax (DDT) at 16.995%
-  Surcharge on Withholding Tax on payments to Non Residents > INR 10 million at 10%
- Minimum Alternate Tax (MAT) – increase in surcharge as per above slabs

## Effective Tax Rates

- Individuals earning more than INR 10 million 33.99%
- Corporate Tax – Domestic Company
  - Income less than INR 10 million 30.90%
  - Income from INR 10 million to INR 100 million 32.445%
  - Income more than INR 100 million 33.99%
- Corporate Tax – Foreign Company
  - Income less than INR 10 million 41.20%
  - Income from INR 10 million to INR 100 million 42.024%
  - Income more than INR 100 million 43.26%
- Firm/LLPs
  - Income less than INR 10 million 30.90%
  - Income up to INR 10 million 33.99%

# Exemptions and Deductions



## Investment Allowance

- Available to manufacturing companies
- Investment in new plant and machinery of INR 1 billion between April 2013 to March 2015
- 15% of the actual cost of machinery allowed as an investment allowance in the year in which investment crosses INR 1 billion
- Over and above the normal and accelerated depreciation of 15% and 20% - effectively 50%!
- Plant and machinery cannot be transferred for five years except in case of amalgamation and demerger

## Securitisation Trusts (ST)

- Income of ST exempt from income tax
- ST liable to pay additional income tax on distribution
  - Nil if the recipient is tax-exempt
  - @ 25% for distribution to individuals and HUFs
  - @ 30% for distribution in other cases
- Distributed income received by investors exempt from tax

## Venture Capital and Angel Investors

- SEBI Alternative Investment Fund (AIF) Regulations have replaced SEBI Venture Capital Fund (VCF) Regulations
- VCF and Venture Capital Company (VCC) registered with SEBI before 21 May 2012 continue to enjoy pass through status
- VCF and VCC (defined under SEBI AIF Regulations) would also enjoy pass-through status subject to:
  - At least two-thirds of its investible funds being invested in unlisted equity shares or equity-linked instruments
  - No investment has been made in an associate VCU
  - Units of trust set up as AIF or shares of a company set up as AIF are not listed on a stock exchange



## Dividends from Foreign Subsidiaries

- Taxability at concessional rate of 15% for dividend received by an Indian company from specified foreign companies extended again for one more year
- Section 115-O amended for removal of cascading effect of DDT
  - Dividends declared by an Indian company would not be liable to DDT to the extent of dividends received from specified foreign companies in the same year

## Others

- Sunset date of power sector extended by one year
- Additional deduction upto INR 0.1 million for interest on home loan
  - Loan to be sanctioned from 1 April 2013 to 31 March 2014
  - Loan from banks and Housing Finance Companies (HFCs)
  - Loan amount not to exceed INR 2.5 million
  - Value of property should not exceed INR 4.0 million
  - Should not own any other house property
- Benefits under Rajiv Gandhi Equity Savings Scheme have been liberalised

# Anti-Avoidance Provisions



## General Anti-Avoidance Rules (GAAR)

- GAAR provisions deferred by two years
  - Effective from 1 April 2015
- GAAR provisions to be applied in case where the “main purpose” of the arrangement is to obtain tax benefit (*and is not **one** of the main purposes*)
  - Scope reduced
- Following factors relevant in invoking GAAR
  - Period or time of existence of arrangement
  - Fact of payment of taxes, directly or indirectly
  - Fact that exit route is provided by arrangement

## General Anti-Avoidance Rules (GAAR)

- Arrangement deemed to be lacking substance if it does not have a significant effect upon the business risks/net cash flows apart from any tax benefit
- Decision of Approving Panel to be binding on tax payer (as well as tax authorities)
- Some Committee recommendation ignored
  - Prescribing monetary threshold limit
  - Grandfathering of investments
  - Non-applicability of GAAR to FIs not availing tax treaty benefit

## Tax Residency Certificate

- Furnishing a Tax Residency Certificate (TRC) would be necessary but would not constitute sufficient evidence for availing tax treaty benefits
- Is the Government disputing the validity of documents furnished by the tax authorities of foreign countries?

## Buy-Back of Shares

- Buy-back of shares by an **unlisted Indian company** would be subject to additional income tax at 20%
  - Tax to be levied on excess of sale consideration over issue price of shares
  - Tax to be borne by the Indian company (like DDT)
  - The income will consequently be exempt in the hands of shareholders
  - Speech says it is in the nature of withholding tax but the Finance Bill does not suggest so

## Buy-Back of Shares

- If intention was parity with DDT, then tax rate should be 15% and not 20%
- May trigger challenges for shareholders to claim foreign tax credit in home country on such capital gains
- AAR Ruling in case of XYZ (Otis) codified
- No longer a measure of cash/profit repatriation



# Withholding Tax Provisions



## Withholding Tax (WHT) on Rupee Infra Bonds

- Concessional tax rate of 5% on interest
  - On rupee-denominated long-term infrastructure bonds issued by Indian companies
  - Non-resident deposits foreign currency in designated bank account
  - Such foreign currency is converted into INR
  - Such funds are utilised for subscription to long-term infrastructure bonds issued by Indian companies
- Greater access to cheap financing options for Indian infrastructure companies
- Effective from 1 June 2013

## Royalties and Fees for Technical Services

- Royalties and Fees for Technical Services paid to foreign company subject to tax at 25% (instead of 10%)
- However, treaty rates would override if beneficial
- Most Indian tax treaties provide for rate of 10% or 15%
- Access to tax treaty and TRC very critical now

## Sale/Transfer of Immovable Property

- WHT on sale of immovable property introduced
- Applicable on sale value of more than INR 5 million
- WHT rate of 1% of the sale consideration
- Agricultural land exempted
- Effective from 1 June 2013

Others



## Miscellaneous

- Proceeds from keyman insurance policy taxable even on assignment
- Stamp duty valuation provisions (akin to Sec 50C) extended to land/building held as stock in trade for business
- Tax return without self-assessment-tax payment would be a defective return
- Director of private companies are personally liable for tax including interest and penalty

# Indirect Taxes




## Tax Rates

- No change in peak rate of customs duty, central excise duty and service tax
  - Basic Customs Duty (BCD) – 10%
  - Excise Duty – 12.36% (including Education Cess)
  - Service Tax – 12.36% (including Education Cess)
- Rate of Central Sales Tax (CST) unchanged



## Customs

- Rate of BCD enhanced for various products imported and some of the products are (effective from 1 March 2013):

Products	Change
Raw silk	From 5% to 15%
Set-top boxes	From 5% to 10%
High-end cars (except used as taxis)	From 75% to 100%
Motor cycle (engine capacity more than 800cc)	From 60% to 75%
Yachts and motorboats	From 10% to 25%
 Steam coal	From nil to 2% Also, Countervailing Duty (CVD) increased from 1 to 2%

## Customs

- Rate of BCD reduced for various products imported and some of the products are (effective from 1 March 2013):

Products	Change
Hazelnuts	From 30% to 10%
Pre forms of precious or semi-precious stones	From 10% to 2%
Specified machinery for use in the leather and footwear	From 7.5% to 5%
Bauxite (Export Duty)	From 30% to 10%

## Customs

- Baggage rules amended to increase limit for duty-free allowance for carrying jewellery (effective from 1 March 2013)

Passengers	Old Limit	New Limit
Male	INR 10,000	INR 50,000
Female	INR 20,000	INR 100,000

- Changes to be effective from the date of enactment of Finance Bill
  - Strict penalty provisions introduced in case quantum of duty evaded is more than INR 5 million or wrong exemption is claimed/drawback, etc.
  - Advance ruling can be taken for any new business of imports or exports proposed to be undertaken by existing importer/exporter
  - Monetary limit of Single Bench Tribunal to hear and dispose cases increased from INR 1 million to INR 5 million

## Excise

- Rate of excise duty enhanced for various products manufactured and some of the products are (effective from 1 March 2013)

Products	Change
Cigarettes, cigars, etc.	Increased by about 18%
Marble tiles and slabs	From 30 per sq.mt. to 60 per sq.mt.
Mobile handsets with retail price of more than INR 2,000	From 1% to 6%
SUVs with engine capacity of more than 1500 CC (excluding taxis)	From 27% to 30%

## Excise

- Strict penalty provisions including arrest for evasion of duty more than INR 5 million (effective from date of enactment of Finance Bill)
- Branded ayurvedic medicaments subject to MRP-based assessment with abatement of 35% (effective from 1 March 2013)
- Exemption granted to intermediate goods manufactured and captively consumed for unit enjoying Area Based Exemption Scheme

## Service Tax

- Ambit of Negative List widened by insertion of two services (effective from date of enactment of Finance Bill)
  - Vocational courses offered by institutes affiliated to the State Council of Vocational Training
  - Testing services related to agriculture and agricultural produce
- Ambit of exemption reduced (effective from 1 April 2013)
  - Auxiliary educational services and renting of immovable property services provided by educational institutions
  - Air-conditioned restaurants that do not serve liquor

## Service Tax

- Ambit of exemption reduced (effective from 1 April 2013)
  - Copyrights for cinematographic films that are not screened in cinema halls or theatres
  - Transport of following goods by rail/vessel within India:
    - Petroleum and petroleum products
    - Postal mail or mail bags
    - Household effects
  - Services of vehicle parking to the general public
  - Repairs and maintenance services with respect to aircraft belonging to the government, local authority or government authority

## Service Tax

- Abatement rate reduced from 75% to 70% for construction other than residential properties with carpet area of more than 2000 sq. ft. or if the amount is more than INR 10 million (effective from 1 March 2013)
- Voluntary return filing scheme introduced for persons who have not filed returns/stopped filing returns, viz. Voluntary Compliance Encouragement Scheme, 2013 (effective from date of enactment of Finance Bill)
  - Penalty, interest and other proceedings would be waived
  - Not applicable where any inquiry/investigation is already in progress
- Penalty for failure to obtain registration capped to INR 10,000 (effective from date of enactment of Finance Bill)



## Service Tax

- Prosecution for period up to 7 years in case service tax is collected and not paid (amount exceeding INR 5 million) within a period of 6 months
  - Can be considered as a cognizable offence (effective from date of enactment of Finance Bill)
  - Powers granted to excise officers to arrest persons for non-payment of service tax
- Benefit of advance ruling authority extended to resident public limited companies (effective from 1 March 2013)

## Concluding Remarks

- Budget briefcase merely a photo object
- Direct Tax Code to be tabled in Budget session
- No step back on retrospective amendments
  - Hanging sword on Vodafone and many others continues
- No extension/limit enhancement for Domestic Transfer Pricing Regulations
  - Applicable from FY 2012-13 itself!
- Draft bill on Constitution amendment and draft bill on Goods and Services Tax (GST) proposed to be tabled before the House in the next few months
  - Incentive for GST roll-out: Funds earmarked for Central Sales Tax (CST) compensation to State Governments



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# BUDGET

## 2013

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### SKP SERVICES

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Assurance and Risk Management

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Business Advisory and Setup

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Business Process Management

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Corporate Services

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Direct and Indirect Tax

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International Tax and Transfer Pricing

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