FINANCE BILL, 2011

PROVISIONS RELATING TO FINANCE BILL, 2011

Introduction

The provisions of the Finance Bill, 2011 relating to direct taxes seek to amend the Income-tax Act, 1961, *inter alia*, in order to,-

(i) increase the basic exemption limit in the case of individual taxpayers;

(ii) lower the qualifying age of senior citizens from 65 years to 60 years and also to increase the current exemption limit in such cases;

(iii) provide a higher exemption limit to very senior citizens above the age of 80 years;

(iv) reduce the surcharge on tax in the case of companies;

(v) provide impetus to overseas borrowings by facilitating setting up of infrastructure debt funds;

(vi) rationalise the taxation of income distributed by debt mutual funds;

(vii) levy Minimum Alternate Tax (MAT) on developers of SEZ and units operating in them;

(viii) levy Alternate Minimum Tax (AMT) in the case of Limited Liability Partnerships;

(ix) provide a set of counter-measures in relation to jurisdictions with which there is a lack of effective exchange of information;

(x) provide a concessional rate of tax on dividends received by Indian companies from their foreign subsidiaries during 2011-12.

2. The Finance Bill, 2011 seeks to prescribe the rates of income-tax on incomes liable to tax for the assessment year 2011-12; the rates at which tax will be deductible at source during the financial year 2011-12 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of "advance tax"; deduction of income-tax from, or payment of tax on, "Salaries", and charging of income-tax on current incomes in certain cases for the financial year 2011-12.

3. Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, changes in the provisions of the tax laws are ordinarily proposed to be prospective in their operation.

4. The substance of the main provisions of the Bill relating to direct taxes is explained in the following paragraphs.

INCOME-TAX

Rates of Income-tax

I. Rates of income-tax in respect of income liable to tax for the assessment year 2011-12

In respect of income of all categories of assessees liable to tax for the assessment year 2011-12, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2010, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

(1) Surcharge on income-tax—

Surcharge shall be levied in respect of income liable to tax for the assessment year 2011-12, in the following cases:—

(a) in the case of a domestic company having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of seven and one-half per cent. of such income-tax.

(b) in the case of a company, other than a domestic company, having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Surcharge shall also be levied in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, 1961 (hereinafter referred to as 'Income-tax Act') .

However, marginal relief shall be allowed in all these cases to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.

(2) Education Cess —

For assessment year 2011-12, additional surcharge called the "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

II. Rates for deduction of income-tax at source during the financial year 2011-12 from certain incomes other than "Salaries"

The rates for deduction of income-tax at source during the financial year 2011-12 from certain incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2010 for the purposes of deduction of income-tax at source during the financial year 2010-11. However, in case of interest income paid to a non-resident by a notified infrastructure debt fund, the rates for deduction have now been provided in the proposed new section 194LB.

(1) Surcharge—

The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

"Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent. respectively , of income-tax including surcharge wherever applicable, in the cases of persons not resident in India including companies other than domestic company.

III. Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2011-12

The rates for deduction of income-tax at source from "Salaries" during the financial year 2011-12 and also for computation of "advance tax" payable during the said year in the case of all categories of assessees have been specified in Part III of the First Schedule to the Bill.

These rates are also applicable for charging income-tax during the financial year 2011-12 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:-

(i) The rates of income-tax in the case of every individual (other than those mentioned in (ii), (iii) and (iv) below) or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) are as under :—

Upto Rs. 1,80,000	Nil.
Rs. 1,80,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs. 8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

(ii) In the case of every individual, being a woman resident in India, and below the age of sixty years at any time during the previous year,—

Upto Rs. 1,90,000	Nil.
Rs. 1,90,001 to Rs. 5,00,000	10 per cent.
Rs.5,00,001 to Rs. 8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

(iii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Upto Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs.8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

(iv) in the case of every individual, being a resident in India, who is of the age of eighty years or more at anytime during the previous year, -

Upto Rs. 5,00,000	Nil.
Rs. 50,00,001 to Rs. 8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

No surcharge will be levied in the cases of persons covered under paragraph-A of part-III of the First Schedule.

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for assessment year 2011-12. No surcharge will be levied .

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for assessment year 2011-12. No surcharge will be levied .

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the assessment year 2011-12. No surcharge will be levied.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the assessment year 2011-12.

The existing surcharge of seven and one-half per cent. on a domestic company is proposed to be reduced to five per cent. In case of companies other than domestic companies, the existing surcharge of two and one-half per cent. is proposed to be reduced to two per cent.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The existing surcharge of seven and one-half per cent. in all other cases (including sections 115JB, 115-O, 115R, etc.) is proposed to be reduced to five per cent.

For financial year 2011-12, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

[Clause 2]

Definition of “charitable purpose”

For the purposes of the Income-tax Act, “charitable purpose” has been defined in section 2(15) which, among others, includes “the advancement of any other object of general public utility”. However, “the advancement of any other object of general public utility” is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity and receipts from such activities is ten lakh rupees or more in the previous year.

It is proposed to amend section 2(15) to enhance the current monetary limit in respect of receipts from such activities from ten lakhs rupees to twenty-five lakhs rupees.

This amendment is proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clause 3]

Exemption of certain perquisites of Chairmen and Members of Union Public Service Commission

The existing provisions of the Income-tax Act provide for the taxation of any perquisites or allowances received by an employee under the head "Salaries" unless it is specifically exempt under the Act.

Currently, specified perquisites of the Chief Election Commissioner or Election Commissioner and the judges of the Supreme Court are exempt from taxation consequent to the enabling provisions in the respective Acts governing their service conditions. It is proposed to amend section 10 to extend similar benefit of exemption in respect of specific perquisites and allowances, which will be notified by the Central Government, received by both serving as well as retired Chairmen and Members of the Union Public Service Commission.

This amendment is proposed to take effect retrospectively from 1st April, 2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent years.

[Clause 4]

Exemption of specified income of notified body or authority or trust or board or commission

It is proposed to insert a new clause in section 10 of the Income-tax Act to provide exemption from income-tax to any specified income of a body, authority, board, trust or commission which is set up or constituted by a Central, State or Provincial Act or constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of the general public, provided-

(i) it is not engaged in any commercial activity, and

(ii) is notified by the Central Government in this behalf.

The nature and extent of income to be exempted will also be specified by the Central Government while notifying such entity.

A consequential amendment is proposed in section 139 of the Act to provide for filing of the return of income by such notified entity.

These amendments are proposed to take effect from 1st June 2011.

[Clauses 4, 23]

Infrastructure Debt Fund

In order to augment long-term, low cost funds from abroad for the infrastructure sector, it is proposed to facilitate setting up of dedicated debt funds.

Section 10 of the Income-tax Act excludes certain incomes from the ambit of total income. It is proposed to amend section 10 of the Income-tax Act so as to provide enabling power to the Central Government to notify any infrastructure debt fund which is set up in accordance with the prescribed guidelines. Once notified, the income of such debt fund would be exempt from tax. It will, however, be required to file a return of income.

It is also proposed to amend section 115A of the Income-tax Act to provide that any interest received by a non-resident from such notified infrastructure debt fund shall be taxable at the rate of five per cent. on the gross amount of such interest income.

It is further proposed to insert a new section 194LB to provide that tax shall be deducted at the rate of five per cent. by such notified infrastructure debt fund on any interest paid by it to a non-resident.

These amendments are proposed to take effect from 1st June 2011.

[Clauses 4, 15, 23, 27]

Provisions relating to Minimum Alternate Tax (MAT) and Dividend Distribution Tax (DDT) in case of Special Economic Zones

Under the existing provisions of section 10AA of the Income-tax Act, a deduction of hundred per cent. is allowed in respect of profits and gains derived by a unit located in a Special Economic Zone (SEZ) from the export of articles or things or services for the first five consecutive assessment years; of fifty per cent. for further five assessment years; and thereafter, of fifty per cent. of the ploughed back export profit for the next five years.

Further, under section 80-IAB of the Income-tax Act, a deduction of hundred per cent. is allowed in respect of profits and gains derived by an undertaking from the business of development of an SEZ notified on or after 1st April, 2005 from the total income for any ten consecutive assessment years out of fifteen years beginning from the year in which the SEZ is notified by the Central Government.

Under the existing provisions of section 115JB(6), an exemption is allowed from payment of minimum alternate tax (MAT) on book profit in respect of the income accrued or arising on or after 1st April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone (SEZ), as the case may be.

Further, under the existing provisions of section 115-O(6), an exemption is allowed from payment of tax on distributed profits [Dividend Distribution Tax (DDT)] in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after 1st April, 2005 out of its current income. Such distributed income is also exempt from tax under section 10(34) of the Act.

The above provisions were inserted in the Income-tax Act by the Special Economic Zones Act, 2005 (SEZ Act) with effect from 10th February, 2006.

Currently, there is no sunset date provided for exemption from MAT in the case of a developer of an SEZ or a unit located in an SEZ. Similarly, there is no sunset date for exemption from DDT in the case of a developer of an SEZ.

It is proposed to sunset the availability of exemption from minimum alternate tax in the case of SEZ Developers and units in SEZs in the Income-tax Act as well as the SEZ Act.

This amendment to section 115JB of the Income-tax Act will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

It is further proposed to discontinue the availability of exemption from dividend distribution tax in the case of SEZ Developers under the Income-tax Act as well as the SEZ Act for dividends declared, distributed or paid on or after 1st June, 2011.

This amendment to section 115-O of the Income-tax Act will take effect from 1st June, 2011.

It is also proposed to make consequential amendments by omitting *Explanation* to section 10(34) of the Income-tax Act.

This amendment to section 10 will take effect from 1st June, 2011.

Consequential amendments have also been proposed in the Second Schedule of the SEZ Act by omitting clause (C) of paragraph (a) [w.e.f. 01.06.2011], paragraph (h) [w.e.f. 01.04.2012] and paragraph (i) [w.e.f. 01.06.2011] of the Second Schedule.

[Clauses 4, 17, 19, 76]

Weighted deduction for contribution made for approved scientific research programme

Under the existing provisions of section 35(2AA) of the Income-tax Act, weighted deduction to the extent of 175 per cent. is allowed for any sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme.

In order to encourage more contributions to such approved scientific research programmes, it is proposed to increase this weighted deduction from 175 per cent. to 200 per cent.

This amendment is proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clause 5]

Investment linked deduction in respect of specified businesses

Under the existing provisions of section 35AD of the Income-tax Act, investment-linked tax incentive is provided by way of allowing hundred per cent. deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business". Currently, the following specified businesses are eligible for availing investment-linked deduction under section 35AD(8)(c):-

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;

(iv) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government;

(v) building and operating, anywhere in India, a new hospital with at least one hundred beds for patients;

(vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed.

It is proposed to include two new businesses as "specified business", i.e.,-

(a) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and

(b) production of fertiliser in India.

The dates of commencement of the "specified business" as an eligibility condition are detailed in section 35AD(5). It is proposed that the date of commencement of operations in the case of the two "specified businesses" of affordable housing projects and production of fertilizer in a new plant or in a newly installed capacity in an existing plant shall be on or after 1st April, 2011.

These amendments will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

Under section 73A, any loss of a "specified business" (under section 35AD) is allowed set-off against profit and gains of any other "specified business". In order to remove any ambiguity in this regard in respect of the business of hotels and hospitals, it is proposed to remove the word "new" from the definition of "specified business" in the case of hotels and hospitals under section 35AD(8)(c). With this, the loss of an assessee on account of a "specified business" claiming deduction under section 35AD would be allowed to be set off against the profit of another "specified business" under section 73A, whether or not the latter is eligible for deduction under section 35AD. Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, of a new hospital or new hotel which begins to operate after 1st April, 2010 and which is eligible for deduction of expenditure under section 35AD.

This amendment will take effect retrospectively from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

[Clause 6]

Tax benefits for New Pension System (NPS)

Section 80CCD of the Income-tax Act provides, *inter alia*, a deduction in respect of contributions made by an employee as well as an employer to the New Pension System (NPS) account on behalf of the employee. In view of the provisions of section 80CCE, the aggregate deduction under sections 80C, 80CCC and 80CCD cannot exceed one lakh rupees. The allowable deduction under section 80CCD includes both the employee's as well the employer's contribution to the NPS.

It is proposed to amend section 80CCE so as to provide that the contribution made by the Central Government or any other employer to a pension scheme under section 80CCD(2) shall be excluded from the limit of one lakh rupees provided under section 80CCE.

Currently, the contribution made by an employer towards a recognised provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under section 36, subject to certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.

It is, therefore, proposed to amend section 36 so as to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed ten per cent. of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under the head "Profits and gains of business or profession".

These amendments are proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clauses 7,8]

Deduction for investment in long-term infrastructure bonds

Under the existing provisions of section 80CCF of the Income-tax Act, a sum of Rs. 20,000 (over and above the existing limit of Rs. 1 lakh available under section 80CCE for tax savings) is allowed as deduction in computing the total income of an individual or a Hindu undivided family if that sum is paid or deposited during the previous year relevant to the assessment year 2011-12 in long-term infrastructure bonds as notified by the Central Government.

It is proposed to amend section 80CCF to allow deduction on account of investment in notified long-term infrastructure bonds for the year 2011-12 (assessment year 2012-13) also.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13.

[Clause 9]

Extension of sunset clause for tax holiday for power sector

Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction of profits and gains is allowed to an undertaking which,—

(a) is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2011;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2011;

(c) undertakes substantial renovation and modernisation of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2011.

It is proposed to amend section 80-IA(4)(iv) to extend the terminal date for a further period of one year, i.e., upto 31st March, 2012.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to assessment year 2012-13 and subsequent years.

[Clause 10]

Sunset of tax holiday for certain undertakings engaged in commercial production of mineral oil

Under the existing provisions of section 80-IB(9) of the Income-tax Act, a seven-year profit-linked deduction of hundred per cent. is available to an undertaking, if it fulfils any of the following, namely:-

(i) is located in North-Eastern Region and has begun or begins commercial production of mineral oil before 1st April, 1997;

(ii) is located in any part of India and has begun or begins commercial production of mineral oil on or after 1st April, 1997;

(iii) is engaged in refining of mineral oil and begins such refining on or after 1st October, 1998 but not later than 31st March, 2012;

(iv) is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (NELP-VIII) under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begins commercial production of natural gas on or after 1st April, 2009;

(v) is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after 1st April, 2009.

For the purposes of claiming this deduction, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner, are treated as a single "undertaking".

Thus, an undertaking, which is located in any part of India and is engaged in commercial production of mineral oil, is eligible for the above-mentioned deduction, if it has begun or begins commercial production of mineral oil at any time after 1st April, 1997. No sunset date has been provided for such business.

It is proposed that the aforesaid deduction available for commercial production of mineral oil will not be available for blocks licensed under a contract awarded after 31st March, 2011 under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clause 11]

Rationalisation of provisions relating to Transfer Pricing

A. Section 92C of the Income-tax Act provides the procedure for computation of the Arm's Length Price (ALP). The section provides the methods of computing the ALP and mandates that the most appropriate method should be chosen to compute ALP. It is also provided that if more than one price is determined by the chosen method, the ALP shall be taken to be the arithmetical mean of such prices. The second proviso to section 92C(2) provides that if the variation between the actual price of the transaction and the ALP, as determined above, does not exceed 5% of the actual price, then, no adjustment will be made and the actual price shall be treated as the ALP.

A fixed margin of 5% across all segments of business activity and range of international transactions has out-lived its utility. It is, therefore, proposed to amend section 92C of the Act to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

This amendment is proposed to take effect from 1st April, 2012 and it shall accordingly apply in relation to the Assessment Year 2012-13 and subsequent years.

B. Section 92CA of the Act provides that the Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction, which has been referred to the TPO by the Assessing Officer.

It is proposed to amend section 92CA so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

C. Section 92CA(7) provides that for the purpose of determining the ALP, the TPO can exercise powers available to an assessing officer under section 131(1) and section 133(6). These are powers of summoning or calling for details for the purpose of inquiry or investigation into the matter.

In order to enable the TPO to conduct on-the-spot enquiry and verification, it is proposed to amend section 92CA(7) so as to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

These amendments are proposed to take effect from 1st June 2011.

D. Section 139 of the Income-tax Act stipulates 30th September of the assessment year as the due date for filing of return of income in case of corporate assessees. In addition to filing a return of income, assessees who have undertaken international transactions are also required (under the provisions of section 92E) to prepare and file a transfer pricing report in Form 3CEB before the due date for filing of return of income.

Corporate assessees face practical difficulties in accessing contemporary comparable data before 30th September in order to furnish a report in respect of their international transactions. It is, therefore, proposed to amend section 139 to extend the due date for filing of return of income by such corporate assessees to 30th November of the assessment year.

This amendment is proposed to take effect from 1st April 2011.

[Clauses 12, 13, 23]

Toolbox of counter measures in respect of transactions with persons located in a notified jurisdictional area

In order to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures have been proposed in the Income-tax Act.

It is proposed to insert a new section 94A in the Act to specifically deal with transactions undertaken with persons located in such country or area.

The proposed section provides –

1) an enabling power to the Central Government to notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as a notified jurisdictional area;

2) that if an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be an international transaction and accordingly, transfer pricing regulations shall apply to such transactions;

3) that no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income-tax authority acting on its behalf, to seek relevant information from the said financial institution;

4) that no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnishes the information as may be prescribed;

5) that if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee;

6) that any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at the higher of the rates specified in the relevant provision of the Act or rate or rates in force or a rate of 30 per cent.

This amendment is proposed to take effect from 1st June, 2011.

[Clause 14]

Taxation of certain foreign dividends at a reduced rate

Under the existing provisions of the Income-tax Act, dividend received from foreign companies is taxable in the hands of the resident shareholder at his applicable marginal rate of tax. Therefore, in case of Indian companies which receive foreign dividend, such dividend is taxable at the rate of thirty per cent. plus applicable surcharge and cess.

It is proposed to insert a new section 115BBD to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable at the rate of fifteen per cent. (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.

This amendment is proposed to take effect from 1st April, 2012 and will accordingly, apply in relation to the assessment year 2012-13.

[Clause 16]

Minimum Alternate Tax

Under the existing provisions of section 115JB(1), a company is required to pay a minimum alternate tax (MAT) on its book profit, if the income-tax payable on the total income, as computed under the Act in respect of any previous year relevant to the assessment year commencing on or after 1st April, 2011, is less than the MAT. The amount of tax paid under the said section is allowed to be carried forward and set off against tax payable up to the tenth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable under the provisions of section 115JAA.

It is proposed to amend this section to increase the rate of MAT to eighteen and one-half per cent. from the existing rate of eighteen per cent. of such book profit.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clause 17]

Alternate Minimum Tax for Limited Liability Partnership (LLP)

The Limited Liability Partnership Act, 2008 (LLP) has come into effect in 2009. The LLP has features of both a body corporate as well as a traditional partnership. The Income-tax Act provides for the same taxation regime for a limited liability partnership as is applicable to a partnership firm. It also provides tax neutrality (subject to fulfilment of certain conditions) to conversion of a private limited company or an unlisted public company into an LLP.

An LLP being treated as a firm for taxation, has the following tax advantages over a company under the Income-tax Act:-

i) it is not subject to Minimum Alternate Tax;

ii) it is not subject to Dividend Distribution Tax (DDT); and

iii) it is not subject to surcharge.

In order to preserve the tax base vis-à-vis profit-linked deductions, it is proposed to insert a new Chapter XII-BA in the Income-tax Act containing special provisions relating to certain limited liability partnerships.

Under the proposed amendment, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such limited liability partnership and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent..

For the purpose of the above,

(i) "adjusted total income" shall be the total income before giving effect to this newly inserted Chapter XII-BA as increased by the deductions claimed under any section included in Chapter VI-A under the heading "*C – Deductions in respect of certain incomes*" and deduction claimed under section 10AA;

(ii) "alternate minimum tax" shall be the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent; and

(iii) "regular income-tax" shall be the income-tax payable for a previous year by a limited liability partnership on its total income in accordance with the provisions of the Act other than the provisions of this newly inserted Chapter XII-BA.

It is further provided that the credit for tax (tax credit) paid by a limited liability partnership under this newly inserted Chapter XII-BA shall be allowed to the extent of the excess of the alternate minimum tax paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax.

This amendment is proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

[Clause 18]

Rationalisation of Tax on Income distributed to unit holders

Under the existing provisions contained in section 115R(2) of the Income-tax Act, a Mutual Fund is liable to pay additional income-tax on the amount of income distributed to its unit holders.

It is proposed to levy additional income-tax at a higher rate of 30 per cent. on income distributed by debt funds to a person other than an individual or HUF.

It is therefore proposed to amend section 115R(2) to provide that the Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate of –

(a) 25 per cent. if the recipient is an individual or HUF in case of distribution by a money market mutual fund or a liquid fund;

(b) 30 per cent. if the recipient is any other person in case of distribution by a money market mutual fund or a liquid fund;

(c) 12.5 per cent. if the recipient is an individual or HUF in case of distribution by a debt fund other than a money market mutual fund or a liquid fund; and

(d) 30 per cent. if the recipient is any other person in case of distribution by debt fund other than a money market mutual fund or a liquid fund.

There will be no change in the rate of income-tax in case of distribution to any individual or HUF. Distribution of income by an equity-oriented fund shall continue to be exempt from tax.

This amendment is proposed to take effect from 1st June, 2011.

[Clause 20]

Collection of information on requests received from tax authorities outside India

Under the existing provisions of section 131(1) of the Income-tax Act, certain income-tax authorities have been conferred the same powers as are available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.

It is proposed to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A of the Income-tax Act.

Accordingly, it is proposed to insert sub-section (2) in section 131. The new sub-section provides that for the purpose of making an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority, not below the rank of Assistant Commissioner of Income-tax, as notified by the Board in this behalf, to exercise the powers currently conferred on income-tax authorities referred to in section 131(1). The authority so notified by the Board shall be able to exercise the powers under section 131(1) notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

It is further proposed to amend section 131(3) so as to empower the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

Similar amendments have also been proposed in section 133 of the Income-tax Act.

These amendments will take effect from 1st June, 2011.

[Clauses 21, 22]

Exemption to a class or classes of persons from furnishing a return of income

Under the existing provisions contained in section 139(1) of the Income-tax Act, every person, if his total income during the previous year exceeds the maximum amount which is not chargeable to income-tax, is required to furnish a return of his income.

In the case of salaried tax payer, entire tax liability is discharged by the employer through deduction of tax at source. Complete details of such tax payers are also reported by the employer through Tax Deduction at Source (TDS) statements. Therefore, in cases where there is no other source of income, filing of a return is a duplication of existing information.

In order to reduce the compliance burden on small tax payer, it is proposed to insert sub-section (1C) in section 139. This provision empowers the Central Government to exempt, by notification in the Official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in that notification.

Consequential amendments are also proposed to be made to the provisions of section 296 to provide that any notification issued under section 139(1C) shall be laid before Parliament.

These amendments will take effect from 1st June, 2011.

[Clauses 23, 32]

Notification for processing of returns in Centralised Processing Centres

Under the existing provisions of section 143(1B) of the Income-tax Act, the Central Government may, for the purpose of giving effect to the scheme made under section 143(1A), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction shall be issued after 31st March, 2011.

It is proposed to amend section 143(1B) to extend the existing time limit for issue of notification to 31st March, 2012.

This amendment will take effect retrospectively from 1st April, 2011.

[Clause 24]

Extension of time limit for assessments in case of exchange of information

Section 153 of the Income-tax Act provides for the time limits for completion of assessments and reassessments. In *Explanation 1* to section 153 of the Income-tax Act, certain periods specified therein are to be excluded while computing the period of limitation for completion of assessments and reassessments.

It is proposed to exclude the time taken in obtaining information from the tax authorities in jurisdictions situated outside India, under an agreement referred to in section 90 or section 90A, from the statutory time limit prescribed for completion of assessment or reassessment.

Accordingly, it is proposed to insert a new clause (viii) in *Explanation 1* to section 153. It provides that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner, or a period of six months, whichever is less, shall be excluded.

Similar amendments are proposed to be made to section 153B of the Income-tax Act.

These amendments will take effect from 1st June, 2011.

[Clauses 25, 26]

Modification in the conditions for filing an application before the Settlement Commission

The existing provisions contained in the proviso to section 245C(1) allow an application to be made before the Settlement Commission if,—

(i) the proceedings have been initiated against the applicant under section 153A or under section 153C as a result of search or a requisition of books of account, as the case may be, and the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees;

(ii) in other cases, if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

It is proposed to expand the criteria for filing an application for settlement by a tax payer in whose case proceedings have been initiated as a result of search or requisition of books of account.

It is, therefore, proposed to insert a new clause (ia) in the proviso to section 245C(1). This stipulates that an application can also be made, where the applicant—

(a) is related to the person [referred to in (i) above] in whose case proceedings have been initiated as a result of search and who has filed an application; and

(b) is a person in whose case proceedings have also been initiated as a result of search,

the additional amount of income-tax payable on the income disclosed in his application exceeds ten lakh rupees.

As a consequence, a tax payer who is the subject matter of a search would be allowed to file an application for settlement if additional income-tax payable on the income disclosed in the application exceeds fifty lakh rupees. Entities related to such a tax payer, who are also the subject matter of search, would now be allowed to file an application for settlement, if additional income-tax payable in their application exceeds ten lakh rupees.

The relationship between the person who makes an application under clause (ia) of the proviso to section 245C(1) and the person mentioned in clause (i) of the proviso is defined by inserting an Explanation in the section.

This amendment will take effect from 1st June, 2011.

[Clause 28]

Power of the Settlement Commission to rectify its orders

The existing provisions of section 245D(4) of the Income-tax Act provide that the Settlement Commission may pass an order, as it thinks fit, on the matters covered by the applications received by it, after giving an opportunity of being heard to the applicant and to the Commissioner. Further, under section 245F(1), the Settlement Commission has been conferred all the powers which are vested in an income-tax authority under the Act. An income-tax authority has the power (under section 154) to amend any order passed by it for the purpose of rectifying any mistake apparent from the record.

It is proposed to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4).

It is further provided that a rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

Consequential amendments on similar lines are proposed to be made to section 22D of the Wealth Tax Act.

These amendments will take effect from 1st June, 2011.

[Clauses 29, 34]

Omission of the requirement of quoting of Document Identification Number

Under the existing provisions contained in section 282B of the Income-tax Act, every income-tax authority shall, on or after the 1st day of July, 2011, allot a computer-generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

Considering the practical difficulties due to non-availability of requisite infrastructure on an all India basis, it is proposed to omit the aforesaid section.

This amendment will take effect retrospectively from 1st April, 2011.

[Clause 30]

Reporting of activities of liaison offices

Foreign companies or firms or associations of individuals operate in India through a branch or a liaison office after approval by Reserve Bank of India. The branch constitutes a permanent establishment of the foreign entity and is, therefore, required to file a return of income along with requisite details. A non-resident does not file a return of income with regard to its liaison office on the ground that no business activity is allowed to be carried out in India.

It is proposed to seek regular information from non-residents regarding the activities of their liaison offices in India. A new section 285 is, therefore, proposed in the Income-tax Act mandating the filing of annual information, within sixty days from the end of the financial year, in the prescribed form and providing prescribed details by non-residents as regards their liaison offices.

This amendment is proposed to take effect from 1st June, 2011.

[Clause 31]

Recognition to Provident Funds – Extension of time limit for obtaining exemption from Employees Provident Fund Organisation (EPFO)

Rule 4 in Part A of the Fourth Schedule to the Income-tax Act provides for conditions which are required to be satisfied by a Provident Fund for receiving or retaining recognition under the Income-tax Act. One of the requirements of rule 4 [clause (ea)] is that the establishment shall obtain exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act).

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under the said rule 4 and the conditions which the Board may specify by rules.

The first proviso to sub-rule (1) of rule 3, *inter alia*, specifies that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st December, 2010 and any other conditions which the Board may specify by rules in this behalf, the recognition to such fund shall be withdrawn.

In order to provide further time to the Employees' Provident Fund Organization (EPFO) to process the applications made by establishments seeking exemption under section 17 of the EPF & MP Act, it is proposed to amend the aforesaid proviso so as to extend the time limit from 31st December, 2010 to 31st March, 2012.

This amendment will take effect retrospectively from 1st January, 2011.

[Clause 33]