FINANCE BILL, 2012

PROVISIONS RELATING TO DIRECT TAXES

Introduction

The provisions of the Finance Bill, 2012 relating to direct taxes seek to amend the Income-tax Act, *inter alia*, in order to provide for-

A. Tax rates

B. Widening of tax base

C. Measures to prevent generation and circulation of unaccounted money

D. Tax incentives and reliefs

E. Rationalization of Tax Deduction at Source (TDS) provisions

F. Rationalization of international taxation provisions

G. Rationalization of transfer pricing provisions

H. General Anti-Avoidance Rule

I. Other clarifications

2. The Finance Bill, 2012 seeks to prescribe the rates of income-tax on income liable to tax for the assessment year 2012-13; the rates at which tax will be deductible at source during the financial year 2012-13 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 2012-13.

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

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2012-13.

In respect of income of all categories of assessees liable to tax for the assessment year 2012-13, 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, 2011, 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 2012-13, 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 five 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 per cent. of such income tax.

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.

Also, 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') and where such income exceeds one crore rupees, surcharge at the rates mentioned above shall be levied and marginal relief shall also be provided.

(2) Education Cess —

For assessment year 2012-13, 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 2012-13 from certain incomes other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2012-13 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, 2011, for the purposes of deduction of income-tax at source during the financial year 2011-12, except that in case of certain interest payments made to a non-residents by a specified Indian company engaged in prescribed business of infrastructure development, the rates for deduction have been now provided in the proposed new section 194LC.

(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 2012-13.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2012-13 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 2012-13 on current incomes in cases where accelerated assessments have to be made , for instance, provisional assessment of shipping profits arising in India to nonresidents, 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) and (iii) 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. 2,00,000	Nil.
Rs. 2,00,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

(ii) 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.10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

(iii) 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. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

No surcharge shall 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 2012-13. 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 2012-13. No surcharge shall 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 2012-13. 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 2012-13.

The existing surcharge of five per cent in case of a domestic company shall continue to be levied. In case of companies other than domestic companies, the existing surcharge of two per cent. shall continue to be levied.

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 five per cent. in all other cases (including sections 115JB, 115-O, 115R, etc.) shall continue to be levied.

For financial year 2012-13, 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 (wherever applicable), in all cases. No marginal relief shall be available in respect of such Cess.

[Clause 2]

B. WIDENING OF TAX BASE

Alternate Minimum Tax (AMT) on all persons other than companies

Under the existing provisions of the Income-tax Act, Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) are levied on companies and limited liability partnerships (LLPs) respectively. However, no such tax is levied on the other form of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base vis-à-vis profit linked deductions, it is proposed to amend provisions regarding AMT contained in Chapter XII-BA in the Income-tax Act to provide that a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading “C – Deductions in respect of certain incomes” or under section 10AA, shall be liable to pay AMT.

Under the proposed amendments, where the regular income-tax payable for a previous year by a person (other than a company) 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 person and he 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 provisions of Chapter XII-BA as increased by the deductions claimed under any section (other than section 80P) 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 person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.

It is further provided that the provisions of AMT under Chapter XII-BA shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person referred to in section 2(31)(vii) if the adjusted total income of such person does not exceed twenty lakh rupees.

It is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of the AMT 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 AMT to the extent of the excess of the regular income-tax over the AMT.

Consequential amendments are also proposed to the provisions of section 140A relating to self-assessment, section 234A relating to interest for defaults in furnishing return of income, section 234B relating to interest for defaults in payment of advance tax and section 234C relating to interest for deferment of advance tax.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clauses 47, 48, 49, 50, 51,52, 57, 82, 83, 84]

Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land)

Under the existing provisions of the Income-tax Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc.

On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1% of such sum, if the consideration paid or payable for the transfer of such property exceeds –

(a) fifty lakh rupees in case such property is situated in a specified urban agglomeration; or

(b) twenty lakh rupees in case such property is situated in any other area.

It is further proposed to provide that where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

For better compliance, it is also proposed to provide that a registering officer appointed under the Indian Registration Act, 1908 (Registrar) shall not register the transfer of any immovable property where taxes are required to be deducted under this provision unless the transferee furnishes proof of deduction and payment of TDS.

For reducing the compliance burden on the transferee, it is also proposed that a simple one page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement as this would be mostly a one time transaction. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

This amendment will take effect from 1st October, 2012.

[Clause 73]

TDS on remuneration to a director

Under the existing provisions of the Income-tax Act, a company, being an employer, is required to deduct tax at the time of payment of salary to its employees including Managing director/whole time director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary.

It is proposed to amend section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration.

This amendment will take effect from 1st July, 2012.

[Clause 71]

Tax Collection at Source (TCS) on cash sale of bullion and jewellery

Under the existing provisions of the Income-tax Act, tax is required to be collected at source by the seller at the specified rate on certain goods like alcoholic liquor, tendu leaves, scrap etc. at the time of sale.

In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, it is proposed to provide that the seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

This amendment will take effect from 1st July, 2012.

[Clause 79]

TCS on sale of certain minerals

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or under-reporting of trading in minerals trading transactions for the taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, it is proposed that tax at the rate of 1% shall be collected by the seller from the buyer of the following minerals:

(a) Coal;

(b) Lignite; and

(c) Iron ore.

However, the seller shall also not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilized for the purposes of manufacturing, processing or producing articles or things.

This amendment will take effect from 1st July, 2012.

[Clause 79]

Daily tonnage income of shipping company

The Tonnage Tax Scheme introduced vide Finance Act 2005 provides for taxation of income of a shipping company on presumptive basis. Under this scheme, the operating profit of a shipping company is determined on the basis of tonnage capacity of its ships.

The rates of daily tonnage income specified under this scheme remained unchanged since the introduction of this scheme. It is, therefore, proposed to amend section 115VG to revise the rate of daily tonnage income under this scheme as under:

Qualifying ship having net tonnage	Existing amount of daily tonnage income	Proposed amount of daily tonnage income
(1)	(2)	(3)
Up to 1,000	Rs.46 for each 100 tons	Rs.70 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs.460 *plus* Rs.35 for each 100 tons exceeding 1,000 tons	Rs.700 *plus* Rs.53 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs.3,610 *plus* Rs.28 for each 100 tons exceeding 10,000 tons	Rs.5,470 *plus* Rs.42 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs.7,810 *plus* Rs.19 for each 100 tons exceeding 25,000 tons	Rs.11,770 *plus* Rs.29 for each 100 tons exceeding 25,000 tons

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 55]

C. MEASURES TO PREVENT GENERATION AND CIRCULATION OF UNACCOUNTED MONEY

Cash credits under section 68 of the Act

Section 68 of the Act provides that if any sum is found credited in the books of an assessee and such assessee either

(i) does not offer any explanation about nature and source of money; or

(ii) the explanation offered by the assessee is found to be not satisfactory by the Assessing Officer,

then, such amount can be taxed as income of the assessee.

The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as share capital, share premium etc.

Judicial pronouncements, while recognizing that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company. The Courts have drawn a distinction and emphasized that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large.

In the case of closely held companies, investments are made by known persons. Therefore, a higher onus is required to be placed on such companies besides the general onus to establish identity and credit worthiness of creditor and genuineness of transaction. This additional onus, needs to be placed on such companies to also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum shall be treated as income of the company and added to its income.

It is, therefore, proposed to amend section 68 of the Act to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder. However, even in the case of closely held companies, it is proposed that this additional onus of satisfactorily explaining the source in the hands of the shareholder, would not apply if the shareholder is a well regulated entity, i.e. a Venture Capital Fund, Venture Capital Company registered with the Securities Exchange Board of India (SEBI).

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.

[Clause 22]

Taxation of cash credits, unexplained money, investments etc.

Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 45]

Compulsory filing of income tax return in relation to assets located outside India

Under the existing provisions of section 139, every person is required to furnish a return of income if his income during the previous year relevant to the assessment year exceeds the maximum amount which is not chargeable to tax. The return of income has to be furnished in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

It is proposed to amend the provisions of section 139 so that furnishing of return of income under section 139 may be made mandatory for every resident having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India. Furnishing of return by such a resident would be mandatory irrespective of the fact whether the resident taxpayer has taxable income or not.

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

[Clause 56)

Reassessment of income in relation to any asset located outside India

Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is 6 years. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

It is proposed to amend the provisions of section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Amendments are also proposed to be made in section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

The provisions of sections 147 and 149 are procedural in nature and will take effect from 1st July, 2012 for enabling reopening of proceedings for and assessment year commencing prior to this date. This is proposed to be clarified through an *Explanation* stating that the provisions of these sections, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Corresponding amendments are also proposed to be made to the provisions of section 17 of the Wealth-tax Act.

These amendments will take effect from the 1st day of July, 2012.

[Clauses 61, 62 and 110]

Penalty on undisclosed income found during the course of search

Under the existing provisions of section 271AAA of the Income-tax Act, no penalty is levied if the assessee admits the undisclosed income in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income. As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet due) found during the course of search attracts a tax at the rate of 30% and no penalty is leviable.

In order to strengthen the penal provisions, it is proposed to provide that the provisions of section 271AAA will not be applicable for searches conducted on or after 1st July, 2012. It is also proposed to insert a new provision in the Act (section 271AAB) for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The new section provides that,-

(i) If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10% of undisclosed income subject to the fulfillment of certain conditions.

(ii) If undisclosed income is not admitted during the course of search but disclosed in the return of income filed after the search, the taxpayer will be liable for penalty at the rate of 20% of undisclosed income subject to the fulfillment of certain conditions.

(iii) In a case not covered under (i) and (ii) above, the taxpayer will be liable for penalty at the rate ranging from 30% to 90% of undisclosed income.

These amendments will take effect from the 1st day of July, 2012 and will, accordingly, apply to any search and seizure action taken after this date.

[Clauses 89, 95, 96]

Expediting prosecution proceedings under the Act

Chapter XXII of the Income-tax Act, 1961 details punishable offences and prosecution for such offences. Prosecution under the direct tax laws is used as a tool for deterrence and effective enforcement of laws.

It is proposed to strengthen the prosecution mechanism (through new sections 280A, 280B, 280C and 280D) under the Income-tax Act by –

(i) Providing for constitution of Special Courts for trial of offences.

(ii) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.

(iii) Providing for appointment of public prosecutors.

The existing provisions of section 276C, 276CC, 277, 277A and section 278 of the Income-tax Act provide that in a case where the amount of tax, penalty or interest which would have been evaded by a person exceeds one hundred thousand rupees, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

In case the amount which would have been evaded by a person does not exceed one hundred thousand rupees, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

The threshold of one hundred thousand rupees was introduced in 1976. It is proposed to be amended so that the revised threshold will be twenty-five hundred thousand rupees.

Summons trials apply to offences where the maximum term of imprisonment does not exceed two years. It is, therefore, proposed that where the amount which would have been evaded does not exceed twenty-five hundred thousand rupees, the person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

These amendments will take effect from the 1st day of July, 2012.

[Clauses 101, 102, 103, 104, 105, 106]

Share premium in excess of the fair market value to be treated as income

Section 56(2) provides for the specific category of incomes that shall be chargeable to income-tax under the head “Income from other sources”.

It is proposed to insert a new clause in section 56(2). The new clause will apply where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares. In such a case if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head “Income from other sources. However, this provision shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

Further, it is also proposed to provide the company an opportunity to substantiate its claim regarding the fair market value. Accordingly, it is proposed that the fair market value of the shares shall be the higher of the value—

(i) as may be determined in accordance with the method as may be prescribed; or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 21]

D. TAX INCENTIVES AND RELIEFS

Tax incentive for funding of certain Infrastructure Sectors

Section 115A of the Income Tax Act provides that any interest income received by any non-resident from the Government or an Indian concern shall be taxable at the rate of 20% on the gross amount of such interest income. The interest income received by a non-resident from a notified Infrastructure Debt Fund (IDF) is taxable at a reduced rate of 5% on gross amount of such interest income.

Section 195 of the Act provides that in case of any interest payment made to a non-resident tax shall be deducted (withholding tax) at the rate in force. Currently, the rate of 20% withholding tax is prescribed, in case of any interest paid by the Government or Indian concern to a non-resident.

In order to augment long-term low cost funds from abroad for the infrastructure sector, it is proposed to provide tax incentives for funding certain infrastructure sectors from borrowings made abroad subject to certain conditions.

It is proposed to amend Section 115A of the Income Tax Act to provide that any interest paid by a specified company to a non-resident in respect of borrowing made in foreign currency from sources outside India between 1st July, 2012 and 1st July, 2015, under an agreement, including rate of the interest payable, approved by the Central Government, shall be taxable at the rate of 5% (plus applicable surcharge and cess).

The specified company shall be an Indian company engaged in the business of -

(i) construction of dam,

(ii) operation of Aircraft,

(iii) manufacture or production of fertilizers,

(iv) construction of port including inland port,

(v) construction of road, toll road or bridge;

(vi) generation, distribution of transmission of power

(vii) construction of ships in a shipyard; or

(viii) developing and building an affordable housing project as is presently referred to in section 35AD(8)(c)(vii).

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-14 and subsequent assessment years.

It is further proposed to insert a new section 194LC to provide that interest income paid by such specified company to a non-resident shall be subjected to tax deduction at source at the rate of 5% (plus applicable surcharge and cess).

This amendment will take effect from 1st July, 2012.

[Clauses 42, 74]

Lower rate of tax on dividends received from foreign companies

Section 115BBD of Income Tax Act (the Act) provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% if such dividend is included in the total income for the Financial Year 2011-12 i.e. Assessment Year 2012-13.

The above provision was introduced as an incentive for attracting repatriation of income earned by residents from investments made abroad with certain conditions to check the misuse of the incentive.

In order to continue these provisions for one more year, it is proposed to amend section 115BBD to extend the applicability of this section in respect of income by way of certain foreign dividends received in Financial Year 2012-13 also, subject to the same conditions.

This amendment will take effect from 1st April, 2013 and shall apply to the Assessment year 2013-14.

[Clause 44]

Provisions relating to Venture Capital Fund (VCF) or Venture Capital Company (VCC).

Provisions of Section 10(23FB) and Section 115U of the Act were intended to ensure a tax pass through status to Securities and Exchange Board of India (SEBI) registered Venture Capital Fund (VCF) or Venture Capital Company (VCC). Section 10(23FB) granted exemption in respect of income of such VCF/VCC. The benefit was available if investment by such VCC/VCF was in unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU). Section 115U ensures that income, in the hand of the investor through VCF/VCC is taxed in like manner and to the same extent as if the investment was directly made by investor in the VCU. Further, TDS provisions are not applicable to any payment made by the VCF to its investor and payment by VCC to the investor is exempted from Dividend Distribution Tax (DDT).

Section 10(23FB) further provides that income of a SEBI regulated VCF or VCC, derived from investment in a domestic company i.e. Venture Capital Undertaking (VCU), is exempt from taxation, provided the VCU is engaged in only nine specified businesses. The working of VCF, VCC or VCU are regulated by SEBI and RBI. In order to avoid multiplicity of conditions in different regulations for the same entities, the sectoral restriction on business of VCU is required to be removed from Income Tax Act and such VCU is to be allowed to be governed by conditions imposed by SEBI and RBI.

The provisions of section 115U currently allow an opportunity of indefinite deferral of taxation in the hands of investor. With a view to rationalize the above position and to align it with the true intent of a pass-through status, it is proposed to amend section 10(23FB) and section 115U to provide that.-

(i) The venture Capital undertaking shall have same meaning as provided in relevant SEBI regulations and there would be no sectoral restriction.

(ii) Income accruing to VCF/ VCC shall be taxable in the hands of investor on accrual basis with no deferral.

(iii) The exemption from applicability of TDS provisions on income credited or paid by VCF/ VCC to investors shall be withdrawn.

These amendments will take effect from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.

[Clauses 5, 54]

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

Section 115-O of the Act provides for taxation of distributed profits of domestic company. It provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits, shall be liable to be taxed at the rate of 15%. The tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients.

Section 115-O of the Act provides that dividend liable for DDT in case of a company is to be reduced by an amount of dividend received from its subsidiary after payment of DDT if the company is not a subsidiary of any other company. This removes the cascading effect of DDT only in a two-tier corporate structure.

With a view to remove the cascading effect of DDT in multi-tier corporate structure, it is proposed to amend Section 115-O of the Act to provide that in case any company receives, during the year, any dividend from any subsidiary and such subsidiary has paid DDT as payable on such dividend, then, dividend distributed by the holding company in the same year, to that extent, shall not be subject to Dividend Distribution Tax under section 115-O of the Act.

This amendment will take effect from 1st July, 2012.

[Clause 53]

Exemption in respect of income received by certain foreign companies

Section 10 of the Income-tax Act provides for certain incomes which are not included in the total income of a person subject to the conditions specified in the relevant clauses of the section.

In the national interest, a mechanism has been devised to make payment to certain foreign companies in India in Indian currency for import of crude oil. The current provisions of the Income-tax Act would render such payment taxable in India because payment is being received by these foreign companies in India in Indian currency. This would not be justified when such payment is based on national interest and particularly when no other activity is being carried out in India by these foreign companies except receipt of payment in Indian currency.

It is therefore proposed to insert a new clause (48) in section 10 of the Income-tax Act to provide for exemption in respect of any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to the following conditions:

(i) The receipt of money is under an agreement or an arrangement which is either entered into by the Central Government or approved by it.

(ii) The foreign company, and the arrangement or agreement has been notified by the Central Government having regard to the national interest in this behalf.

(iii) The receipt of the money is the only activity carried out by the foreign company in India.

These amendments will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years once such arrangement or agreement is notified.

[Clause 5]

Extending benefit of initial depreciation to the power sector

Section 32(1)(iia) provides for allowance of initial depreciation (in addition to normal depreciation) at the rate of 20% of the actual cost on new machinery or plant (other than ships and aircraft) to the assessee engaged in the business of manufacture or production of any article or thing in the year of acquisition and instalment. Under the existing provisions, the benefit of initial depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of generation or generation and distribution of power.

In order to encourage new investment by the assessees engaged in the business of generation or generation and distribution of power, it is proposed to amend this section to provide that an assessee engaged in the business of generation or generation and distribution of power shall also be allowed initial depreciation at the rate of 20% of actual cost of new machinery or plant (other than ships and aircraft) acquired and installed in a previous year.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 7]

Weighted deduction for scientific research and development

Under the existing provisions of Section 35(2AB) of the Income-tax Act, a company is allowed weighted deduction at the rate of 200% of expenditure (not being in the nature of cost of any land or building) incurred on approved in-house research and development facilities. These provisions are not applicable in respect of any expenditure incurred by a company after 31st March, 2012.

In order to incentivise the corporate sector to continue to spend on in-house research, it is proposed to amend this section to extend the benefit of the weighted deduction for a further period of five years i.e. up to 31st March, 2017.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years up to assessment year 2017-18.

[Clause 8]

Weighted deduction for expenditure incurred on agricultural extension project

Agricultural extension services play a critical role in enhancing the productivity in the agricultural sector. In order to incentivise the business entities to provide better and effective agriculture extensive services, it is proposed to insert a new provision in the Income-tax Act to allow weighted deduction of 150% of the expenditure incurred on agricultural extension project. The agricultural extension project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 10]

Weighted deduction for expenditure for skill development

The Department of Industrial Policy & Promotion (DIPP) has notified the National Manufacturing Policy (NMP) vide Press Note dated 4th November, 2011. The notified NMP *inter alia* propose to provide following direct tax incentive for skill development in manufacturing sector:

> "*To encourage the private sector to set up their own institutions, the government will provide weighted standard deduction of 150% of the expenditure (other than land or building) incurred on Public Private Partnership (PPP) project for skill development in the ITIs in manufacturing sector in separate facilities in coordination with NSDC.*"

In order to incentivise companies to invest on skill development projects in the manufacturing sector, it is proposed to insert a new provision in the Income-tax Act to provide weighted deduction of 150% of expenses (not being expenditure in the nature of cost of any land or building) incurred on skill development project. The skill development project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines.

The proposed amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 10]

Turnover or gross receipts for audit of accounts and presumptive taxation

I. Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed sixty lakh rupees. Similarly, a person carrying on a profession is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed fifteen lakh rupees.

In order to reduce the compliance burden on small businesses and on professionals, it is proposed to increase the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting accounts audited, from sixty lakh rupees to one crore rupees in the case of persons carrying on business and from fifteen lakh rupees to twenty five lakh rupees in the case of persons carrying on profession.

II. It is also proposed that for the purposes of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from sixty lakh rupees to one crore rupees.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply to the assessment year 2013-14 and subsequent assessment years.

[Clauses 13, 14]

Exemption for Senior Citizens from payment of advance tax

Under the existing provisions of Income-tax Act, every assessee is required to pay advance tax if the tax liability for the previous year exceeds ten thousand rupees. In case of senior citizens who have passive income of the nature of interest, rent, etc., the requirement of payment of advance tax results in raising compliance burden.

In order to reduce the compliance burden of such senior citizens, it is proposed that a resident senior citizen, not having any income chargeable under the head "Profits and gains of business or profession", shall not be liable to pay advance tax and such senior citizen shall be allowed to discharge his tax liability (other than TDS) by payment of self assessment tax.

This amendment will take effect from the 1st April, 2012. Accordingly, the aforesaid senior citizen would not be required to pay advance tax for the financial year 2012-13 and subsequent financial years.

[Clause 80]

Wealth Tax – Exemption of residential house allotted to employee etc. of a company

Under the existing provisions of section 2 of the Wealth-tax Act, the specified assets for the purpose of levy of wealth tax do not include a residential house allotted by a company to an employee or an officer or a whole time director if the gross annual salary of such employee or officer, etc. is less than five lakh rupees.

Considering general increase in salary and inflation since revision of this limit, it is proposed to increase the existing threshold of gross salary from five lakh rupees to ten lakh rupees for the purpose of levying wealth-tax on residential house allotted by a company to an employee or an officer or a whole time director.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 109]

Relief from long-term capital gains tax on transfer of residential property if invested in a manufacturing small or medium enterprise

The Government had announced National Manufacturing Policy (NMP) in 2011, one of the goals of which is to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector. It is proposed to insert a new section 546B so as to provide rollover relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery.

This relief would be subject to the conditions that-

(i) the amount of net consideration is used by the individual or HUF before the due date of furnishing of return of income under sub-section (1) of section 139, for subscription in equity shares in the SME company in which he holds more than 50% share capital or more than 50% voting rights.

(ii) The amount of subscription as share capital is to be utilized by the SME company for the purchase of new plant and machinery within a period of one year from the date of subscription in the equity shares.

(iii) If the amount of net consideration subscribed as equity shares in the SME company is not utilized by the SME company for the purchase of plant and machinery before the due date of filing of return by the individual or HUF, the unutilised amount shall be deposited under a deposit scheme to be prescribed in this behalf.

(iv) Suitable safeguards so as to restrict the transfer of the shares of the company, and of the plant and machinery for a period of 5 years are proposed to be provided to prevent diversion of these funds. Further, capital gains would be subject to taxation in case any of the conditions are violated.

(v) The relief would be available in case of any transfer of residential property made on or before 31st March, 2017.

The proposed amendments in the provisions of the Income-tax Act shall be effective from 1st April, 2013 and would accordingly apply to assessment year 2013-14 and subsequent assessment years.

[Clause 19]

Reduction in the rate of Securities Transaction Tax (STT)

Securities Transaction Tax (STT) on transactions in specified securities was introduced vide Finance (No.2) Act, 2004.

It is proposed to reduce STT in Cash Delivery segment from the existing 0.125% to 0.1%. The proposed new rates along with details of old rates are given in the following table.

TABLE

Sl.No.	Nature of taxable securities transaction	Payable by	Existing Rates %	Proposed rates%
(1)	(2)	(3)	(4)	(5)
1.	Delivery based purchase of equity shares in a company/ units of an equity oriented fund entered into through a recognised stock exchange in India.	Purchaser	**0.125**	**0.1**
2.	Delivery based sale of equity shares in a company / units of an equity oriented fund entered into through a recognised stock exchange in India.	Seller	**0.125**	**0.1**

The proposed amendments in the rates of Securities Transaction Tax (STT) will be effective from the 1st day of July, 2012 and will accordingly apply to any transaction made on or after that date.

[Clause 153]

Deduction in respect of capital expenditure on specified business

I. Under the existing provisions of section 35AD of the Income-tax Act, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of the whole 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” during the previous year in which such expenditure is incurred. Currently, the following “specified businesses” are eligible for availing the 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.

(vii) 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

(ix) production of fertilizer in India.

It is proposed to include three new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD, namely:-

(a) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962 (52 of 1962);

(b) bee-keeping and production of honey and beeswax; and

(c) setting up and operating a warehousing facility for storage of sugar.

The dates of commencement of the "specified business" are detailed in section 35AD (5). It is proposed that the date of commencement of operations for availing investment linked deduction in respect of the three new specified businesses shall be on or after 1st April, 2012.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

II. It is also proposed that the following specified businesses commencing operations on or after the 1st of April, 2012 shall be allowed a deduction of 150% of the capital expenditure under section 35AD of the Income-tax Act, namely:-

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

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

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

(iv) 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

(v) production of fertilizer in India.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

III. Currently, the investment-linked deduction under section 35AD is allowed to an assessee engaged in the business of building and operating a hotel whereby the deduction can only be granted to the owner of a hotel if he himself operates it.

In service industries like hotels, a franchisee business system exists where the hotel owner may get the hotel operated through an outsourcing arrangement.

Therefore, it is proposed to provide a suitable clarification so that a hotel owner continues to be eligible for the investment-linked deduction under section 35AD if he, while continuing to own the hotel, transfers the operation of such hotel to another person. Accordingly, a new sub-section (1A) is proposed to be inserted in section 35AD to provide that where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel.

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

[Clause 9]

Extension of sunset date for tax holiday for power sector

Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction from 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, 2012;

(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, 2012;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2012.

It is proposed to amend the above provision to extend the terminal date for a further period of one year, i.e., up to 31st March, 2013.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

[Clause 29]

Reduction of the eligible age for senior citizens for certain tax reliefs

The Finance Act, 2011 amended the effective age of a senior citizen being an Indian resident from sixty-five years of age to sixty years for the purposes of application of various tax slabs and rates of tax under the Income Tax Act, 1961 for income earned during the financial year 2011-12 (assessment year 2012-13).

There are certain other provisions of the Act in which the age for qualifying as a senior citizen is now proposed to be similarly amended.

(i) Section 80D of the Income-tax Act provides for a deduction in respect of premia paid towards a health insurance policy for the assessee or his family (spouse and dependant children) and a further deduction is also allowed for buying a health insurance policy for parent(s). Where the premium is paid to effect or keep in force an insurance on the health of any person who is a senior citizen, the deductions are allowable up to a higher sum of Rs. 20,000/- instead of Rs. 15,000/-.

(ii) Section 80DDB of the Income-tax Act provides for a deduction up to Rs. 40,000/- for the medical treatment of a specified disease or ailment in the case, inter alia, of an individual or his dependant. This deduction is enhanced to Rs. 60,000/- where the amount actually paid is in respect of any of the above persons who is a senior citizen.

(iii) Section 197A(1C) of the Income-tax Act provides that in respect of tax deduction at source under section 193 (interest on securities) or section 194 (dividends) or section 194A (interest other than interest on securities) or section 194EE (payments in respect of deposits under NSS etc.) or section 194K (income in respect of units), no deduction of tax shall be made in the case of a senior citizen, if such individual furnishes a declaration in the prescribed form (Form No. 15H) to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

In all of the above-mentioned provisions, i.e., under sections 80D, 80DDB and 197A the effective age for a “senior citizen” who can avail of the benefit is mentioned as sixty-five years or more at any time during the relevant previous year.

In order to make the effective age of senior citizens uniform across all the provisions of the Income Tax Act, it is proposed to reduce the age for availing of the benefits by a senior citizen under the aforesaid sections (sections 80D, 80DDB and 197A) from sixty-five years to sixty years.

The amendments to section 80D and section 80DDB will take effective from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

The amendment to section 197A will take effect from 1st July, 2012.

[Clauses 25, 26, 76]

Deduction for expenditure on preventive health check-up

Under the existing provisions contained in section 80D of the Income-tax Act, a deduction is allowed in respect of premium paid towards a health insurance policy for insurance of self, spouse and dependant children or any contribution made to the Central Government Health Scheme, up to a maximum of Rs.15,000 in aggregate. A further deduction of Rs.15,000 is also allowed for buying a health insurance policy in respect of parents.

It is proposed to amend this section to also include any payment made by an assessee on account of preventive health check-up of self, spouse, dependant children or parents(s) during the previous year as eligible for deduction within the overall limits prescribed in the section. However, the proposed deduction on account of expenditure on preventive health check-up (for self, spouse, dependant children and parents) shall not exceed in the aggregate Rs.5,000.

It is further proposed to provide that for the purpose of the deduction under section 80D, payment can be made – (i) by any mode, including cash, in respect of any sum paid on account of preventive health check-up and (ii) by any mode other than cash, in all other cases.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 25]

Deduction in respect of interest on deposits in savings accounts

Under the proposed new section 80TTA of the Income-tax Act, a deduction up to an extent of ten thousand rupees in aggregate shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of any income by way of interest on deposits (not being time deposits) in a savings account with—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(iii) a post office, as defined in clause (k) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).

However, where the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 30]

E. RATIONALIZATION OF TAX DEDUCTION AT SOURCE (TDS) AND TAX COLLECTION AT SOURCE (TCS) PROVISIONS

I. Deemed date of payment of tax by the resident payee

Under the existing provisions of Chapter XVII-B of the Income-tax Act, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. In case of non-deduction of tax in accordance with the provisions of this Chapter, he is deemed to be an assessee in default under section 201(1) in respect of the amount of such non-deduction.

However, section 191 of the Act provides that a person shall be deemed to be assessee in default in respect of non/short deduction of tax only in cases where the payee has also failed to pay the tax directly. Therefore, the deductor cannot be treated as assessee in default in respect of non/short deduction of tax if the payee has discharged his tax liability.

The payer is liable to pay interest under section 201(1A) on the amount of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly. As there is no one-to-one correlation between the tax to be deducted by the payer and the tax paid by the payee, there is lack of clarity as to when it can be said that payer has paid the taxes directly. Also, there is no clarity on the issue of the cut-off date, i.e. the date on which it can be said that the payee has discharged his tax liability.

In order to provide clarity regarding discharge of tax liability by the resident payee on payment of any sum received by him without deduction of tax, it proposed to amend section 201 to provide that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee –

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.

It is also proposed to provide that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Amendments on similar lines are also proposed to be made in the provisions of section 206C relating to TCS for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee.

These amendments will take effect from 1st July, 2012.

II. Disallowance of business expenditure on account of non-deduction of tax on payment to resident payee

A related issue to the above is the disallowance under section 40(a)(ia) of certain business expenditure like interest, commission, brokerage, professional fee, etc. due to non-deduction of tax. It has been provided that in case the tax is deducted in subsequent previous year, the expenditure shall be allowed in that subsequent previous year of deduction.

In order to rationalise the provisions of disallowance on account of non-deduction of tax from the payments made to a resident payee, it is proposed to amend section 40(a)(ia) to provide that where an assessee makes payment of the nature specified in the said section to a resident payee without deduction of tax and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the payee, then, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

These beneficial provisions are proposed to be applicable only in the case of resident payee.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

III. Fee and penalty for delay in furnishing of TDS/TCS Statement and penalty for incorrect information in TDS/TCS Statement

As per the existing provisions of the Income-tax Act, a deductor is required to furnish a periodical TDS statement (quarterly) containing the details of deduction of tax made during the quarter by the prescribed due date. A substantial number of the deductors are not furnishing their TDS statement within the prescribed due date. Delay in furnishing of TDS statement results in delay in granting of credit of TDS to the deductee and consequently results into delay in issue of refunds to the deductee tax payers or raising of infructuous demand against the deductee tax payers. Further, in large number of cases, the deductors are not furnishing correct information like PAN of the deductee, amount of tax deducted, etc. in the TDS statement. Furnishing of correct information in respect of tax deduction is critical for processing of return of income furnished by the deductee because credit for TDS is granted to the deductee on the basis of information furnished by the deductor.

Under the existing provisions of section 272A, penalty of Rs.100 per day is levied for delay in furnishing of TDS statement, however, no specific penalty is specified for furnishing of incorrect information in the TDS statement. The said provisions of penalty are not proved to be effective in reducing or eliminating defaults relating to late furnishing of TDS statement.

In order to provide effective deterrence against delay in furnishing of TDS statement, it is proposed –

(i) to provide for levy of fee of Rs.200 per day for late furnishing of TDS statement from the due date of furnishing of TDS statement to the date of furnishing of TDS statement. However, the total amount of fee shall not exceed the total amount of tax deductible during the period for which the TDS statement is delayed, and

(ii) to provide that in addition to said fee, a penalty ranging from Rs.10,000 to Rs.1,00,000 shall also be levied for not furnishing TDS statement within the prescribed time.

In view of the levy of fee for late furnishing of TDS statement, it is also proposed to provide that no penalty shall be levied for delay in furnishing of TDS statement if the TDS statement is furnished within one year of the prescribed due date after payment of tax deducted along with applicable interest and fee.

In order to discourage the deductors to furnish incorrect information in TDS statement, it is proposed to provide that a penalty ranging from Rs.10,000 to Rs.1,00,000 shall be levied for furnishing incorrect information in the TDS statement.

Consequential amendment is proposed in section 273B so that no penalty shall be levied if the deductor proves that there was a reasonable cause for the failure.

Consequential amendment is also proposed in section 272A to provide that no penalty under this section shall be levied for late filing of TDS statement in respect of tax deducted on or after 1st July, 2012.

Amendments on the similar lines for levy of fee and penalty for delay in furnishing of TCS statement and furnishing of incorrect information in the TCS statement are also proposed to be made.

These amendments will take effect from 1st July, 2012 and will, accordingly, apply to the TDS or TCS statement to be furnished in respect of tax deducted or collected on or after 1st July, 2012.

IV. Intimation after processing of TDS statement

Vide finance (No.2) Act, 2009, section 200A was inserted in the Income-tax Act to provide for processing of TDS statement. After processing of TDS statement, an intimation is generated specifying the amount payable or refundable. The intimation generated after processing of TDS statement is not

(i) subject to rectification under section 154;

(ii) appealable under section 246A; and

(iii) deemed as notice of demand under section 156.

In order to reduce the compliance burden of the deductor and also to rationalise the provisions of processing of TDS statement, it is proposed to provide that the intimation generated after processing of TDS statement shall be

(i) subject to rectification under section 154;

(ii) appealable under section 246A; and

(iii) deemed as notice of demand under section 156.

These amendments will take effect from 1st July, 2012.

V. "Person responsible for paying" in case of payment by Central Government or Government of a State

Under the existing provisions of section 204 of the Income-tax Act, a "person responsible for paying" has been defined to include employer, company or its principal officer or the payer. There is a lack of clarity in the case of payment made by Central Government or by a State Government as to who is the person responsible for paying the sum to the payee.

In order to provide clarity to the meaning of "person responsible for paying" in case of payment by Central Government or a State Government, it is proposed to provide that in the case of payment by Central Government or a State Government, the Drawing and Disbursing Officer or any other person (by whatever name called) responsible for making payment shall be the "person responsible for paying" within the meaning of section 204.

This amendment will take effect from 1st July, 2012.

VI. Extension of time for passing an order under section 201 in certain cases

Under the existing provisions section 201 of the Income-tax Act, a person can be deemed to be an assessee in default, by an order, in respect of non-deduction/short deduction of tax. Such order can be passed within a period of four years from end of financial year in a case where no statement as referred to in section 200 has been filed.

It is proposed to amend provision of section 201, so as to extend the time limit from four years to six years.

This amendment will take effect retrospectively from 1st April, 2010.

[Clauses 11, 67, 68, 77, 78, 79, 86, 89, 98, 99, 100]

Threshold for TDS on compensation or consideration for compulsory acquisition

Under the existing provisions of the section 194LA of the Income-tax Act, a person responsible for paying any compensation or consideration for compulsory acquisition of immovable property (other than agricultural land) is required to deduct tax at the rate of 10% in case the consideration exceeds one lakh rupees.

In order to reduce the compliance burden of small assessees, it is proposed to increase the aforesaid threshold limit from one lakh rupees to two lakh rupees.

This amendment will take effect from 1st July, 2012.

[Clause 72]

Threshold for TDS on payment of interest on debentures

Under the existing provisions of section 193 of the Income-tax Act, a person responsible for paying interest to a resident individual on listed debentures of a company, in which the public are substantially interested, is not required to deduct tax on the amount of interest payable if the aggregate amount of interest paid during a financial year does not exceed Rs.2,500/- and the interest is paid by account payee cheque. However, in the case of unlisted debentures of a company, no threshold limit is specified for deduction of tax on payment of interest.

In order to reduce the compliance burden on small assessees and companies, it is proposed that no deduction of tax should be made from payment of interest on any debenture, (whether listed or not) issued by a company, in which the public are substantially interested, to a resident individual or Hindu undivided family, if the aggregate amount of interest on such debenture paid during the financial year does not exceed Rs.5,000 and the payment is made by account payee cheque.

This amendment will take effect from 1st July, 2012.

[Clause 69]

F. RATIONALIZATION OF INTERNATIONAL TAXATION PROVISIONS

Income deemed to accrue or arise in India

Section 2 of the Income Tax provides definitions of various terms which are relevant for the purposes of the Act.

Section 9 of the Income Tax provides cases of income, which are deemed to accrue or arise in India. This is a legal fiction created to tax income, which may or may not arise in India and would not have been taxable but for the deeming provision created by this section. Sub-section (1)(i) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. One of the limbs of clause (i) is income accruing or arising directly or indirectly **through the transfer of a capital asset situate in India.** The legislative intent of this clause is to widen the application as it covers incomes, which are accruing or arising directly or indirectly. The section codifies source rule of taxation wherein the state where the actual economic nexus of income is situated has a right to tax the income irrespective of the place of residence of the entity deriving the income. Where corporate structure is created to route funds, the actual gain or income arises only in consequence of the investment made in the activity to which such gains are attributable and not the mode through which such gains are realized. Internationally this principle is recognized by several countries, which provide that the source country has taxation right on the gains derived of offshore transactions where the value is attributable to the underlying assets.

Section 195 of the Income-tax Act requires any person to deduct tax at source before making payments to a non-resident if the income of such non-resident is chargeable to tax in India. "Person", here, will take its meaning from section 2 and would include all persons, whether resident or non-resident. Therefore, a non-resident person is also required to deduct tax at source before making payments to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. There are no other conditions specified in the Act and if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

Certain judicial pronouncements have created doubts about the scope and purpose of sections 9 and 195. Further, there are certain issues in respect of income deemed to accrue or arise where there are conflicting decisions of various judicial authorities.

Therefore, there is a need to provide clarificatory retrospective amendment to restate the legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law.

I. It is, therefore, proposed to amend the Income Tax Act in the following manner:-

(i) Amend section 9(1)(i) to clarify that the expression 'through' shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

(ii) Amend section 9(1)(i) to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

(iii) Amend section 2(14) to clarify that 'property' includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

(iv) Amend section 2(47) to clarify that 'transfer' includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

(v) Amend section 195(1) to clarify that obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-

(a) a residence or place of business or business connection in India; or

(b) any other presence in any manner whatsoever in India.

These amendments will take effect retrospectively from 1st April, 1962 and will accordingly apply in relation to the assessment year 1962-63 and subsequent assessment years.

II. Section 9(1)(vi) provides that any income payable by way of royalty in respect of any right, property or information is deemed to be accruing or arising in India. The term "royalty" has been defined in Explanation 2 which means consideration received or receivable for transfer of all or any right in respect of certain rights, property or information. Some judicial decisions have interpreted this definition in a manner which has raised doubts as to whether consideration for use of computer software is royalty or not; whether the right, property or information has to be used directly by the payer or is to be located in India or control or possession of it has to be with the payer. Similarly, doubts have been raised regarding the meaning of the term processed.

Considering the conflicting decisions of various courts in respect of income in nature of royalty and to restate the legislative intent, it is further proposed to amend the Income Tax Act in following manner:-

(i) To amend section 9(1)(vi) to clarify that the consideration for use or right to use of computer software is royalty by clarifying that transfer of all or any rights in respect of any right, property or information as mentioned in Explanation 2, includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

(ii) To amend section 9(1)(vi) to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not

(a) the possession or control of such right, property or information is with the payer;

(b) such right, property or information is used directly by the payer;

(c) the location of such right, property or information is in India.

(iii) To amend section 9(1)(vi) to clarify that the term "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

These amendments will take effect retrospectively from 1st June, 1976 and will accordingly apply in relation to the assessment year 1977-78 and subsequent assessment years.

III. Consequential amendments are proposed in section 149, to extend time limit for issue of notice in case of a person who is treated as agent of a non-resident, the time limit presently prescribed of two years be extended to six years. It is also clarified that these provisions being of procedural nature shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

These amendments will take effect from 1st July, 2012.

IV. It is also proposed to amend section 195 to provide that the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

This amendment shall take effect from 1st July, 2012.

V. Validation clause: It is proposed to provide for validation of demands raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from transfer of a capital asset situate in India, in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of agreement or otherwise outside India. It is proposed to provide through this validation clause that any notice sent or purporting to have been sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause shall be deemed to have been validly made and such notice or levy of tax shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India. The validating clause shall operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority.

This validation shall take effect from coming into force of the Finance Act, 2012.

[Clauses 3, 4, 62, 75, 113]

Taxation of a non-resident entertainer, sports person etc.

Section 115BBA of the Income Tax Act provides a concessionary tax regime in the case of income of sports persons who are non-citizen and non-resident. The provision covers income received by way of participation in any game or sport, advertising or contribution of article in any newspaper etc. The income of such sportsmen is taxed at the rate of 10% of the gross receipts. The same regime is also available to a non-resident sports association or institution for guarantee money payable to such institution in relation to any game or sport played in India.

Under the Double Tax Avoidance Agreement (DTAA's), there is parity between a non-resident sportsman and a non-resident entertainer. A similar tax regime i.e. taxation on basis of gross receipts rather than net income would simplify the process of taxation in the case of entertainer. The special treatment in respect of entertainer is required because determination of deductible expenses for performance is complicated, especially when the production expenses of an international tour need to be allocated across performances in various countries.

Internationally, similar tax rates exist for both entertainer and sportsperson. International comparisons also reveal that the tax rate ranges between 10% to 30% in case of entertainer and sportsperson. Therefore, rate of 20% on gross receipts is a reasonable rate of tax in case of non-resident, non-citizen entertainer. The tax rate in case of non-resident, noncitizen sportspersons and non-resident sports associations also needs to be raised to 20%

It is proposed to amend section 115BBA to provide that income arising to a non-citizen, non-resident entertainer (such as theatre, radio or television artists and musicians) from performance in India shall be taxable at the rate of 20% of gross receipts. It is also proposed to increase the taxation rate, in case of non-citizen, non-resident sportsmen and non-resident sports association, from 10% to 20% of the gross receipts.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Consequential amendment is proposed in section 194E to provide for withholding of tax at the rate of 20% from income payable to non-resident, non-citizen, entertainer, or sportsmen or sports association or institution.

This amendment will take effect from 1st July, 2012.

[Clauses 43, 70]

Meaning assigned to a term used in Double Taxation Avoidance Agreement (DTAA)

Section 90 of the Act, empowers the Central Government to enter into an agreement with foreign countries or specified territories for the purpose of granting reliefs particularly in respect of double taxation. Under this power, the Central Government has entered into various treaties commonly known as Double Taxation Avoidance Agreements (DTAA's).

Section 90A of the Act similarly empowers the Central Government to adopt and implement an agreement between a specified association in India and any specified association in a specified territory outside India for granting relief from 'double taxation' etc. on the lines of section 90 of the Act.

Sub-section (3) of sections 90 and 90A of the Act empowered the Central Government to assign a meaning, through notification, to any term used in the Agreement, which was neither defined in the Act nor in the agreement.

Since this assignment of meaning is in respect of a term used in a treaty entered into by the Government with a particular intent and objective as understood during the course of negotiations leading to formalization of treaty, the notification under section 90(3) gives a legal frame work for clarifying the intent, and the clarification should normally apply from the date when the agreement which has used such a term came into force.

Therefore, the legislative intent of sub-section (3) to section 90 and section 90A that whenever any term is assigned a meaning through a notification issued under Section 90(3) or section 90A(3), it shall have the effect of clarifying the term from the date of coming in force of the agreement in which such term is used, needs to be clarified.

It is proposed to amend Section 90 of the Act to provide that any meaning assigned through notification to a term used in an agreement but not defined in the Act or agreement, shall be effective from the date of coming into force of the agreement. It is also proposed to make similar amendment in Section 90A of the Act.

The amendment in section 90 will take effect retrospectively from 1st October, 2009 and the amendment in section 90A shall take effect retrospectively from 1st June, 2006.

[Clauses 31, 32]

Tax Residence Certificate (TRC) for claiming relief under DTAA

Section 90 of the Income Tax Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of –

(i) granting relief in respect of avoidance of double taxation,

(ii) exchange of information and

(iii) recovery of taxes.

Further section 90A of the Act empowers the Central Government to adopt any agreement between specified associations for relief of double taxation.

In exercise of this power, the Central Government has entered into various Double Taxation Avoidance Agreements (DTAA's) with different countries and have adopted agreements between specified associations for relief of double taxation . The scheme of interplay of treaty and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the treaty, is entitled to claim applicability of beneficial provisions either of treaty or of the domestic law.

It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits.

Therefore, it is proposed to amend Section 90 and Section 90A of the Act to make submission of Tax Residency Certificate containing prescribed particulars, as a necessary but not sufficient condition for availing benefits of the agreements referred to in these Sections.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.

[Clauses 31, 32]

Extension of time limit for completion of assessment or reassessment where information is sought under a DTAA

During the course of assessment proceedings, in the case of an assessee having income or assets outside India, information is being sought from the tax authorities situated outside India, while completing an assessment. Under the provisions of section 90 or section 90A of the Income-tax Act, information can be exchanged with the foreign tax authorities for prevention of evasion or avoidance of income tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be.

The time limit for completion of an assessment or reassessment has been provided in the provisions of section 153 and 153B of the Income-tax Act. These provisions were amended vide Finance Act, 2011 to exclude the time taken in obtaining information (form foreign tax authorities) from the time prescribed for completion of assessment or reassessment in the case of an assessee. This time period to be excluded would start from the date on which the process of getting information is initiated by making a reference by the competent authority in India to the foreign tax authorities and end with the date on which information is received by the Commissioner. Currently, this period of exclusion is limited to six months.

Foreign inquiries generally by nature take longer time for obtaining information. It is, therefore, proposed that this time limit of six months be extended to one year.

These amendments will take effect from the 1st day of July, 2012.

[Clauses 63, 65]

G. RATIONALIZATION OF TRANSFER PRICING PROVISIONS

Advance Pricing Agreement (APA)

Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APAs offer better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach.

It is proposed to insert new sections 92CC and 92CD in the Act to provide a framework for advance pricing agreement under the Act. The proposed sections provide the following. –

1. It empowers Board, to enter into an advance pricing agreement with any person undertaking an international transaction.
2. Such APAs shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction which the person undertake.
3. The manner of determination of arm's length price in such cases shall be any method including those provided in sub-section (1) of section 92C, with necessary adjustments or variations.
4. The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered and the provisions of section 92C or section 92CA which normally apply for determination of arm's length price would be modified to this extent and arm's length price shall be determined in accordance with APA.
5. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
6. The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change in law or facts having bearing on such APA.

7. The Board is empowered to declare, with the approval of Central Government, any such agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared void ab-initio, all the provisions of the Act shall apply to the person as if such APA had never been entered into.

8. For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void ab-initio shall be excluded. However if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than sixty days, such remaining period shall be extended to sixty days.

9. The Board is empowered to prescribe a Scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

10. Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under section 133(6) of the Act.

11. The person entering in to such APA shall necessarily have to furnish a modified return within a period of three months from the end of the month in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.

12. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by one year.

13. If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies has been completed before the expiry of period allowed for furnishing of modified return ,the Assessing Officer shall, in a case where modified return is filed, proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the APA and to such assessment, all the provisions relating to assessment shall apply as if the modified return is a return furnished under section 139 of the Act. The period of limitation for completion of such assessment or reassessment is one year from the end of the financial year in which the modified return is furnished.

14. All the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

These amendments will take effect from 1st July, 2012.

[Clauses 39, 89]

Examination by the Transfer Pricing Officer of international transactions not reported by the Assessee

Section 92CA of the Act provides that the Assessing Officer, if he considers it necessary or expedient to do so, may with the previous approval of Commissioner of Income tax, refer the matter of determination of Arm's Length Price in respect of an international transaction to the Transfer Pricing Officer (TPO). Once reference is made to the TPO, TPO is competent to exercise all powers that are available to the Assessing Officer under sub-section (3) of Section 92C for determination of ALP and consequent adjustment. Further under section 92E of the Act, there is reporting requirement on the taxpayer and the taxpayer is under obligation to file an audit report in prescribed form before the Assessing Officer (AO) containing details of all international transactions undertaken by the taxpayer during the year.

This audit report is the primary document with the Assessing Officer, which contains the details of international transactions undertaken by the taxpayer. If the assessee does not report such a transaction in the report furnished under section 92E then the Assessing Officer would normally not be aware of such an International Transaction so as to make a reference to the Transfer Pricing Officer. The Transfer Pricing Officer may notice such a transaction subsequently during the course of proceeding before him. In absence of specific power, the determination of Arm's Length Price by the Transfer Pricing Officer would be open to challenge even though the basis of such an action is non-reporting of transaction by the taxpayer at first instance.

It is proposed to amend the section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the Act.

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

It is also proposed to provide an explanation to effect that due to retrospectivity of the amendment no reopening of any proceeding would be undertaken only on account of such an amendment.

This amendment will take effect from 1st July, 2012.

[Clause 38]

Transfer Pricing Regulations to apply to certain domestic transactions

Section 40A of the Act empowers the Assessing Officer to disallow unreasonable expenditure incurred between related parties. Further, under Chapter VI-A and section 10AA, the Assessing Officer is empowered to re-compute the income (based on fair market value) of the undertaking to which profit linked deduction is provided if there are transactions with the related parties or other undertakings of the same entity. However, no specific method to determine reasonableness of expenditure or fair market value to re-compute the income in such related transactions is provided under these sections.

The Supreme Court in the case of *CIT Vs. Glaxo SmithKline Asia (P) Ltd.*, in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.

The application and extension of scope of transfer pricing regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonableness of expenditure between related domestic parties. It will create legally enforceable obligation on assessees to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions will lead to increase in compliance burden on all assessees which may not be desirable.

Therefore, the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA. The concerns of administrative and compliance burden are addressed by restricting its applicability to the transactions, which exceed a monetary threshold of Rs. 5 crores in aggregate during the year. In view of the circumstances which were present in the case before the Supreme Court, there is a need to expand the definition of related parties for purpose of section 40A to cover cases of companies which have the same parent company.

It is, therefore, proposed to amend the Act to provide applicability of transfer pricing regulations (including procedural and penalty provisions) to transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of sections 40A, 80-IA, 10AA, 80A, sections where reference is made to section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceeds Rupees 5 crore in a year. It is further proposed to amend the meaning of related persons as provided in section 40A to include companies having the same holding company.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-14 and subsequent assessment years.

[Clauses 12, 23, 29, 33, 35, 37, 38, 92, 94, 97]

Determination of Arm's Length Price (ALP)

I. Section 92C of the Act provides for computation of arms lengths price. Sub-section (1) of this section provides the set of methods for determination of arms length price and mandates application of the most appropriate method for determination of arms length price (ALP). Sub-Section (2) of section 92C provides that where more than one price is determined by application of most appropriate method, the arms length price shall be taken to be the arithmetic mean of such prices. The proviso to this sub-section was inserted by Finance Act, 2002 with effect from 01.04.2002 to ensure that in case variation of transaction price from the arithmetic mean is within the tolerance range of 5%, no adjustment was required to be made to transaction value.

Subsequently, disputes arose regarding the interpretation of the proviso. Whether the tolerance band is a standard deduction or not, in case variation of ALP and transaction value exceeded the tolerance band. Different courts interpreted it differently.

In order to bring more clarity and resolving the controversy the proviso was substituted by Finance Act (No.2), 2009. The substituted proviso not only made clear the intent that 5% tolerance band is not a standard deduction but also changed the base of determination of the allowable band, linked it to the transaction price instead of the earlier base of Arithmetic mean. The amendment clarified the ambiguity about applicability of 5% tolerance band, not being a standard deduction.

However, the position prior to amendment by Finance (No.2) Act, 2009 still remained ambiguous with varying judicial decisions. Some favouring departmental stand and others the stand of tax payer. There is, therefore, a need to bring certainty to the issue by clarifying the legislative intent in respect of first proviso to sub-section (2) which was inserted by the Finance Act, 2002.

It is, therefore, proposed to amend the Income Tax Act to provide clarity with retrospective effect in respect of first proviso to section 92C(2) as it stood before its substitution by Finance Act (No.2), 2009 so that the tolerance band of 5% is not taken to be a standard deduction while computing Arm's Length Price and to ensure that due to such retrospective amendment already completed assessments or proceedings are not reopened only on this ground.

The amendments proposed above shall be effective retrospectively from 1st April, 2002 and shall accordingly apply in relation to the Assessment Year 2002-03 and subsequent Assessment Years.

II. In respect of amendment, which was brought by the Finance (No. 2) Act, 2009, the explanatory memorandum clearly mentioned the legislative intent of the amended provision to be applicable to all proceedings pending as on 01.10.2009 before the Transfer Pricing Officer. However, subsequent decisions of certain judicial authorities have created doubts about applicability of this proviso to proceedings pending as on 01.10.2009. There is need to clarify the legislative intent of making the proviso applicable for all assessment proceedings pending as on 01.10.2009 instead of it being attracted only in respect of proceeding for assessment year 2010-11 and subsequent assessment years.

It is, therefore, proposed to amend the Income Tax Act to provide clarity that second proviso to section 92C shall also be applicable to all proceedings which were pending as on 01.10.2009. [The date of coming in force of second proviso inserted by Finance (No.2) Act, 2009].

The amendments will take effect retrospectively from 1st October, 2009.

[Clause 36]

Filing of return of income, definition of international transaction, tolerance band for ALP, penalties and reassessment in transfer pricing cases

I. Section 139 of the Act provides for due date of filing return of income in case of various categories of persons. In addition to filing of return of income, the assesses who have undertaken international transactions are also required to prepare and file a Transfer Pricing report in Form 3CEB, as per Section 92E of the Act, before the due date of filing of return of income. Vide the Finance Act, 2011 the due date for filing of return of income in case of corporate assesses who were required to obtain and file Transfer Pricing report (required under section 92E of the Act), was extended to 30th November of the assessment year.

It has been noted that assesses other than companies are also faced with similar constraints of absence of sufficient contemporary data in public domain by 30th September which is currently the due date of filing of return of income and Transfer Pricing report in their cases.

Therefore, there is a need to extend the due date for filing of return of income in case of non-corporate taxpayers, who have undertaken international transactions and are required to obtain and file Transfer Pricing report as per Section 92E of the Act. The due date of filing of return of income in case of non-corporate assesses be extended to 30th November of the assessment year.

It is proposed to amend Section 139 of the Act, to provide that in case of all assesses who are required to obtain and file Transfer Pricing report as per Section 92E of the Act, the due date would be 30th November of the assessment year.

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

II. Section 92B of the Act, provides an exclusive definition of International Transaction. Although, the definition is worded broadly, the current definition of International Transaction leaves scope for its misinterpretation.

The definition by its concise nature does not mention all the nature and details of transactions, taking benefit of which large number of International Transactions are not being reported by taxpayers in transfer pricing audit report. In the definition, the term “intangible property” is included. Still, due to lack of clarity in respect of scope of intangible property, the taxpayer have not reported several such transactions.

Certain judicial authorities have taken a view that in cases of transactions of business restructuring etc. where even if there is an international transaction Transfer Pricing provisions would not be applicable if it does not have bearing on profits or loss of current year or impact on profit and loss account is not determinable under normal computation provisions other than transfer pricing regulations. The present scheme of Transfer pricing provisions does not require that international transaction should have bearing on profits or income of current year.

Therefore, there is a need to amend the definition of international transaction in order to clarify the true scope of the meaning of the term. “international transaction” and to clarify the term “intangible property” used in the definition.

It is, therefore, proposed to amend section 92B of the Act, to provide for the explanation to clarify meaning of international transaction and to clarify the term intangible property used in the definition of international transaction and to clarify that the ‘international transaction’ shall include a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets or such enterprises at the time of the transaction or at any future date.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent assessment years.

III. Section 92C provides methods for determination of Arm's Length Price (ALP). Sub section (1) of the said section prescribes the methods of computation of Arm's Length Price. Sub section (2) of the said sub section provides that if the appropriate method results in more than one price then the arithmetic mean of these prices would be the ALP. The proviso to sub section (2) of section 92C which was amended by Finance Act, 2011 provides that the Central Government may notify a percentage and if variation between the ALP so determined and the transaction price is within the notified percentage (of transaction price), no adjustment shall be made to the transaction price.

There is a need to put an upper ceiling on such tolerance range, which is to be notified, in the legislation.

It is, therefore, proposed to amend Section 92C (2) of the Act, so as to provide an upper ceiling of 3% in respect of power of Central Government to notify the tolerance range for determination of arms length price.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

IV. Section 271BA of the Income Tax Act provides a penalty of Rs. 1 lakh in cases where any person fails to furnish a report from an accountant as required by Section 92E.

Section 271AA provides penalty for failure to keep and maintain information and document in respect of International Transaction.

Section 271G provides penalty for failure to furnish information or document under Section 92D which requires maintenance of certain information and documents in the prescribed proforma by persons entering into an International Transaction.

The above scheme of penalty provisions allows for misuse of provisions due to lack of effective deterrent. In order to suppress information about international transactions, some taxpayers may not furnish the report or get the Transfer Pricing audit done. The meager penalty of Rs.1 lakh as compared to the quantum of international transactions is not an effective deterrent. There is presently no penalty for non-reporting of an international transaction in report filed under section 92E or maintenance or furnishing of incorrect information or documents. Therefore, there is need to provide effective deterrent based on transaction value to enforce compliance with Transfer Pricing regulations.

It is, therefore, proposed to amend Section 271AA to provide levy of a penalty at the rate of 2% of the value of the international transaction, if the taxpayer.-

(i) fails to maintain prescribed documents or information or;

(ii) fails to report any international transaction which is required to be reported, or;

(iii) maintains or furnishes any incorrect information or documents.

This penalty would be in addition to penalties in section 271BA and 271G.

This amendment will take effect from 1st July, 2012.

V. Section 147 of the Act, provides for reopening of the cases of the previous years, if any income chargeable to tax has escaped assessment. Explanation to this section provides certain circumstances where it will be deemed that income has escaped assessments.

Under the Act, income from an international transactions has to be computed in accordance with arm's length principle and transfer pricing provisions apply to such transactions. Therefore, in each and every case of international transaction, the income arising from such transaction has to be tested against the benchmark of arm's length price. In certain transactions, transaction value is at arm's length price and no adjustment takes place whereas in others it may lead to adjustments. If an international transaction is not reported by the assessee, such transaction never gets benchmarked against arm's length principle. It is, therefore, imperative that non-reporting of international transactions should lead to a presumption of escapement of income.

It is, therefore, proposed to amend Section 147 of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not including such transaction in the report mentioned in section 92E then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under section 147 of the Act.

This amendment will take effect from 1st July, 2012.

[Clauses 34, 36, 56, 61, 93]

Appeal against the directions of the Dispute Resolution Panel (DRP)

The institution of Dispute Resolution Panel (DRP) was created by Finance Act, 2009 with a view to bring about speedy resolution of disputes in the case of international transactions particularly involving Transfer Pricing issues.

Under the provisions of sub-section (8) of section 144C, the DRP has the power to confirm, reduce or enhance the variations proposed in the draft order. The Income Tax Department does not have the right to appeal against the directions given by the DRP. The taxpayer has been given a right to appeal directly to the Income Tax Appellate Tribunal (ITAT) against the order passed by the Assessing Officer in pursuance of the directions of the DRP.

As the directions given by the DRP are binding on the Assessing Officer, it is accordingly proposed to provide that the Assessing Officer may also file an appeal before the ITAT against an order passed in pursuance of directions of the DRP.

It is therefore proposed to amend the provisions of section 253 and section 254 of the Income-tax Act to provide for filing of appeal by the Assessing Officer against an order passed in pursuance of directions of the DRP in respect of an objection filed on or after 1st July, 2012.

These amendments will take effect from the 1st day of July, 2012.

[Clauses 90, 91]

Power of the DRP to enhance variations

Dispute Resolution Panel (DRP) had been constituted with a view to expeditiously resolve the cases involving transfer pricing issues in the case of any person having international transactions or in case of a foreign company. It has been provided under sub-section (8) of section 144C that DRP may confirm, reduce or enhance the variations proposed in the draft order of the Assessing Officer.

In a recent judgement, it was held that the power of DRP is restricted only to the issues raised in the draft assessment order and therefore it cannot enhance the variation proposed in the order as a result of any new issue which comes to the notice of the panel during the course of proceedings before it.

This is not in accordance with the legislative intent.

It is accordingly proposed to insert an Explanation in the provisions of section 144C to clarify that the power of the DRP to enhance the variation shall include and shall always be deemed to have included the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order. This power to consider any issue would be irrespective of the fact whether such matter was raised by the eligible assessee or not.

This amendment will be effective retrospectively from the 1st day of April, 2009 and will accordingly apply to assessment year 2009-10 and subsequent assessment years.

[Clause 60]

Completion of assessment in search cases referred to DRP

Under the provisions of section 144C of the Income-tax Act where an eligible assessee files an objection against the draft assessment order before the Dispute Resolution Panel (DRP), then, the time limit for completion of assessments are as provided in section 144C notwithstanding anything in section 153. A similar provision is proposed to be made where assessments are framed as a result of search and seizure to provide that for such assessments, time limit specified in section 144C will apply, notwithstanding anything in section 153B.

It is also proposed to provide for exclusion of such orders passed by the Assessing Officer in pursuance of the directions of the DRP, from the appellate jurisdiction of the Commissioner (Appeals) and to provide for filing of appeals directly to ITAT against such orders. Accordingly, consequential amendments are proposed to be made in the provisions of section 246A and 253 of the Income-tax Act.

These amendments in the provisions of the Income-tax Act will take effect retrospectively from the 1st day of October, 2009.

[Clauses 60, 89, 90]

H. GENERAL ANTI-AVOIDANCE RULE (GAAR)

The question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context, judicial decisions have varied. While some courts in certain circumstances had held that legal form of transactions can be dispensed with and the real substance of transaction can be considered while applying the taxation laws, others have held that the form is to be given sanctity. The existence of anti-avoidance principles are based on various judicial pronouncements. There are some specific anti-avoidance provisions but general anti-avoidance has been dealt only through judicial decisions in specific cases.

In an environment of moderate rates of tax, it is necessary that the correct tax base be subject to tax in the face of aggressive tax planning and use of opaque low tax jurisdictions for residence as well as for sourcing capital. Most countries have codified the “substance over form” doctrine in the form of General Anti Avoidance Rule (GAAR).

In the above background and keeping in view the aggressive tax planning with the use of sophisticated structures, there is a need for statutory provisions so as to codify the doctrine of “substance over form” where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. Internationally several countries have introduced, and are administering statutory General Anti Avoidance Provisions. It is, therefore, important that Indian taxation law also incorporate a statutory General Anti Avoidance Provisions to deal with aggressive tax planning. The basic criticism of statutory GAAR which is raised worldwide is that it provides a wide discretion and authority to the tax administration which at times is prone to be misused. This vital aspect, therefore, needs to be kept in mind while formulating any GAAR regime.

It is accordingly proposed to provide General Anti Avoidance Rule in the Income Tax Act to deal with aggressive tax planning.

A. The main feature of such a regime are

(i) An arrangement whose main purpose or one of the main purposes is to obtain a tax benefit and which also satisfies at least one of the four tests, can be declared as an “impermissible avoidance arrangements”.

(ii) The four tests referred to in (i) are–

- (a) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm’s length.
- (b) It results in misuse or abuse of provisions of tax laws.
- (c) It lacks commercial substance or is deemed to lack commercial substance.
- (d) Is carried out in a manner, which is normally not employed for bonafide purpose.

(iii) It shall be presumed that obtaining of tax benefit is the main purpose of an arrangement unless otherwise proved by the taxpayer.

(iv) An arrangement will be deemed to lack commercial substance if –

- (a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or
- (b) it involves or includes -
  - (i) round trip financing;
  - (ii) an accommodating party ;
  - (iii) elements that have effect of offsetting or cancelling each other; or
  - (iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of fund which is subject matter of such transaction; or
- (c) it involves the location of an asset or of a transaction or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining tax benefit for a party.

(v) It is also provided that certain circumstances like period of existence of arrangement, taxes arising from arrangement, exit route, shall not be taken into account while determining ‘lack of commercial substance’ test for an arrangement.

(vi) Once the arrangement is held to be an impermissible avoidance arrangement then the consequences of the arrangement in relation to tax or benefit under a tax treaty can be determined by keeping in view the circumstances of the case, however, some of the illustrative steps are:-

- (a) disregarding or combining any step of the arrangement.
- (b) ignoring the arrangement for the purpose of taxation law.

(c) disregarding or combining any party to the arrangement.

(d) reallocating expenses and income between the parties to the arrangement.

(e) relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement.

(f) considering or looking through the arrangement by disregarding any corporate structure.

(g) re-characterizing equity into debt, capital into revenue etc.

(vii) These provisions can be used in addition to or in conjunction with other anti avoidance provisions or provisions for determination of tax liability, which are provided in the taxation law.

(viii) For effective application in cross border transaction and to prevent treaty abuse a limited treaty override is also provided.

B. The procedure for invoking GAAR is proposed as under:-

(i) It is proposed that the Assessing Officer shall make a reference to the Commissioner for invoking GAAR and on receipt of reference the Commissioner shall hear the taxpayer and if he is not satisfied by the reply of taxpayer and is of the opinion that GAAR provisions are to be invoked, he shall refer the matter to an Approving Panel. In case the assessee does not object or reply, the Commissioner shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.

(ii) The Approving Panel has to dispose of the reference within a period of six months from the end of the month in which the reference was received from the Commissioner

(iii) The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made.

(iv) The Assessing Officer (AO) will determine consequences of such a positive declaration of arrangement as impermissible avoidance arrangement.

(v) The final order in case any consequence of GAAR is determined shall be passed by AO only after approval by Commissioner and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.

(vi) The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.

(vii) The Approving Panel shall be set up by the Board and would comprise of officers of rank of Commissioner and above. The panel will have a minimum of three members. The procedure and working of Panel shall be administered through subordinate legislation.

In addition to the above, it is provided that the Board shall prescribe a scheme for regulating the condition and manner of application of these provisions.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clauses 31, 32, 40, 59, 60, 63, 65, 89, 90]

I. OTHER AMENDMENTS

Extension of time for completion of assessments and reassessments

The existing provisions of section 153 and 153B, inter alia, provides the time limit for completion of assessment and reassessment of income by the Assessing Officer. Time limits have been provided for completion of assessment or reassessment under section 143(3), 147, 153A, 153C, etc. Further, these time limits get extended if a reference is made under section 92CA to the Transfer Pricing Officer during the course of assessment/reassessment proceedings. These time limits are either from the end of the financial year in which the notice for initiation of the proceedings was served or from the end of the assessment year to which the proceedings relate.

It is proposed to amend the aforesaid sections, i.e., 153 and 153B so as to provide that the time limits for completion of assessments and reassessments shall respectively be increased by three months.

The existing period and the new extended period for completion of pending proceedings and subsequent proceedings under these provisions is given below:

Limitation of time

Proceedings under section	Current time allowed	Proposed Period
143	21 months from the end of the A.Y.	24 months
143 and 92CA	33 months from the end of the A.Y.	36 months
148	9 months from the end of the F.Y. in which notice issued	12 months
148 and 92CA	21 months from the end of the F.Y. in which notice issued	24 months
250 or 254 or 263	9 months from the end of the F.Y. in which order received	12 months
250 or 254 or 263, and 92CA	21 months from the end of the F.Y. in which order received	24 months

Consequential amendments have been made in the provisions of section 17A of the Wealth-tax Act for increasing the time limit by three months for completion of assessment/reassessment proceedings.

These amendments will take effect from 1st July, 2012.

[Clauses 63, 65, 111]

Assessment of charitable organization in case commercial receipts exceed the specified threshold

Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the Act. Section 10(23C) of Income Tax Act also provides exemption in respect of approved charitable funds or institutions.

Section 2(15) of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

The 2nd proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed Rs. 25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it.

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year.

However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded.

It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act to ensure that such organization does not get benefit of tax exemption in the year in which it's receipts from commercial activities exceed the threshold whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded.

This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years.

[Clauses 5, 6, 58]

Due date of furnishing audit report in case of international transactions

As per the existing provisions of the Income-tax Act, the report of audit under section 44AB is required to be furnished by 30th September of the assessment year. Section 139 was amended vide Finance Act 2011 to extend the due date of furnishing of return by the corporate assessees, who have undertaken international transactions, from 30th September to 30th November of the assessment year.

In order to align the due date for furnishing tax audit report under section 44AB of the Act and due date specified for furnishing of return under section 139 of the Act, it is proposed to provide that the due date for furnishing tax audit report under section 44AB would be the same as due date specified for furnishing of return under section 139.

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

[Clause 13]

Presumptive taxation not to apply to professions etc.

Finance (No.2) Act, 2009 substituted Section 44AD in the Income-tax Act to provide for a presumptive income scheme for small businesses with effect from 1st April, 2011. Under this scheme a sum equal to 8% of the total turnover or gross receipts is deemed to be the profits and gains from business. This presumptive scheme is applicable only to a person carrying on any business, except business of plying, hiring or leasing goods carriage, having turnover or gross receipt of less than 60 lakh rupees.

It is proposed to amend section 44AD to clarify that this presumptive scheme is not applicable to (i) a person carrying on profession as referred to in sub-section (1) of section 44AA; (ii) persons earning income in the nature of commission or brokerage income; or (iii) a or a person carrying on any agency business.

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

[Clause 14]

Minimum Alternate Tax (MAT)

I. Under the existing provisions of section 115JB of the Act, a company is liable to pay MAT of eighteen and one half per cent of its book profit in case tax on its total income computed under the provisions of the Act is less than the MAT liability. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the Schedule VI of the Companies Act, 1956.

As per section 115JB, every company is required to prepare its accounts as per Schedule VI of the Companies Act, 1956. However, as per the provisions of the Companies Act, 1956, certain companies, e.g. insurance, banking or electricity company, are allowed to prepare their profit and loss account in accordance with the provisions specified in their regulatory Acts. In order to align the provisions of Income-tax Act with the Companies Act, 1956, it is proposed to amend section 115JB to provide that the companies which are not required under section 211 of the Companies Act to prepare their profit and loss account in accordance with the Schedule VI of the Companies Act, 1956, profit and loss account prepared in accordance with the provisions of their regulatory Acts shall be taken as a basis for computing the book profit under section 115JB.

II. It is noted that in certain cases, the amount standing in the revaluation reserve is taken directly to general reserve on disposal of a revalued asset. Thus, the gains attributable to revaluation of the asset is not subject to MAT liability.

It is, therefore, proposed to amend section 115JB to provide that the book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed, if the same is not credited to the profit and loss account.

III. It is also proposed to omit the reference of Part III of the Schedule VI of the Companies Act, 1956 from section 115JB in view of omission of Part III in the revised Schedule VI under the Companies Act, 1956.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 46]

Liability to pay advance tax in case of non-deduction of tax

Under the existing provisions of section 209 of the Income-tax Act, the amount of advance tax payable is computed by reducing the amount of income-tax which would be deductible or collectible during the financial year from income-tax on estimated income. Therefore, in cases where the assessee receives or pays any amount (on which the tax was deductible or collectible) without deduction or collection of tax, it has been held by Courts that he is not liable to pay advance tax to the extent the tax is deductible or collectible from such amount.

In order to make an assessee liable for payment of advance tax in respect of income which has been received or paid without deduction or collection of tax, it is proposed to amend the aforesaid section to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.

This amendment will take effect from the 1st April, 2012 and would, accordingly, apply in relation to advance tax payable for the financial year 2012-13 and subsequent financial years.

[Clause 81]

Exemption from Wealth Tax - Reserve Bank of India

Under the existing provisions of the Wealth-tax Act, wealth-tax is levied on individual, HUF and company. The definition of "Company" under the Act includes a corporation established by or under the Central, State or Provincial Act. Therefore, the Reserve Bank of India (RBI), being a corporation established under the Central Act, would be deemed as company for the purpose of levy of wealth-tax and shall be liable to pay wealth-tax. However, there is no provision for exempting RBI from the levy of wealth-tax either in the Wealth-tax Act or in Reserve Bank of India Act, 1934.

In order to provide that the RBI is not liable to pay wealth-tax, it is proposed to amend section 45 of the Act to provide that wealth-tax shall not be levied on the net wealth of RBI.

This amendment will take effect retrospectively from 1st April, 1957 and will, accordingly, apply in relation to the assessment year 1957-58 and subsequent assessment years.

[Clause 112]

Definition of Commissioner to include Director

Section 116 of the Income-tax Act lists various Income Tax Authorities. At clause (c) of this section, Directors of Income-tax or Commissioner of Income-tax or Commissioners of Income-tax (Appeals) have been listed as one Income Tax Authority. Under section 117(1) of the Act, the Central Government appoints such persons as Income Tax Authorities. The post of Commissioner under section 117 and the post of a Director of Income-tax is inter-changeable.

It is therefore proposed to amend the provisions of section 2 to include a Director of Income-tax appointed under sub-section (1) of section 117 within the definition of a Commissioner.

This amendment will take effect retrospectively from the 1st day of April, 1988 and will accordingly apply to assessment year 1988-89 and subsequent assessment years.

[Clause 3]

Cost of acquisition in case of certain transfers

Where transfer of an asset from one person to another is not regarded as a transfer under section 47, then, for the purpose of computation of capital gains, the cost of the asset in the hands of the successor under section 49 is taken as that of the predecessor. Certain transactions like transfer of assets by a sole proprietorship or a firm to a company on conversion are not regarded as transfer under the provisions of section 47(xiv) and section 47(xiii). While computing capital gains on subsequent sale of such assets by the company, there is no reference in the provisions of section 49 with regard to the cost to be taken for such assets.

Accordingly, it is proposed to amend the provisions of section 49 of the Income-tax Act to provide that in case of conversion of sole proprietorship or firm into a company which is not regarded as a transfer, the cost of acquisition of asset in the hands of the company would be the same as that in the hand of the sole proprietary concern or the firm, as the case may be.

This amendment will take effect retrospectively from 1st day of April, 1999 and will accordingly apply to assessment year 1999-2000 and subsequent assessment years.

[Clause 16]

Capital gains tax from sale of agricultural land by a Hindu undivided family (HUF)

Capital gains on transfer of land which, in the two years preceding the year in which it has been sold, has been used for agricultural purposes by assessee or his parent, is exempt if the whole of capital gains has been reinvested in the purchase of agricultural land in the next two years. It is now proposed that this benefit be also granted to a HUF.

Accordingly, it is proposed to amend the provisions of section 54B of the IT Act to provide that the rollover relief is available if the land is used for agricultural purposes by an individual or his parent, or by a HUF.

This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

[Clause 18]

Reference to a Valuation Officer

Under the provisions of section 55A, where in the opinion of the Assessing Officer value of asset as claimed by the assessee is less than its market value, he may refer the valuation of a capital asset to a Valuation Officer. Under section 55 in a case where the capital asset became the property of the assessee before 1st April, 1981, the assessee has the option of substituting the fair market value of the asset as on 1st April, 1981 as the cost of the asset. In such a case the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, would lead to a lower amount of capital gains being offered for tax.

Accordingly, it is proposed to amend the provisions of section 55A of the Income-tax Act to enable the Assessing Officer to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value. Therefore, in case where the Assessing Officer is of the opinion that the value taken by the assessee as on 1.4.1981 is higher than the fair market value of the asset as on that date, the Assessing Officer would be enabled to make a reference to the Valuation Officer for determining the fair market value of the property.

This amendment will take effect from 1st day of July, 2012.

[Clause 20]

Rate of tax for short term capital gain under section 111A

Under the provisions of section 111A tax on short-term capital gains, in the case of equity shares in a company or units of an equity oriented fund on which Securities Transaction Tax (STT) has been paid, is levied at the rate of 15%. This rate was increased from 10% to 15% vide Finance Act, 2008 with effect from 1.4.2009. However, in the proviso to this section while providing relief, the rate of short-term capital gains tax is still referred to as 10% which needs to be corrected to 15%.

It is accordingly proposed to amend the provisions of proviso to section 111A of the Income-tax Act.

This amendment will take effect retrospectively from the 1st day of April, 2009 and will accordingly apply to assessment year 2009-10 and subsequent assessment years.

[Clause 41]

Capital gains in cases of amalgamation and demerger

(i) Under the provisions of section 47(vii) any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company is not regarded as a transfer if,

(a) any transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and

(b) the amalgamated company is an Indian company.

In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions at (a) above, i.e. that the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself. Therefore, it is proposed to amend the provisions of section 47(vii) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company. However, the amalgamated company will continue to be required to issue shares to the other shareholders of the amalgamating company.

This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

[Clause 15]

(ii) Similarly, in the case of a demerger, there is a requirement under section 2(19AA)(iv) that the resulting company has to issue its shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.

Therefore, it is proposed to amend the provisions of section 2(19AA) so as to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. The requirement of issuing shares would still have to be met by the resulting company in case of other shareholders of the demerged company.

This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

[Clause 3]

Fair Market Value to be full value of consideration in certain cases

Capital gains are calculated on transfer of a capital asset, as sale consideration minus cost of acquisition. In some recent rulings, it has been held that where the consideration in respect of transfer of an asset is not determinable under the existing provisions of the Income-tax Act, then, as the machinery provision fails, the gains arising from the transfer of such assets is not taxable.

It is, therefore, proposed that where in the case of a transfer, consideration for the transfer of a capital asset(s) is not attributable or determinable then for purpose of computing income chargeable to tax as gains, the fair market value of the asset shall be taken to be the full market value of consideration.

Accordingly, it is proposed to insert a new provision (section 50D) in the Income-tax Act to provide that fair market value of the asset shall be deemed to be the full value of consideration if actual consideration is not attributable or determinable.

This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

[Clause 17]

Exemption of any sum or property received by an HUF from its members

Under the existing provisions of clause (vii) of sub-section (2) of section 56 any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head "Income from other sources". However, in the case of an individual, receipts from relatives are excluded from the purview of this section and are therefore treated as not taxable. The definition of relative as given in this sub-clause is only in relation to an individual and not in relation to a HUF.

It is therefore proposed to amend the provisions of section 56 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.

This amendment will take effect retrospectively from the 1st day of October, 2009.

[Clause 21]

Processing of return of income where scrutiny notice issued

Under the existing provisions, every return of income is to be processed under sub-section (1) of section 143 and refund, if any, due is to be issued to the taxpayer. Some returns of income are also selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing.

It is therefore proposed to amend the provisions of the Income-tax Act to provide that processing of return will not be necessary in a case where notice under sub–section (2) of section 143 has already been issued for scrutiny of the return.

This amendment will take effect from the 1st day of July, 2012.

[Clause 58]

Notification of a class of search cases where compulsory reopening of past six years not required

Under the existing provisions of section 153A of the Income-tax Act, it is mandatory to issue a notice for filing of tax returns for 6 assessment years immediately proceeding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

It is proposed that the provisions of section 153A and 153C may be amended so as to empower the Central Government to notify cases or class of cases in which the Assessing Officer shall not issue notice for initiation of proceedings for preceding 6 assessment years. However, action for completion of assessment proceedings for the assessment year relevant to the previous year in such class of cases in which search or requisition has been made would be taken. This would result in initiating assessment proceedings only for the assessment year relevant to the previous year in which search or requisition has been made.

Consequential amendments are also proposed to be made to the provisions of section 296 of the Act.

These amendments will take effect from the 1st day of July, 2012.

[Clauses 64, 66, 108]

Charging of interest on recovery of refund granted earlier

Under the existing provisions of section 234D of the Income-tax Act (inserted with effect from 1.6.2003, vide Finance Act, 2003), where any refund has been granted to the assessee under sub-section (1) of section 143 and subsequently on regular assessment, no refund or lesser amount of refund is found due to the assessee, then, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the excess amount so refunded for the period starting from the date of refund to the date of such regular assessment.

In a recent decision of the Court, it has been held that the provisions of section 234D inserted with effect from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after 1st June, 2003 or refund was granted for those years after the said date.

This is not in conformity with the legislative intent of the provision.

It is, therefore, proposed to clarify that the provisions of section 234D would be applicable to any proceeding which is completed on or after 1st June, 2003, irrespective of the assessment year to which it pertains.

This amendment will take effect retrospectively from the 1st day of June, 2003.

[Clause 85]

Related person for the purpose of making an application before Settlement Commission

Currently, an application can be filed before the Settlement Commission under the provisions of section 245C of the Income-tax Act

2. The definition of related person which is currently being used is "…the substantial interest is found to exist, where a person holds more than 20% shares or 20% share in profits, at any time during the previous year". It is proposed to provide that the substantial interest should exist as on the "date of the search" in place of "at any time during the previous year" as the proceedings before the Commission are filed for many previous years.

It is accordingly proposed to amend the provisions of section 245C of the Income-tax Act so as to provide that a person shall be deemed to have a substantial interest in a business or profession if such person is a beneficial owner of not less than 20% of shares or of 20% share in profits on the date of search.

This amendment will take effect from the 1st day of July, 2012.

[Clause 87]

Fee for filing of applications before Authority for Advance Rulings (AAR)

Under section 245Q of the Income-tax Act, the prescribed fee for filing an application before the Authority for Advance Rulings (AAR) is Rs.2500. This fee was prescribed in 1993, when the provisions for Advance Rulings were first introduced and there has been no change/review thereafter.

It is therefore proposed to amend the provisions of section 245Q so as to provide for increase in the fee for filing an application for advance ruling from Rs.2500 to Rs.10,000 or such fee as may be prescribed, whichever is higher.

This amendment will take effect from the 1st day of July, 2012 and will accordingly apply to any application for advance ruling filed on or after the 1st day of July, 2012.

[Clause 88]

Authorisation or requisition and subsequent assessment in search cases

Under the existing provisions of section 132 and section 132A, an authorisation can be issued or a requisition can be made, as the case may be, where the Director General or the Director in consequence of information in his possession has reason to believe that any person is in possession of any money, bullion, jewellery or other valuable article or thing (hereafter referred to as undisclosed income or property), then, he may authorise any Additional Director or Deputy Director, etc. to enter and search any building, place, vehicle, etc. and seize any such books of accounts, other documents, undisclosed property, etc.

Where a search is initiated under section 132 or requisition is made under section 132A, assessment is to be completed under the provisions of section 153A or section 153C (and if search was prior to 31st May, 2003 under Chapter XIV-B of the Act) or section 143(3), etc.

In a recent Court decision, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorisation must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.

This decision is not in accordance with the legislative intent.

It is accordingly proposed to insert a new section 292CC in the Income-tax Act to provide that –

(i) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorisation under section 132 has been issued or a requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons;

(iii) notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.

These amendments will take effect retrospectively from the 1st day of April, 1976 and will accordingly apply to assessment year 1976-77 and subsequent assessment years.

[Clause 107]

Prohibition of cash donations in excess of ten thousand rupees

Section 80G of the Income-tax Act provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to specified conditions. The deduction is allowed in respect of any donation being a sum of money. Similarly, section 80GGA of the Income-tax Act provides for a deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/institutions, subject to specified conditions.

Currently, there is no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, it is proposed to amend sections 80G and 80GGA so as specify therein that any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

[Clauses 27, 28]

Eligibility conditions for exempt life insurance policies

Under the existing provisions contained in section 10(10D) of the Income-tax Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt. For this purpose, it is necessary that the premium payable for any of the years shall not exceed 20% of the actual capital sum assured.

It is proposed to reduce the threshold of premium payable to 10% of the actual capital sum assured from 20% of the actual capital sum assured. Accordingly, it is proposed to amend section 10(10D) so as to provide that the exemption for insurance policies issued on or after 1st April, 2012 would only be available for policies where the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured.

Further, in order to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year, it is also proposed to provide that the capital sum assured would be the minimum of the sum assured in any of the years of the policy. Insertion of a new *Explanation* 2 has been proposed towards this effect by referring to the new definition of "actual capital sum assured" under *Explanation* of section 80C(3A). This *Explanation* will apply to insurance policies issued on or after the 1st April, 2012.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 5]

Eligibility condition for deduction in respect of life insurance policies

Section 80C of the Income-tax Act provides that in computing the total income of an assessee, being an individual or an HUF, a deduction of up to one lakh rupees for life insurance premia, contributions to any provident fund, tuition fees, subscription to any deposit scheme of a public sector company engaged in financing, construction or purchase of houses in India for residential purposes, fixed term deposits of not less than five years with a scheduled bank, etc., is allowed.

The existing provisions contained in section 80C(3) provide that the deduction for life insurance premium shall be allowed for only so much of any premium or other payment made on an insurance policy as is not in excess of 20% of the actual capital sum assured.

It is proposed to amend the provisions to provide that the deduction for life insurance premium as regards insurance policies issued on or after 1st April, 2012 shall be allowed for only so much of the premium payable as does not exceed 10% of the actual capital sum assured.

It is further proposed to insert the definition of "actual capital sum assured" so as to provide that the actual capital sum assured in relation to a life insurance policy shall be the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account— (i) the value of any premiums agreed to be returned, or (ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person. This amendment has been proposed to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year. This definition is also referred to in the proposed *Explanation* 2 in section 10(10D).

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clause 24]