SALIENT FEATURES OF THE FINANCE BILL, 2012

DIRECT TAXES

VED JAIN

ABOUT THE AUTHOR

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INTRODUCTION

The Finance Minister presented the budget for the year 2012-13 this time away from the tradition on a day different than the last day of February i.e. 16th March, 2012. This budget has been presented in the backdrop of the political uncertainties arising post-Uttar Pradesh elections. Accordingly this budget has been presented in the mists of woes across political, economic and monetary environments. Economic woes are in plenty both from domestic and external sectors. The overshoot in fiscal deficit and resultant funding of the gap from the market is a major cause for the liquidity squeeze and high cost of liquidity. The political woe is the absence of support both from inside and outside the coalition. The Finance Minister had a difficult task to arrest further slippages in fiscal deficit and to maintain it around 5 per cent; effect pass through of subsidy to consumers to control cost; pull domestic and foreign investment to core sectors to spur growth momentum and to boost exports to address trade deficit. The fiscal deficit of 5.9% as against 4.6% budged in the last budget and the projection of 5.1% for the next year does not seem to be a very positive signal.

The growth in the tax revenue has also been sluggish. The total of tax collected for the year 2011-12 was Rs.9,01,663 Crore as against Rs.9,32,439 Crore budgeted in the budget mainly because of lower collections of income tax from Corporate of Rs.3,27,680 Crore as against Rs.3,59,990 Crore budgeted.

The Finance Minister in the last budget has promised to introduce Direct Tax Code from 1st April, 2012. However, in view of the non-receipt of the report from the Parliamentary Committee, the implementation of the Direct Tax Code stands postponed to next year. One interesting feature of this Finance Bill, 2012 is that despite Direct Tax Code being before the Parliament and the Finance Minister promising to implement the same at the earliest, still in this Bill there are 113 clauses to amend the provisions of the existing Income Tax Act and the Wealth Tax Act. This raises a serious issue for consideration, i.e., need for Direct

Tax Code. What is so different in the Direct Tax Code which is not in the existing Income Tax Act. The Direct Tax Code is being projected to be a next generation reform, a big financial reform. The Direct Tax Code is not much different than the existing Income Tax Act except having some anti tax avoidance measures. There is nothing much in the Direct Tax Code to make it a tax payer friendly law. In fact the Finance Bill, 2012 proposes to introduce many such anti tax avoidance provisions of the Direct Tax Code in the existing Income Tax Act, strengthening the argument that there is no need to bring Direct Tax Code and the time tested existing Income Tax Act, 1961 is good enough and if need be can be amended suitably to introduce some left over provisions of the Direct Tax Code. Various amendments proposed in the Finance Bill, 2012 are analyzed below unless otherwise stated all these amendments are to be effected from April 1, 2013 i.e. assessment year 2013-14 relevant to the income earned in the financial year 2012-13.

A. TAX RATES

1. **Increase in threshold limit**:

The Finance Bill, 2012 proposes to increase the threshold limit for every Individual, Hindu Undivided Family, Association of persons, Body of Individual and every Artificial Juridical Persons from Rs.1,80,000 to Rs.2,00,000. Further the income slab of 20% from Rs.5,00,000 to Rs.8,00,000 has been increased from Rs.5,00,000 to Rs.10,00,000. Thus a tax payer having income up to Rs.8,00,000 will get a benefit of Rs.2,060 whereas a tax payer having income of Rs.10,00,000 or more will get a benefit of Rs.22,660.

The new slab rates proposed are as under:-

Income	Tax Rate
Up to Rs.2,00,000	Nil
Rs.2,00,001 - Rs.5,00,000	10%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

There is no special threshold for women as it was earlier of Rs.1,90,000/- as against Rs.1,80,000/- to others. With the result that increases in threshold limit for women tax payer is just Rs.10,000/- as against Rs.20,000/- for tax payer other than women. Thus a women tax payer shall get a benefit of Rs.1,030/- only on account of increase in threshold limit.

Further in the case of senior citizens above the age of 60 years but less than 80 years the threshold limit shall continue to be Rs.2,50,000/- whereas in the case of very senior citizens of the age of 80 years or more the threshold limit shall continue to be Rs.5,00,000/-. This means that there is no benefit of increase in threshold limit to senior citizens as well as very senior citizens.

2. **No change in tax rate on Corporates**

The Finance Bill, 2012 has proposed no change in the tax rate applicable to a firm including LLP and a company. The applicable tax rates for a firm, and domestic company continues to be flat rate of 30%. However, a domestic company is liable to pay surcharge at the rate of 5% of the tax in case its total income exceeds Rs. One Crore. The tax rate applicable to a foreign company i.e. other than a domestic company continues to be 40% with surcharge at the rate of 2% in case its income exceeds Rs. One Crore.

3. **Security Transaction Tax reduced**

The Finance Bill, 2012 proposes to reduce the rate of Securities Transaction Tax (STT) in cash delivery segment from existing 0.125% to 0.1%. The new rate will apply to any transaction made on or after 1st day of July, 2012. However, the rate of STT in respect of other transactions shall continue to be same.

4. **Alternate Minimum Tax being made applicable to all**

The Finance Act, 2011 has introduced Alternate Minimum Tax (AMT) on Limited Liability Partnership on the line of Minimum Alternate Tax (MAT) applicable to a company. The scope of Alternate Minimum Tax is being widened to make it applicable to all persons other than companies. The implication of this will be that all persons including individual, HUF, Partnership Firm shall be required to ascertain its liability, if any, for payment of Alternate Minimum Tax. As per the provisions of the Alternate Minimum Tax, tax at the rate of 18.5% is payable on the 'adjusted total income' which is different than the concept of book profit applicable for MAT on a company. The adjusted total income means total taxable income as increased by deductions claimed under Chapter VI-A – Part-C 'deduction in respect of certain incomes' i.e. exemption under Section 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-ID and exemption available under Section 10AA (in respect of Special Economic Zone).

Further every person including individual and HUF will be required to obtain a report from the Chartered Accountant and file such report with the return of income. However, the alternate minimum tax provision shall not apply to an individual or an HUF or an AOP or a Body of Individual or an artificial juridical person if the adjusted total income does not exceed Rs. Twenty Lac. This threshold of Rs. Twenty Lac needs to be checked up on year to year basis.

Alternate Minimum Tax liability to pay shall be same as that of a regular tax. A person liable for Alternate Minimum Tax needs to pay advance tax as well as self assessment tax before filing the return of income. Amendments are being made to Section 140A, 234A, 234B and 234C of the Act to provide that interest shall be payable in case a person liable to Alternate Minimum Tax fails to deposit the advance tax at due time or fails to file the return of income in time.

B. DEDUCTIONS

1. Savings Interest to be exempt up to Rs.10,000

The Finance Bill, 2012 proposes to introduce a deduction in respect of income by way of interest on deposits in a saving account up to Rs.10,000. The deduction shall be available under a new Section 80-TTA in respect of interest in a saving account with a Bank, a Co-operative Bank or a Post Office. The deduction shall not be available in respect of time deposits i.e. fixed deposits, etc. The deduction shall be available to an individual or HUF only. Further, in case, such deposit is held in a saving account on behalf of the firm, AOP or a body of individual no deduction shall be allowed while computing income of any of the partner or any member of the AOP or any body of individual.

2. Scope of Section 80D being widened

The Finance Bill, 2012 proposes to widen the scope of Section 80D regarding deduction of Rs.15,000 available in respect of Premium paid towards a Health Insurance Policy for self, spouse and dependent children or any contribution made to Central Government Health Scheme, to include payment made on account of preventive health check-up up to Rs.5,000 within the overall deduction of Rs.15,000. Similarly the scope of further deduction of Rs.15,000 allowed in respect of premium towards a health insurance policy in respect of

parents is being widened to include payments made on account of preventive health check-up up to Rs.5,000. These payments towards preventive health check up can also be made in cash. However, the payment towards health insurance premium has to be made otherwise than cash only to be eligible for deduction.

Further, for the purposes of higher deduction of Rs.20,000 toward health insurance, in the case of parents who are senior citizens the condition of age of 65 years is being reduced to 60 years.

3. **Age Limit for deduction of medical treatment for Senior Citizens being reduced**

Presently under Section 80DDB a deduction up to Rs.40,000 is allowed to an individual for the medical treatment of specified diseases for himself or a dependent and to an HUF for any member of the HUF. This deduction is Rs.60,000, if the expenditure is for a senior citizen who is of the age of 65 years or more. The Finance Bill, 2012 proposes to reduce the eligibility criteria of higher deduction of Rs.60,000 for a senior citizen from 65 years to 60 years.

4. **Life Insurance Premium not to exceed 10% of the sum assured for 80C exemption**

The Finance Bill, 2012 proposes to restrict the deductions under Section 80C in respect of Life Insurance Premium paid to an amount as does not exceed 10% of the capital sum assured under the policy as against present restriction of 20% of the capital sum assured introduced by the Finance Act, 2003. This provision shall however be applicable only for the new insurance policies issued on or after 1st April, 2012. Accordingly premium paid on existing policies even if such premium exceeds 10% of the capital sum assured shall continue to be eligible for deduction under Section 80C. It is being further clarified that for the purpose of computing 10% of the capital sum assured, the capital sum assured in relation to a policy shall be the minimum amount assured at any time during the term of the policy so as to ensure that the policy is not designed to circumvent this limit of 10% by varying the capital sum assured from year to year.

Further a similar amendment is being made to Section 10(10D) of the Act to exempt the amount received on maturity of the life insurance policy only for

such policies where premium payable for any of the year during the term of the policy does not exceed 10% of the capital sum assured as against 20% as on date. This amendment shall also be applicable for life insurance policies issued on or after 1st April, 2012 and in case premium payable for any year exceeds 10% of the capital sum assured, the amount received on maturity of such policy shall not be exempt but will be included in the total income.

5. **No extension to deduction of Rs.20,000 for Infrastructure Bond**

The Finance Bill, 2012 has not extended the deduction of Rs.20,000 available under Section 80CCF in respect of subscription to Long Term Infrastructure Bond. This deduction was allowed for one year by the Finance Act, 2010 and was extended for another one year by the Finance Act, 2011. Thus the deduction will be available only for investments made up to 31st March, 2012.

6. **Deduction for investment in Rajiv Gandhi Equity Savings Scheme**

The Finance Minister in his Budget speech has stated to allow a deduction of 50% to the new retail investors who invests up to Rs.50,000 directly in equities in a new Scheme called Rajiv Gandhi Equity Savings Scheme. The deduction shall be available only to those investors whose annual income is below Rs. Ten Lac. This Scheme will have a lock-in period of three years. This has been introduced to encourage flow of savings in financial instruments and improve the depth of the domestic capital market. Though the Finance Minister has made this announcement in the speech but there is no amendment proposed in the Finance Bill, 2012 allowing such deductions while computing income under the Income Tax Act. It appears that this deduction was finalized at the fag end with the result corresponding amendment could not be inserted in the Finance Bill, 2012.

7. **No Exemption of Donation above Rs.10,000 if paid in cash**

The Finance Bill, 2012 proposes to prohibit allowing deduction under Section 80-G in respect of the donations to charitable trust or institutions in case such donation exceeding Rs.10,000 is paid in cash. Similarly deduction for any donation for Scientific Research or Rural Development exceeding Rs.10,000, and eligible for deduction under Section 80-GGA will not be allowed if the same is

paid in cash. The donation of Rs.10,000 or less paid in cash, however, shall continue to be eligible for deduction.

The above amendment has been made by inserting following Sub-section (5D) below Sub-section (5C) of Section 80G.

> *"No deduction shall be allowed under this Section in respect of donations of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash."*

Thus in case any donation has been paid in cash exceeding Rs.10,000 then the entire donation will not be eligible for deduction.

8. **Clarificatory amendment regarding denial of exemption to charitable organizations**

The Finance Bill, 2012 proposes to insert a new sub-section (8) in Section 13 to provide that a Charitable Trust or Institution coming under proviso to Section 2(15) shall not be eligible for claiming benefit of exemption under Section 11 or 12 in the year in which it is not considered to be a charitable organization by application of proviso to Section 2(15) despite such trust or institution is registered and the registration or the approval has not been cancelled or withdrawn. Similar amendment is being made in Section 10(23C) and under Section 143 by inserting a proviso to deny the benefit of exemption under Section 10(23C) in respect of charitable trusts or institutions approved under sub-clause (iv) & (v) despite such approval having not been withdrawn.

This amendment also, by implication, clarifies that a trust or institution which is denied benefit of exemption in a year since the aggregate value of the receipts from commercial activities exceeded the prescribed limit of Rs.25 Lac will not be considered as altering the charitable nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval and in the subsequent year such trusts or institutions may again be eligible for exemption in case its receipts from commercial activities does not exceed Rs.25 Lac.

This amendment is being made retrospectively from 1st April, 2009 i.e. assessment year 2009-10 in view of the fact that the provisions of Section 2(15) defining the charitable purpose were amended from that day so as to exclude advancement of any other object of general public utility from the definition of

charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business for a fee or any other consideration.

9. **Extension for setting up power generation, transmission or distribution undertakings by one year**

The Finance Bill, 2012 proposes to extend the terminal date by another one year for claiming exemption under Section 80-IA(iv) in respect of undertakings for the generation and distribution of the power; or which starts transmission or distribution; or which undertakes substantial renovation and modernization of existing network of transmission or distribution up to 31st March, 2013. The Finance Act, 2011 had also extended the period by one year. Looking to the need to enhance power generation further extension of one year has been given. Any unit which becomes operational by 31st March, 2013 will be eligible to claim exemption for ten consecutive assessment years out of the fifteen assessment years from the year of operation.

C. SALARIES & INCOME FROM HOUSE PROPERTY

The Finance Bill, 2012 has not proposed any amendment in respect of income from salaries and income from house properties.

D. BUSINESS INCOME

1. **No disallowance of expenditure on failure to deduct TDS in case the deductee has included the same in the income and filed its return**

The Finance Bill, 2012 proposes to address a major issue arising consequent to insertion of Section 40(a)(ia) whereby any expenditure incurred by the assessee on which tax has not been deducted is disallowed leading to assessment of income at an amount highly disproportionate to the actual income. As per the proposed amendment in case the assessee has not deducted tax at source on any sum but the deductee has filed its return of income under Section 139 and has taken into account such sum while computing its income in the return filed and has paid tax due on the income declared as per the return of income then for the purposes of Section 40(a)(ia) it shall be deemed that the assessee had deducted tax and paid the tax on such income on the date of furnishing of return of income. For this purpose amendment is being made to Section 201 of the Act

to provide that in the above circumstances the person responsible for deducting tax shall not be deemed to be an assessee in default. Such person shall be required to furnish a certificate from a Chartered Accountant. This amendment will help in addressing the issue of huge tax liability arising consequent to minor technical default of non-deduction of tax at source. In case the assessee has failed to deduct tax at source, he will have an option to deduct and deposit the same before filing its return of income. In case he becomes aware of the default after the filing of the return of income then he can approach the deductee to give a copy of his return and the accounts so as to get a certificate from a Chartered Accountant, of the deductee having taken into account the sum while computing its income, paying tax as per the return and having filed the return. Further in case the deductee has not filed the return still the deductor can persuade the deductee to file the return within the time prescribed under Section 139. It may be noted that the Section referred to is 139 only and will include late return as well. However, in case there is a loss as per the return of the deductee then such return has to be filed before the due date of filing, belated return being not a valid return within the meaning of Section 139. The amendment may not help a situation where the method of accounting being followed by the deductor and deductee are different. In case the deductor follows accrual method of accounting and fails to deduct tax and the payment has not been made of the sum so accrued, and the deductee follows cash method of accounting, in such a situation the deductee would not have taken into account such sum while computing its income and consequently the deductor will be an assessee in default.

This amendment gives statutory recognition to the judgment of the Supreme Court in the case of Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT (2007) 293 ITR 226 (SC) whereby it was held that recovery once again cannot be made from the deductor where the deductee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereof. With this amendment there will be no recovery of tax ought to have been deducted from the deductor in case deductee has paid tax and filed return.

Further a proviso is being inserted below sub-section (1A) of Section 201 to provide that in such a situation the deductor shall be liable to pay interest from the date when the tax was deductible to the date of furnishing of the return of

income by deductee. This proviso gives a statutory recognition to the judgment of the Gujarat High Court in the case of CIT vs. Rishikesh Apartments Co-operative Housing Society Ltd. (2002) 253 ITR 310 (Guj.) delivered long time back on June 14, 2001.

It may be noted that this amendment is only in respect of payment to resident i.e. when the deductee is a resident.

This amendment to Section 201, not to treat the deductor in default is effective from 1st July, 2012 whereas the amendment to Section 40(a)(ia) is proposed with effect from 1st April, 2013 i.e. assessment year 2013-14. It is interesting but not surprising to note that so many amendments favouring Revenue are proposed to be retrospective being clarificatory in nature and the one favouring tax payer which in real sense is clarificatory is proposed to be effective prospectively. Despite this, considering the fact that a deeming fiction is being created under the proposed amendment it may be interpreted by Court to be a clarificatory and hence applicable retrospectively. The Calcutta High Court recently in the case of CIT vs. Virgin Creations has held that the amendment made to Section 40(a) (ia) by the Finance Act, 2010 of allowing benefit of the payment made before the due date of filing return under Section 139(1) is clarificatory and have retrospective operation. The Calcutta High Court has referred to the judgment of the Supreme Court in the case of R.B. Jodha Mal Kuthiala vs. CIT (1971) 82 ITR 570 (SC) whereby it was held that the provision, which are inserted as a remedy to make the provision workable, requires to be treated with retrospective operation so that reasonable deduction can be given to the Section as well.

Similar amendment is being made to provision of tax collection at source by inserting Sub-section (6A) in Section 206C to provide that the seller responsible for tax collection at source will not be considered as an assessee in default in case the buyer has accounted for the amount in its return of income, paid tax on the income declared as per the return and filed the return under Section 139.

2. **Payment to relatives – Scope of Section 40A(2) being widened, Transfer Pricing Regulations to apply to domestic transactions**

Under the existing law in case of any transaction with a related party the Assessing Officer under Section 40A(2)while computing income from business or

profession can disallow the expenditure which in his opinion is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which expenditure has been incurred. There is no mechanism to re-compute the income received from a related party in case the Assessing Officer is of the opinion that such income is low considering the market value. In order to address this issue, the provisions of Transfer Pricing are being amended to extend the scope to 'specified domestic transactions' by amending Section 92 of the Act. Further specified domestic transactions have been defined in a new Section 92BA as following transactions where the aggregate of such transactions entered into by the assessee in a year exceed Rs. Five Crore:

i) Expenditure referred to in Section 40A(2);

ii) Transaction referred to in Section 80A i.e. transactions for goods or services held for the purposes of the undertaking or the unit or eligible business which are transferred to any other business carried on by the assessee or are transferred to the undertaking or unit claiming exemption under Sections 10A, 10AA, 10B or Section 10BA. For this purpose a new clause is being inserted to provide that in relation to any goods or services sold, supplied or acquired in respect of the unit claiming above exemption, the market value means the arm's length price determined under Section 92F as applicable for specified domestic transactions.

iii) Transfer of goods or services of eligible business under Section 80IA, 80IAB, 80IC, 80ID, 80IE, 10AA transferred to any other business carried on by the assessee;

iv) Any business transacted between the assessee and the other persons having close connections where the assessing officer is of the opinion that the business transacted produces more than the ordinary profit as per Section 80IA(10) read with Sections 80IB(13), 80IC(7), 80ID(5), 80IE(6), 10AA(9);

v) Any other transactions as may be prescribed.

It has been further provided by inserting a new sub-section (2A) in Section 92 that any allowance or any expenditure or interest or allocation of any cost or expense or any income in relation to specified domestic transaction shall be computed having regards to arm's length price meaning thereby the specified

domestic transaction will be tested applying arm's length principle. Accordingly corresponding amendment is being made in the procedural laws of transfer pricing to cover domestic transactions i.e. Section 92C for computation of arm's length price by the method prescribed, Section 92D maintenance and keeping of information and document, Section 92E obtaining report from Chartered Accountant in respect of specified domestic transactions, Section 92CA being reference to the Transfer Pricing Officer, penal provisions of Section 271(1), Explanation 7 regarding concealment, Section 271AA penalty for failure to keep and maintain information and Section 271G penalty for failure to furnish information or document.

Further the scope of the related party is being expanded to cover cases of companies which have the same parent company by providing that any other company carrying on business or profession in which the first mentioned company has substantial interests shall be considered to be a related party.

The proposal is going to have far reaching implications and increase the compliance cost substantially which may be beyond the means of such taxpayer. In international transaction, the country loses tax. However in domestic transactions, the country does not loose tax. A taxable transaction between two related parties even if not at arm's length, still there is no tax implications if both such entities are in same tax bracket. Considering this only at the time when Section 40A(2) was inserted, the Board Circular explaining the provisions of the amendment has stated that in case there is no net tax effect, no disallowance on this account need be made. It is a normal practice may be because of regulatory requirement or because of family set up or development and structuring of business over the period one entity related to other may be selling its products or providing services. Despite both such entities falling in same tax brackets and there being no net tax effect, still there will be requirement on both these entities of maintaining and complying all complex transfer pricing regulations. The cost of such compliance will be too high as compared to nominal margin of profits. The threshold of rupees five crore may not also be helpful as in manufacturing or trading of goods this is too little and the total margin earned in such transactions may not be sufficient to meet the cost of compliance.

3. **Power Sector to be eligible for initial depreciation**

Under the existing provisions of Section 32(1)(iia) an additional depreciation at the rate of 20% of the actual cost of new machinery or plant is allowed to an assessee engaged in the business of manufacture or production of an article or thing in the year in which such new machinery or plant is acquired. There have been disputes on the issue whether the generation of power means production of an article or thing so as to be eligible for this initial depreciation. The Finance Bill, 2012 proposes to explicitly provide that an assessee engaged in the business of generation or generation and distribution of power shall also be eligible for initial depreciation of 20% of the actual cost of the new machinery or plant acquired and installed during the year. This amendment though proposed to be effective from 1st April, 2013 but still there will be dispute regarding on the issue whether this amendment is clarificatory amendment or not.

4. **Time period for availing weighted deduction for expenditure on scientific research extended**

Under the existing provision of Section 35(2AB) any expenditure incurred on research and development facilities which is approved is eligible for deduction twice the amount of the expenditure incurred. This benefit however, was limited till 31st March, 2012. The Finance Bill, 2012 proposes to extend the period by another five years i.e. expenditure incurred up to 31st March, 2017. It may be noted that this exemption is available only to a company and not to any other person.

5. **Income received in India on account of crude oil to be exempt**

Under the existing provisions of Section 5(2) of the Income Tax Act applicable to a non-resident, the total income liable for taxation in India includes all income from whatever source derived which is received or deemed to be received in India in such year by or on behalf of such person. A foreign company is considered to be a non-resident and in case any such company receives any payment in India by implication of this Section 5(2) such payment shall be deemed to be income received in India. India is importing crude oil from Iran which is under sanction of United Nations as on date and as such there is no mechanism available to make payment to Iran against import of such crude oil. In order to overcome this difficulty the Government has recently worked out a

mechanism whereby the payment of such crude oil shall be made to a bank account in India and Iran can use such account for purchase of goods from India. To avoid taxability of such payment against import of crude being credited in the bank account in India on behalf of Iran, the Finance Bill, 2012 proposes to insert a new clause (48) in Section 10 to exempt such income on account of sale of crude oil with a condition that the receipt of such income by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government, and having regard to the national interest such agreement is notified by the Government. The foreign company, however, should not be engaged in any other activity in India.

6. **Scope of investment linked deduction being broadened by adding new businesses**

The Finance Bill, 2012 proposes to add three new businesses viz. setting and operating an Inland Container Depot/freight station, Bee-keeping and production of honey and beeswax and setting up and operating a warehousing facility for storage of sugar for allowing investment linked deductions under Section 35AD of the Act. The benefit of this deduction shall be available to these three new businesses which commences operations on or after 1st April, 2012. As per the provisions of Section 35AD, the entire expenditure of capital nature incurred for the purpose of these specified businesses other than the expenditure on land, goodwill or financial instruments shall be allowed as deduction during the year in which such expenditure is incurred. Further such business is not eligible for claiming deduction under Chapter VIA nor will such expenditure be eligible for deduction under any other provisions of the Act. Further the loss of this business is also eligible for set off against any other income of the same business. Accordingly the investment linked deduction under Section 35AD is an accelerated depreciation being 100% of the capital expenditure in the year in which it is incurred. Thus this may be good incentive for a person already in the same business so as to set off income of such business against capital expenditure of a new same business. However, for a person who is not in the same business this may act as counter-productive since the entire capital expenditure will be a business loss eligible for carry forward at best for eight

years as against depreciation to be claimed over a period with no limitations as to number of years the depreciation to be carried forward.

7. **Weighted investment linked deduction under Section 35AD**

The Finance Bill, 2012 proposes to introduce the concept of weighted deduction of 150% of the capital expenditure under Section 35AD of the Act. As per the proposal the five existing eligible businesses under Section 35AD viz., setting up and operating a cold chain facility; setting up and operating a warehousing facility for storage of agricultural produce; building and operating a hospital with atleast 100 beds; developing and building a housing project under a Scheme for affordable housing and production of fertilizers in India, if commences operations on or after 1st day of April, 2012, then such business shall be eligible to claim 150% of the capital expenditure incurred in the year in which such businesses commence operations. This is a message to the eligible business likely to commence business by 31st March, 2012 to delay commencement beyond 31st March, 2012 so as to get weighted deduction of 150% as against 100% if operation commences by 31st March, 2012. Further there is every possibility that similar weighted deduction be allowed to other eligible business under Section 35AD in the Finance Bills of the coming years.

8. **Owner of hotel to be eligible for investment linked incentive despite transfer of operation of hotel**

Provisions of Section 35AD are being relaxed in respect of specified business of a hotel of two stars or above category. As per the existing provisions the benefit of investment linked incentive under Section 35AD is allowed only when the hotel is owned and operated by the assessee himself. Considering the fact that in the hotel industry it is normal to have a franchisee arrangement whereby hotel is operated through an outside arrangement and not by the owner of the hotel, the condition of operating the hotel is being relaxed. In case the operations are transferred to another person, the assessee shall still be deemed to be carrying on the business of building and operating hotel so as to be eligible for the exemption.

This amendment is being made retrospectively from 1st April, 2011 i.e. assessment year 2011-12 so as to not to deny the benefit to such hotels which have entered franchisee arrangement of operating hotel by an outside agency.

9. **Expenditure on Agriculture extension project and Skill development project to get weighted deduction**

The Finance Bill, 2012 proposes to introduce two new weighted deductions of 150% in respect of expenditure incurred on agriculture extension project and skill development on the line of research and development expenditure available under Section 35 of the Act. The agriculture extension projects shall be notified by the Board in accordance with the prescribed guidelines. Similarly skill development project shall be also notified by the Board in accordance with the prescribed guidelines.

10. **Threshold Limit for Presumptive Taxation being increased from Rs.60 Lac to Rs.1 Crore.**

Under the existing provision of Section 44AD presumptive taxation is applicable in the case of a small business having turnover not exceeding Rs.60 Lac whereby 8% of turnover is deemed to be the income of the eligible business. The assessee is not required to maintain any books of account nor required to get the accounts audited. The Finance Bill, 2012 proposes to raise the threshold limit from Rs.60 Lac to Rs.1 Crore. Accordingly in the case of an assessee having turnover up to Rs.1 Crore, 8% of the turnover shall be deemed to be the income with no hassle of accounts and audit. Under the proposed tax rate on an income of Rs.8 Lac after claiming deduction of Rs.1 Lac under 80C (LIC/PFF), Rs.15,000 under Section 80D (Medi claim/Health checkup) the tax liability on taxable income of Rs.6,85,000 will be just Rs.69,010/- which is 0.7% of the turnover. In case such assessee has taken housing loan and paying interest thereon of Rs.1,50,000, the tax payable will go down to Rs.38,110/- only. A big relief for a small business considering that turnover of Rs.1 Crore per annum means turnover of approx. Rs.30,000 per day. This amendment shall be effective from 1st April, 2013, i.e., assessment year 2013-14.

However, the scope of eligible business is being restricted by excluding person earning income in the nature of commission or brokerage and person carrying on any agency business. Further it is being explicitly provided that small business does not include carrying on of profession. This amendment is being made retrospectively with effect from 1st day of April, 2011 i.e. assessment year 2011-12. The benefit of Section is available to an individual, HUF and Partnership firm

only. Accordingly company and Limited Liability Partnership are outside the scope of presumptive taxation under Section 44AD of the Act.

11. **Threshold limit for tax audit being increased**

The provision of Section 44AB prescribing tax audit for business and profession is being amended to increase the threshold limit. As per the proposal tax audit shall be required in case of a person carrying on business if his total sales, turnover or gross receipts exceeds Rs.1 Crore as against existing threshold of Rs.60 Lac and in the case of a person carrying on profession if his gross receipts in profession exceeds Rs.25 Lac as against existing threshold of Rs.15 Lac. Thus a company or an LLP will be outside the scope of tax audit in case its total turnover is less than Rs.1 Crore despite its income being less than 8% of the turnover (being not covered by presumptive taxation). On the other hand an Individual, HUF or a Partnership firm in case its profit is less than 8% of its turnover, shall still be required to get its accounts audited as per provisions of Section 44AB in case it wants to opt out of presumptive taxation. This amendment is being made with effect from 1st April, 2013, i.e., assessment year 2013-14.

12. **Specified date for tax audit being linked to due date of filing return**

Under the existing provision of Section 44AB an assessee is required to obtain the tax audit report by 30th September. The due date of filing return is prescribed under Sect8ion 139(1) as 30th September. However, sometimes the due date of filing return is extended. For this purpose to avoid default in getting tax audit report a separate notification has to be issued every time under Section 44AB extending period of obtaining tax audit report. In order to address this issue the Finance Bill, 2012 proposes to link the due date of obtaining tax audit report as the due date prescribed under Secti8on 139(1) instead of the existing due date i.e. 30th September. The implication of this amendment will be that as and when the due date of filing return is extended the due date of obtaining tax audit report will stand automatically extended.

E. CAPITAL GAINS

1. **No capital gain tax on investment in small and medium enterprises**

The Finance Bill, 2012 proposes to introduce a new Section 54GB allowing exemption to an individual or an HUF in respect of the long term capital gain arising from the transfer of a residential property being a house or a plot of land if the person utilizes the net consideration received from transfer of such assets for subscribing equity shares of an eligible company before the due date of filing return and such company within a period of one year from date of subscription in equity shares utilizes this amount for purchase of new plant and machinery. The eligible company shall be a company which is incorporated in India during the period from the 1st April of the year in which the capital gain arises to the due date of filing return meaning thereby the incorporation has to take place in a period of almost 18 months starting from 1st April to 30th September of next year if due date of filing return is 30th September and in case it is 31st July, then within 16 months. Further the company should engage in the business of manufacturing an article or a thing and such assessee should have more than 50% share capital or more than 50% voting rights after the subscription in the shares by the assessee. Such company should qualify to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006. Further the new plant and machinery shall not include any office appliances, computer, computer software, any vehicle, machinery or plant installed in office premises or any residential accommodation including guest house. Further such machinery should not have been used either within or outside India by any person. It may be noted that the net consideration has to be utilized for the purchase of new plant and machinery and accordingly all other expenditure of the company should be met from other sources in case the amount utilized towards acquisition of new plant and machinery is less than the net consideration then exemption shall be allowed proportionately. In case the company is not able to utilize the amount of subscription of shares for the purchase of new machinery before the due date of filing return by the assessee then the unutilized amount is to be deposited in a separate notified bank account and the proof of such deposit to accompany the return. On failure to utilize such money deposited in the bank account within the period prescribed i.e. within one year from the date of subscription of equity shares then such amount shall be

charged as income of the assessee in the year in which the period of one year from date of subscription of such equity shares expires.

Further there is a restriction not to sell or otherwise transfer the equity shares of the company as well as the new plant and machinery acquired within a period of five years from the date of their acquisition. In case of such transfer the same shall be deemed to be the income of the assessee of the year in which such shares or plant and machinery are transferred.

This provision has been introduced for a period of five years, i.e., transfer of residential property up to 31st March, 2017.

2. Scope of exemption in respect of agricultural land being extended to HUF

The Finance Bill, 2012 proposes to expand the scope of Section 54B of the Act providing exemption to an individual in respect of long term capital gain arising on transfer of land used for agricultural purposes so as to include HUF also. Accordingly in case any land used for agricultural purposes is owned by the HUF there will be no capital gain on transfer of the same if within a period of two years it has purchased any other land for being used for agricultural purposes.

3. Fair Market Value to be full consideration where consideration is not determinable

The Finance Bill, 2012 proposes to introduce a new Section 50D to provide that in the case of a transfer where consideration for the transfer of a capital asset is not determinable or attributable then for the purpose of computing capital gains, the fair market value of the assets transferred shall be considered to be the full market value of consideration. This amendment is being done to overcome the judgment whereby it has been held that in case consideration of transfer is not determinable then gains arising from the transfer are not taxable.

4. Reference to Valuation Officer for determination of Fair Market Value as on 1st April, 1981

The provisions of Section 55A are being amended to enable the Assessing Officer for making a reference to the Valuation Officer where in his opinion the fair market value adopted by the assessee as on 1st April, 1981 for the purpose of computation of capital gain is higher than the fair market value. This

amendment is being done to overcome the rulings whereby it was held that a reference to valuation officer can be made only when value declared by the assessee is less than the value in the opinion of the Assessing Officer. This amendment is being proposed from 1st July, 2012 and from that day the Assessing Officer shall be eligible to make a reference.

F. INCOME FROM OTHER SOURCES

1. **Gifts received by HUF from its member to be exempt**

The Finance Bill, 2012 proposes to extend the meaning of 'relative' so as to include in the case of an HUF, any member of such HUF so as to exclude amount received by HUF from its members from the scope of the provision of Section 56(2)(vii). As per provision of Section 56(2)(vii)any sum of money or any immovable property received by an individual or an HUF without consideration is considered to be income from other sources except when it is received from a relative. The 'relatives' in the case of an individual have been defined in the proviso to this clause but no relative has been defined for an HUF. With the result amount received by HUF from its member without consideration was being considered as income from other sources. This amendment accordingly is being made retrospectively from 1st October, 2009 to remove this anomaly. It may be noted that as per provision of Section 64(2) any separate property of the individual is converted into a property belonging to the HUF then the income derived from such converted property is deemed to arise to the individual and not to the family. Accordingly the gift received by HUF from its member may not be taxable as income from other sources in the hands of HUF, however, income arising from such gift shall be taxable in the hand of such member only who has gifted the amount or the property.

2. **Unexplained cash credit and investment to be taxed at the rate of 30%**

The Finance Bill, 2012 proposes to introduce a new Section 115BBE of the Act whereby any addition made on account of unexplained credit under Section 68, unexplained investment under Section 69, unexplained money under Section 69A, understatement of investment under Section 69B, unexplained expenditure under Section 69C, amount borrowed or repaid on hundi under Section 69D the same shall be chargeable to tax at the flat rate of 30% irrespective of the

threshold exemption or losses, etc. Thus in the case of an assessee if the net income is assessed at loss despite above stated additions it will be required to pay tax on such additions at the rate of 30%. This amendment will make the tax liability more than the liability on the income as determined by the tax authorities itself. The penalty for concealment or furnishing inaccurate particulars is also leviable under the Section 271(1)(c). In case the Government is of the view that the penal provisions are not adequate the better course is to enhance the penalty rather than levying tax in this manner.

3. **Share capital, Share premium, Share application to be considered as deemed income**

The Finance Bill, 2012 proposes to make a far reaching amendment to the provisions of Section 68 as well as Section 56(2) to address the issue of share capital, share premium and share application in the case of a company in which public is not substantially interested i.e. closely held company. In this regard a proviso is being inserted in Section 68 to provide that in the case of such company the amount credited as share application money, share capital, share premium shall be deemed to be not satisfactorily explained unless the person, being a resident, in whose name such credit is recorded in the books of the company, also offers an explanation about the nature and source of such sum and such explanation is found to be satisfactory by the Assessing Officer. The only exception is to a person which is a venture capital fund or a venture capital company. This amendment is proposed to overcome the judgment being delivered by the various Courts including the judgment of the Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd. (2008)216 CTR 195 (SC).

4. **Share premium in excess of fair market value to be deemed as income**

The scope of Section 56(2)(vii) is being expanded by inserting a new clause (viia) to provide that in the case of a company not being a company in which public are substantially interested i.e. a closely held company the consideration received for issue of shares from any person being a resident exceeding the fair market value of the share shall be chargeable as income from other sources in the hands of the company except when such consideration is received by a Venture Capital Undertaking from a Venture Capital Company or a Venture Capital Fund. The fair market value of the share shall be in accordance with the

method as may be prescribed. Presently Rule 11U and 11UA prescribes the method for determination of the fair market value. However, considering the fact that such method is based on book value, an option has been given to the company to substantiate the valuation on the date of issue of shares on the basis of the assets including intangible asset being goodwill, know-how, patents, copyrights, trademark, licenses, franchisee or any other business or commercial rights of similar nature. With this amendment it will be practically very difficult for any company to justify the value of the share on the date of issue over and above the book value. This will also lead to a dispute in case of genuine shareholder subscribing from well established sources.

Having shifted the onus regarding the nature and source of money in the hands of the shareholder, taxing the same after passing such test to the satisfaction of the Assessing Officer amounts to double taxation of same income.

G. INTERNATIONAL TAXATION

1. **Interest on borrowings in foreign currency to be taxed at 5%**

The Finance Bill, 2012 proposes to amend Section 115A of the Income Tax Act to provide that interest paid by certain class of companies to a non-resident in respect of borrowings made in foreign currency from sources outside India during the period between 1st July, 2012 and 1st July, 2015 under an agreement which is approved by the Central Government including the rate of interest payable thereon, shall be taxable at the rate of 5% with applicable surcharge and cess. This concession is being given to augment the long term funds required for infrastructure sector by the company engaged in the business of construction of dam, operation of aircrafts, manufacture of fertilizers, construction of ports including inland ports, construction of road, toll road or bridge, generation, distribution or transaction of power, construction of ships in a shipyard or developing and building an affordable housing project. Amendment to this Section 115A shall be with effect from 1st April, 2013 i.e. assessment year 2013-14.

Corresponding amendment is being made by inserting a new Section 194LC to provide that tax at the rate of 5% shall be deducted at source on such interest. This amendment shall be effective from 1st July, 2012.

2. **Income of non-resident sports person and non-resident entertainer to be taxed at the rate of 20% of the gross receipts**

The Finance Bill, 2012 proposes to rationalize the tax rate applicable for taxation of non-resident sports person and non-resident entertainer under Section 115BBA of the Act. As per the proposal income arising to a non-citizen/non-resident sports person, sports association, non-resident entertainer shall be taxable at the rate of 20% of the gross receipts. The income shall cover income by way of participation in any game or sport, advertising, contribution of article in any newspaper, etc. This amendment shall be effective from 1st April, 2013 i.e. assessment year 2013-14.

Consequential amendment is being made to widen the scope of Section 194E of the Act to include non-resident entertainer as well and to increase the rate of deduction of tax at source from 10% to 20% for income payable to non-resident, non-citizen entertainer, or sportsmen or sports associations or institutions. This amendment shall be effective from 1st July, 2012.

3. **Dividend received from foreign company to continue to be taxed at the concessional rate of 15% for one more year**

The provisions of Section 115BBD which were introduced last year for a period of one year is being extended for another one year providing taxation of gross dividend received by an Indian company from a foreign company in which it has shareholding of 26% or more at a concessional rate of 15%. Now this benefit will be available for dividend received in financial year 2012-13 i.e. assessment year 2013-14. This provision is being extended for attracting repatriation of income earned by residents from investments made abroad.

4. **Assessing Officer to file appeal against order of Dispute Resolution Panel**

As per the present provision the Assessing Officer in the case of an assessee being a foreign company or a person in whose case a variation is proposed as a consequence to transfer pricing order is required to pass a draft assessment order giving an option to the assessee to file objections against the same before the Dispute Resolution Panel being a collegium comprising of three Commissioners of Income Tax. The Dispute Resolution Panel after hearing the assessee passes an order giving directions to the Assessing Officer to modify the

order as per its directions. Thereafter the Assessing Officer passes an order in accordance with the direction of Dispute Resolution Panel. Against such order the assessee has a right to appeal before the Income Tax Appellate Tribunal. The Assessing Officer does not have any such right. The Finance Bill, 2012 proposes to authorize the Assessing Officer to file appeal against the order of the Dispute Resolution Panel on the reasoning that the directions of Dispute Resolution are binding on him and consequently, the Dispute Resolution Panel order are not independent orders.

This proposed amendment goes against the basic premise and the nomenclature of the Dispute Resolution Panel. The proceedings before the Dispute Resolution Panel are extension of the assessment proceedings and Assessing Officer in line with that passes an assessment order. Filing an appeal against the assessment order itself shows the lack of confidence in the collegium of three Commissioners. Further there is no resolution of dispute atleast from the Department's side which was the reason for setting up of the Disputes Resolution Panel. If the working of Dispute Resolution Panel has been found to be not practicable the better course would be to restructure the same or wind up the same rather than making piecemeal amendments. The above amendment is proposed from 1st July, 2012 i.e., in respect of the objections filed by the assessee on or after 1st July, 2012. For existing objections filed by 30th June, 2012 before the DRP the AO shall have no right to appeal.

Further an amendment is being proposed to clarify that the DRP shall have a power to enhance the variations proposed by the Assessing Officer in the draft assessment order. This is being done to overcome the judgment delivered whereby it has been held that the power of the DRP is restricted to the issue raised in the draft assessment order only and it cannot raise a new issue. This amendment is being made retrospectively from 1st April, 2009 i.e. assessment year 2009-10.

5. **Clarificatory amendment in respect of search cases before Dispute Resolution Board**

The Finance Bill, 2012 proposes to align the time for completion of assessments in respect of search cases which are referred to DRP with that of the time period provided under Section 144C for a normal assessment. Similarly it is proposed

that the final assessment order passed by assessing officer in pursuance of the directions of DRP shall be appealable directly to ITAT. This amendment is also being made retrospectively from 1st October, 2009.

6. Amendment to overcome Supreme Court judgment in the case of Vodafone

The Finance Bill, 2012 proposes to make various amendments with retrospective effect to overcome the judgment delivered by the Supreme Court in the case of Vodafone. In this regard an Explanation is being inserted below Section 2(14) defining 'capital asset' to clarify that property includes and shall be deemed to have always included any rights in or in relation to Indian company, including rights of management or control or any other right whatsoever. This is being done as in the case of the Vodafone the Supreme Court has held that the rights of management or control are not independent right but are integral part of the share. Further amendment is being made to Section 9(1)(i) by inserting Explanation 4 after Explanation 3 retrospectively from 1st April, 1962 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' and Explanation 5 thereafter 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.

To take the above clarification to the logical end definition of transfer under Section 2(47) is also being amended by inserting Explanation 2 after Explanation 1 to clarify that 'transfer' includes and shall be deemed to have always included disposing off or parting with 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 (within entered into in India out outside India) or otherwise, notwithstanding, that such transfer of rights has been characterized as being affected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

The above Explanations are being inserted to overcome the Supreme Court's interpretation whereby it was held that in Section 9(1)(i) there is a legal fiction embedded. A legal fiction has a limited scope. A legal fiction cannot be expanded by giving purposive interpretation the result of which interpretation is to transform the concept of chargeability which is also under Section 9(1). Accordingly it was held that the scope of Section 9(1)(i) cannot be extended to cover indirect transfers of capital assets/property situated in India. It was further held that by doing so it would amount to changing the content and ambit of Section 9(1)(i). This is because Section 9(1)(i) applies to transfers of capital asset situated in India. The Supreme Court has further referred to the Direct Tax Code Bill, 2010 which proposes to tax income from transfer of shares of a foreign company by a non-resident where at any time during 12 months preceding the transfer, the fair market value of the asset in India, owned directly or indirectly, by the company, represents atleast 50% of the fair market value of all assets owned by the company. On the basis of this it was held by the Supreme Court that the existing Section 9(1)(i) does not cover indirect transfer which is expressly stated in Direct Tax Code Bill. The Finance Bill, 2012 in order to hold the buyer i.e. Vodafone responsible for payment of the tax due from the seller has also amended Section 195(1) so as to make a non-resident liable for deduction of tax at source in case it makes any payment to another non-resident which is chargeable to tax in India. This amendment is also being made retrospectively from 1st April, 1962. By amending definition of capital asset the right of management and control of an Indian company is being made a capital asset. By amending Section 2(47) the scope of transfer is being expanded so as to include disposing of any right and by amending Section 9(1) the transfer is being covered within the deemed income arising in India.

7. **Validation of demand and notices**

The Finance Bill, 2012 propose to create a validation clause so as to provide for validation of demand created under the income act as well as any notice sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause. In respect of income accruing through or form the transfer of the asset situate in India in consequent of transfer of share or shares of a company registered outside India or in

consequence of an agreement or otherwise outside India. This clause shall come into effect on the date on which finance bill receives the assent of the president.

8. **Section 9(1)(vi) being amended to expand the scope of definition of royalty**

The Finance Bill, 2012 proposes to add Explanation 4 in clause (vi) retrospectively from 1st day of June, 1996 to clarify that the transfer of all and or any right in respect of any right, property or information shall include and has always included transfer of all or any right for use or right to use a computer software including granting of license irrespective of the medium through which such right is transferred. A further Explanation 5 is being inserted to clarify that the royalty includes and has always included consideration in respect of any right, property or information, whether or not the possession or control of such right, property or information is with the payer or such right, property or information is used directly by the payer, the location of such right, property or information is in India. Further Explanation 6 is being inserted to clarify that the expression '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 are being proposed retrospectively from 1st June, 1976 i.e. assessment year 1977-78.

As a consequence thereof Section 149 is being amended to extend the time limit for issue of notice for reopening of assessment of a person who is treated as agent of a non-resident from the present time limit of two years to six years. It has been further provided in the memorandum that this extension of time limit being procedural in nature shall be applicable for already closed assessment as well.

9. Board being empowered to notify persons to obtain prior approval of assessing officer for determination of liability under Section 195

A new sub-section (7) is being inserted in Section 195 empowering the Board to notify persons who will be required to make an application to the assessing officer to determine the appropriate proportion of sum chargeable for determination of tax to be deducted at source irrespective of the fact whether the amount paid is chargeable or not under the provisions of the Income Tax

Act. Presently under Section 195 a person is required to deduct tax on payment to a non-resident when such sum is chargeable to tax. With this enabling provision the Board will be entitled to notify certain class of persons who will be required to get the determination done from the assessing officer irrespective of the fact that such sum is not chargeable to tax. This amendment is being made to partially overcome the judgment of the Supreme Court in the case of GE India Technology Centre (P) Ltd. Vs. CIT 193 Taxman234 (SC).

10. **Clarificatory amendment regarding meaning to a term under DTAA**

The Finance Bill, 2012 proposes to amend section 90 of the Act with effect from 1st, October 2009 and section 90 A from 1st June, 2006 to provide that any meaning assigned through a notification shall have the effect of clarifying the term for the date of coming in force of the agreement in which such term is used.

11. **Tax Residence Certificate not sufficient for availing benefits of the DTAA**

The Finance Bill, 2012 proposes to make a far reaching amendment in section 90 and 90A of the Act to clarify that the benefit of the DTAA available to a tax resident of the contracting country shall not be allowed merely on the basis of the tax residence certificate issued by such country. This will over rule the earlier position of the government particularly in the context of Mauritius DTAA whereby it was clarified by way of circular that tax residence certificate issued by Mauritius authorities is sufficient evidence and no further question shall be raised. It was this clarification which has led to the judgment in the case of Azadi Bachao Aandolan upholding Government clarification. Consequent to such amendment , issues may arise about exemption to Mauritius routed investment. This amendment however be effective prospectively from 1stApril, 2013 i.e. A.Y.2013-14.

12. **TPO being empowered to examine international transaction not reported by the assessee**

The Finance Bill, 2012 proposes to amend 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 is being made retrospectively from 1st June, 2002.

It has also been 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.

13. **Tolerance band of 5% under section 92C is not a standard deduction**

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. In order to bring clarity and resolving the controversy the proviso was substituted by Finance Act (No.2), 2009 to clarify that the 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. The Finance Bill, 2012 proposes to clarify 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. 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.

Further it is being clarified that the second proviso to section 92C shall also be applicable to all proceedings which were pending as on 01.10.2009 i.e. the date of coming in force of second proviso inserted by Finance (No.2) Act, 2009. This amendment will take effect retrospectively from 1st October, 2009.

14. **Due date for filing return of non corporate tax payers being extended**

The Finance Bill, 2012 proposes to extend the due date for filing return of income in case of non corporate tax payers, who have undertaken international transactions and are required to obtain and file Transfer Pricing report as per Section 92E of the Act to 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.

15. **Definition of international transaction**

The Finance Bill, 2012 proposes to amend section 92B of the Act, 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 reorganization, 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 from assessment year 2002-03.

16. **Scope of penalty under section 271AA being expanded**

The Finance Bill, 2012 proposes to widen the scope of penalty under section 271AA. As per the amended Section 271AA a penalty at the rate of 2% of the value of the international transaction shall be leviable if the taxpayer fails to maintain prescribed documents or information or; fails to report any

international transaction which is required to be reported, or; 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.

17. Assessment to be reopened if international transactions are found to be not reported

The Finance Bill, 2012 proposes 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.

18. Advance Pricing Agreement

The Finance Bill, 2012 proposes to introduce the mechanism of advance pricing agreement. 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. –

i. It empowers Board, to enter into an advance pricing agreement with any person undertaking an international transaction.

ii. 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.

iii. The manner of determination of arm's length price in such cases shall be any method including those provided in subsection (1) of section 92C, with necessary adjustments or variations.

iv. 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.

v. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.

vi. 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.

vii. 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.

viii. 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.

ix. 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.

x. 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.

xi. The person entering in to such APA shall necessarily have to furnish a modified return within a period of three month 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.

xii. 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.

xiii. 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.

xiv. 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

19. **General Anti Avoidance Rule (GAAR)**

The Finance Bill, 2012 proposes to introduce General Anti Avoidance Rule (GAAR).

A. The main features of GAAR 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.

H. MINIMUM ALTERNATE TAX

1. **Applicability of MAT on insurance, banking and electricity companies**

The Finance Bill, 2012 proposes to address the anomaly on the applicability of MAT provisions in respect of insurance, banking and electricity companies since these companies are not required to prepare its Profit and loss account as per provision of Companies Act. It is being proposed that the profit and loss account prepared as per the provisions of the respective Regulatory Act shall be the basis for computing the book profit under Section 115JB of the Act. This amendment is being made with effect from 1st April, 2013 i.e. assessment year 2013-14,

meaning thereby these companies are not liable for MAT for assessment year prior to assessment year 2013-14.

2. Amount standing in revaluation reserve in respect of revalued assets retired or disposed off to be added to book profit for MAT

The Finance Bill, 2012 proposes to provide that book profit for the levy of MAT shall be increased by the amount standing in the revaluation reserve in respect of the assets revalued which has been retired or disposed of if the same is not credited to the profit and loss account.

A consequential amendment is being made to delete the reference to Part III of the Schedule VI of the Companies Act consequent to revision of Schedule VI under the Companies Act.

I. TAX DEDUCTION AT SOURCE

1. Tax deduction at source on purchase of property

The Finance Bill, 2012 proposes to extend the scope of tax deduction at source by inserting a new Section 194LAA whereby any person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property other than agricultural land shall be required to deduct tax at the time of credit or payment at the rate of 1% of such sum where the consideration for the transfer of the immovable property Rs.50 Lac or more in the case of a specified area and Rs.20 Lac or more in case such immovable property is situated in any area other than the specified area. The consideration for this purpose shall be the value adopted for stamp duty. It will be important to note that the seller must have Permanent Account Number, as otherwise the tax will be required to be deducted at the rate of 20% in view of the provision of Section 206AA of the Act.

Further as per this provision the Registering Officer shall not register any document unless the transferee furnishes the proof of deduction of income tax in accordance with the provision of this Section in the prescribed form meaning thereby that tax so deducted is required to be deposited before registration of document. This may lead to a practical difficulty whereby the buyer may be required to part with the money even before registration of the document in his favour. Agricultural land which is exempt under Section 2(14) of clause (iii)

shall be outside the purview of this withholding tax. Specified area comprises of metropolitan cities of Mumbai, Delhi, Kolkatta, Chennai, Hyderabad, Bengaluru, Ahmedabad, Faridabad, Gurgaon, Gautam Budh Nagar, Ghaziabad, Gandhi Nagar and Secunderabad.

To ease the compliance, it has been proposed that a new single page challan form would be prescribed to make the payment for TDS under the above provisions. The transferee would fill in the details of the transferor, transferee, property and the amount of consideration in the challan form itself. The transferor would be able to take credit of the tax deducted on the basis of details submitted in the challan. .The transferee would not be required to obtain a Tax Deduction Account Number (TAN) or submit any return for the tax deposited. The above amendment shall be effective from 1st October, 2012.

2. **Directors sitting fee liable for TDS**

Provision of Section 194J are being widened to include payment of any remuneration or fee or commission by whatever name called other than on which tax deductible under Section 192 to a Director of a company for deduction of tax at source at the rate of 10%. The objective is to make liable for tax deduction at source any payment made to non whole time director like sitting fee etc. Payment to working directors is liable for tax deduction under section 192 being salaries. This amendment shall be effective from 1st July¸2012.

3. **Threshold for TDS on payment of interest on debenture**

Provisions of Section 193 are being amended to provide a threshold of Rs.5,000 in respect of interest on any debenture issued by a company, in which the public are substantially interested, to resident individual or HUF if the payment is made by account payee cheque. This amendment shall be effective from 1st July¸2012.

4. **Enhanced threshold for TDS on compensation for compulsory acquisition**

The provision of Section 194LA is being amended to increase the threshold for deduction of tax at source in respect of a payment for compulsory acquisition of immovable property other than agricultural land from Rs.1 Lac to Rs.2 Lac. This amendment shall be effective from 1st July¸2012.

5. **Extension of time limit for passing an order under Section 201(3)**

Provisions of Section 201(3) are being amended to provide an extended period of six years as against four years for passing an order under Section 201(1) for treating a person to be in default for failure to deduct the whole or any part of the tax where statement is not filed as referred to in Section 200. This amendment is also being made retrospectively from 1st April, 2010.

6. **Tax collection at source on cash sale of bullion and jewellery**

The Finance Bill, 2012 proposes to levy tax collection at source at the rate of 1% on sale of bullion and jewellery in cash if the sale consideration exceeds Rs.2 Lac. The collection has to be made from all buyers irrespective of its status if sale is made in cash. This amendment will be effective from 1st July, 2012. Similar amendment is being proposed to levy 1% tax collection at source on sale of coal, lignite and iron ore. However, such tax shall not be collected if the same are being purchased by the buyer for personal consumption or the buyer declares to be purchasing for the purposes of manufacturing, processing or producing article or thing. This may lead to tax collection at source from power generating company which purchases coal for generation of power since there is a dispute already on whether generation of power is production of an article or thing. It will be better if purchase of coal for power generation is also specifically excluded on the line as initial depreciation is being allowed in this Finance Bill itself. This amendment shall be effective from 1st July, 2012.

7. **Fee for delay in furnishing TDS/TCS statement being increased**

The Finance Bill, 2012 proposes to levy a fee of Rs.200 per day for late furnishing of TDS/TCS statement from the due date of furnishing of such statement to the date of furnishing of such statement. However, the total amount of fee shall not exceed the total amount of the tax deductible during the period for which TDS/TCS statement is delayed. Further in order to discourage incorrect information in TDS/TCS statement it has been proposed to levy a penalty ranging from Rs.10,000 to Rs.1,00,000 for furnishing incorrect information in the TDS/TCS statement.

Further a new Section 271H is being introduced for levy of penalty in case of failure to deliver the statement under Section 200(3) or under the proviso to

Section 206C(3) within the time prescribed or for furnishing incorrect information in such statement. The penalty leviable in such cases shall not be less than Rs.10,000 but may extend to Rs.1,00,000. However, no penalty shall be leviable for failure to deliver the statement within time if the statement had been delivered after payment of tax deducted within a period of one year from the time prescribed for filing such statement. Further, such penalty shall not be leviable if there was a reasonable cause for such failure. Consequent to this no penalty provision shall be leviable under Section 272A for late filing of TDS/TCS statement on or after 1st July, 2012.

8. Intimation of TDS/TCS processing statement to be appealable

The Finance Bill, 2012 proposes to give a statutory status of an order to the intimation of TDS and TCS processing statement so as to make such statement appealable under Section 246A and rectifiable under Section 154 of the Act. Further such intimation shall be deemed to be notice of demand under Section 156 of the Act.

J. MISCELLANEOUS

1. Partial dilution of cascading effect of dividend distribution tax

At present under Section 115 of the Income Tax Act dividend distribution tax is payable at the rate of 15% by a domestic company at the time of distribution of dividend. However, in case dividend is being paid by a holding company which has received dividend from its subsidiary and such subsidiary company has paid dividend distribution tax on such dividend and further the domestic company is not a subsidiary of any other company then such amount is deducted from the dividend distribution tax liability. The implication of this is that in case of multi-tier corporate structure the benefit of this deduction is not available with the result that the dividend paid out of the dividend received is again subjected to dividend distribution tax. The Finance Bill, 2012 proposes to delete the 3rd condition which requires that the domestic company should not be itself a subsidiary company of any other company. With the proposed amendment dividend paid out of the dividend received from a subsidiary company shall not be subjected again to dividend distribution tax. However, this amendment does not address the issue of cascading effect of dividend distribution tax. The multi-

tier corporate structure does not mean that there is always a relationship of holding vs. subsidiary company. In the multi-tier corporate structure it is a normal practice to control a company not necessarily through a single holding company but through various group companies. In such a situation the parent company may not be holding more than 50% shares itself. Thus there is a need to amend this provision on the line of Section 115BBD whereby dividend received from a foreign company in which it has a shareholding of 26% or more is eligible for concessional rate of tax of 15%.

2. **Person holding assets abroad to file return of income**

Provision of Section 139(1) requiring a person to file return of income is being amended so as to include a person being a resident, who otherwise is not required to furnish a return, in case he has any asset including any financial interest in any entity located outside India or signing authority in any account located outside India before the due date of furnishing the return. This amendment is being made from 1st April, 2012 i.e. assessment year 2012-13 with the result that such person shall be required to file return for the year ended 31st March, 2012.

3. **Processing of return not mandatory – an exercise to withhold refund**

The Finance Bill, 2012 proposes to make an amendment whereby processing of return consequent to which refunds are to be issued shall not be mandatory where it is proposed to issue notice under Section 143(2) for scrutiny of the return. This is being done to withhold refund which otherwise is required to be issued on processing of the return. Withholding of refund without there being a demand raises an unsupported presumption about income returned not being correct. There is every possibility that all heavy refund cases will be picked up for scrutiny to improve the collections by withholding the refund. This amendment shall be effective from 1st day of July, 2012.

4. **Reopening of assessment in relation to any asset located outside India**

The time limit for reopening of the assessment in case of income escaping assessment is being extended from the existing 6 years to 16 years where the income in relation to any asset including financial interest in any entity located

outside India chargeable to tax as escaped assessment. Further a deeming provision is being made that where a person is found to have any asset, including financial interest in any entity located outside India it shall be deemed to have escaped assessment. This amendment is being made with effect from 1st day July, 2012 with an Explanation 4 inserted to clarify that the provision of this section as amended shall also be applicable for any assessment year beginning on or before 1st day of April, 2012. In this regard it is to be noted that the assessment which on the date of the enactment under the existing law could be reopened. The period of only such assessments shall get extended to 16 years. The assessments which have become barred by limitation because of the existing law before the date of enactment of this amendment may not get revived back consequent to this amendment. This amendment will become law after 31st March, 2012 and accordingly assessments up to assessment year 2005-06 will stand barred by limitation.

5. Extended time limit for completion of assessment or reassessment where information is sought from tax authorities outside India

The provision of Section 153C and 153B are being amended to provide extended period for completion of assessment or reassessment up to one year where information is sought by making a reference to the foreign tax authorities as against six months of extended period presently available.

6. Assessment and reassessment to be completed by 31st March

Under the existing provisions introduced by the Finance Act, 2006 all assessments are to be completed by 31st December. The Finance Bill, 2012 proposes to go back to the earlier scheme whereby all assessments and reassessments will be completed by 31st March only. Consequently a regular assessment can be completed within a period of 24 months from the end of the assessment year. Similarly a reassessment under Section 148 can be completed within a period of one year from the end of the financial year in which notice under Section 148 is issued. This amendment is being made with effect from 1st July, 2012 with the result all the pending assessments as on 1st July, 2012 which were getting time barred on 31st December, 2012 will now be extended till 31st March, 2013. It appears that the earlier logic of preponing the assessment to December so as to collect the demand so created by March and to utilize the three months period for recovery has become irrelevant.

7. Notice for reassessment in case of search to be restricted to relevant assessment year

The Finance Bill, 2012 proposes to amend the provision of Section 153A and 153C, whereby all six assessment years preceding the search year gets automatically reopened, to enable the Central Government to notify cases or class of cases in which the assessing officer shall not issue the notice for initiation of proceedings for the preceding six assessment years. This may help to reduce the work load and futile exercise of reopening and completing the assessment even if there is no material for reassessment of the income. This amendment is proposed to be effective from 1st July, 2012.

8. Penalty on undisclosed income of current period found during search

The Finance Act, 2007 has split the provision for levy of penalty in respect of undisclosed income into two parts. The first part was undisclosed income pertaining to the period for which due date of filing return has expired and second part was pertaining to the period for which return is still to be filed. For the first part no option was given to surrender or disclose such income to avoid penalty of concealment under Section 271(1)(c). For the second part it was provided that no penalty shall be levied in case undisclosed income is admitted during the search. However, if such income is not admitted then penalty at the rate of 10% of the income shall be levied under Section 271AAA of the Act. The above amendment was made to deny the benefit of Explanation 5 to Section 271(1)(c) whereby no penalty was leviable for any assessment year in case an assessee is found to be owner of any money, bullion, jewellery, etc. during the course of the search and assessee surrenders such income and pays taxes thereon. The Finance Bill, 2012 proposes to delete the Section 271AAA in respect of searches conducted on or after 1st July, 2012. In place of this a new Section 271AAB is being inserted for levy of penalty in a case where search has been initiated on or after 1st July, 2012. As per this new Section penalty at the rate of 10% of the undisclosed income shall be levied in case undisclosed income is admitted during the search, and the assessee substantiates the manner in which the undisclosed income was earned and pays taxes before the due date of filing the return under Section 139(1) and under Section 153A of the Act. Penalty at the rate of 20% of the income shall be levied if the undisclosed

income is not admitted during the search but such income is disclosed in the return of income filed and pays taxes thereon before the due date of filing the return under Section 139 and Section 153A.

Further penalty at the rate of 30% to 90% shall be leviable in case the undisclosed income is assessed otherwise i.e. when it is not disclosed by the assessee either at the time of search or in the return filed.

The implication of the above amendment will be that the assessee will have three options in case of search. One to admit the undisclosed income at the time of the search then penalty at the rate of 10% of the undisclosed income shall be leviable. The second will be the assessee though not admitting the income in the search but including the same in the return filed post-search then penalty at the rate of 20% shall be leviable. And the third is where the assessee does not admit the undisclosed income nor discloses in the return and assessing officer still assess the undisclosed income then the penalty shall be 30% to 90% of the undisclosed income i.e. equivalent to 100% of the tax to 300% of the tax leviable under Section 271(1)(c). This provision shall be applicable in respect of the search which has been initiated on or after 1st July, 2012.

9. **Special Courts for trial of income tax offences**

The Finance Bill, 2012 proposes to constitute Special Courts for expeditious trial of offences committed under the Income Tax Act. Further the threshold for lower imprisonment is being increased from Rs. One Lac to Rs. Twenty Five Lac. The period of lower imprisonment is being reduced from three years to two years so as to enable summary trial of such offences. Accordingly the punishment for tax evasion which does not exceed Rs.25 Lac shall be a term which shall not be less than three months but which extent to two years with fine. For higher offences i.e. where tax evasion is Rs.25 Lac or more the punishment can be for a term which shall not be less than six months but which extent to seven years with fine. The above amendment shall be effective from 1st day of July, 2012.

10. **Senior citizens need not pay advance tax**

The Finance Bill, 2012 proposes to exempt the senior citizens who are resident of India from the obligation to pay advance tax provided there is no income from business or profession by introducing sub-section (2) in Section 207 of the Act.

Further the age for being eligible as senior citizen under this clause shall be 60 years or more at any time during the previous year. This provision is being made effective from 1st April, 2012. In the memorandum explaining the provision in the Finance Bill, 2012 it has been stated that the senior citizen would not be required to pay advance tax for the financial year 2012-13 whereas in the notes on clauses appended to the Finance Bill it has been stated that the amendment will take effect retrospectively from 1st April, 2012 meaning thereby that it shall be applicable for assessment year 2012-13.

11. **Senior citizen age to be 60 years or more for filing declaration of non-deduction of tax**

The age for determining the eligibility as senior citizen for submitting declaration in Form 15G and 15H so as to avoid deduction of tax at source under Section 197A is proposed to be reduced from 65 years to 60 years.

12. **Liability to pay advance tax in case of deductor does not deduct tax at source**

The Finance Bill, 2012 proposes to put an obligation on the tax payer to pay advance tax in respect of the income also which is liable for tax deduction at source but the same has not been actually deducted by the deductor. This amendment is being made to overcome the judicial decisions whereby it has been held that an assessee is not liable to pay interest under Section 234B and 234C in respect of the income which is liable for tax deduction at source. This amendment is being made applicable from 1st April, 2012. In the memorandum explaining the provision of the Finance Bill it has been stated that advance tax shall be payable for the financial year 2012-13 whereas in the notes on clauses it has been stated that this amendment is retrospective meaning thereby applicable for assessment year 2012-13. This amendment will have a practical problem. A person may not be knowing before the close of the year that there is a failure by the deductor to deduct tax at source on the income which is to be credited on 31st March. By the time the due of payment of advance tax would stand expired resulting liability to pay interest under Section 234B and 234C. Further it is a case of double taxation as deductor is liable to pay interest from the date the tax was deductible till the date of filing return by the deductee as per the amendment proposed to Section 201(1A) in this very Finance Bill, 2012

and the deductee is being made liable to pay interest on the same amount under Section 234B and 234C of the Act for the same period.

13. **Levy of interest under Section 234D with effect from 1st June, 2003**

The Finance Bill, 2012 proposes to insert a retrospective amendment in respect of interest chargeable under Section 234D on the excess refund granted to the assessee on processing of return which is required to be paid back consequent to the demand being created in regular assessment. Section 234D was inserted with effect from 1st June, 2003. The Court in the case of DIT vs. Jacabs Civil Incorporated (2010) 330 ITR 578 (Del) has held approving the judgment of the Special Bench of the ITAT Delhi in the case of ITO vs. Ekta Promoters Pvt. Ltd. 117 TTJ 289 (Del) (SB) that the provision of Section234D shall be applicable from assessment year 2004-05 only. As per the proposed amendment interest under Section 234D shall be leviable in respect of all proceedings completed on or after 1st June, 2003 irrespective of the assessment year to which it pertains.

14. **Fee for filing application before Authority for Advance Ruling being increased**

The Finance Bill, 2012 proposes to increase the fee for filing application before the Authority for Advance Ruing from Rs.2,500 to Rs.10,000. Further the Board has been given power to increase this fees in future as may be prescribed by Rules. This amendment shall be effective from 1st July, 2012.

15. **Assessment in search cases can be in individual name despite search warrant in joint name**

The Finance Bill, 2012 proposes to insert a clarificatory amendment retrospectively from the 1st day of April, 1976 to provide that where a search warrant has been issued mentioning therein the name of more than one person the assessment or reassessment can be made separately in the name of each of the persons mentioned in such search warrant. This amendment is being made to overcome the judgment delivered by the Allahabad High Court CIT vs. Smt Vandana Verma (2010) 330 ITR 533 (All) whereby it was held that if search warrant is in the name of more than one person then assessment cannot be made individually in the absence of any search warrant in individual name.

WEALTH TAX

1. **Increase of threshold of Gross Salary from Rs. 5 Lakh to Rs. 10 Lakhs**

As per this amendment Wealth Tax shall not be payable by an employer in respect of residential houses which are allotted to an employee or an officer or a whole time director whose gross salary is less than Rs.10 Lac per annum. This amendment shall be effective from 1st April, 2012.

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