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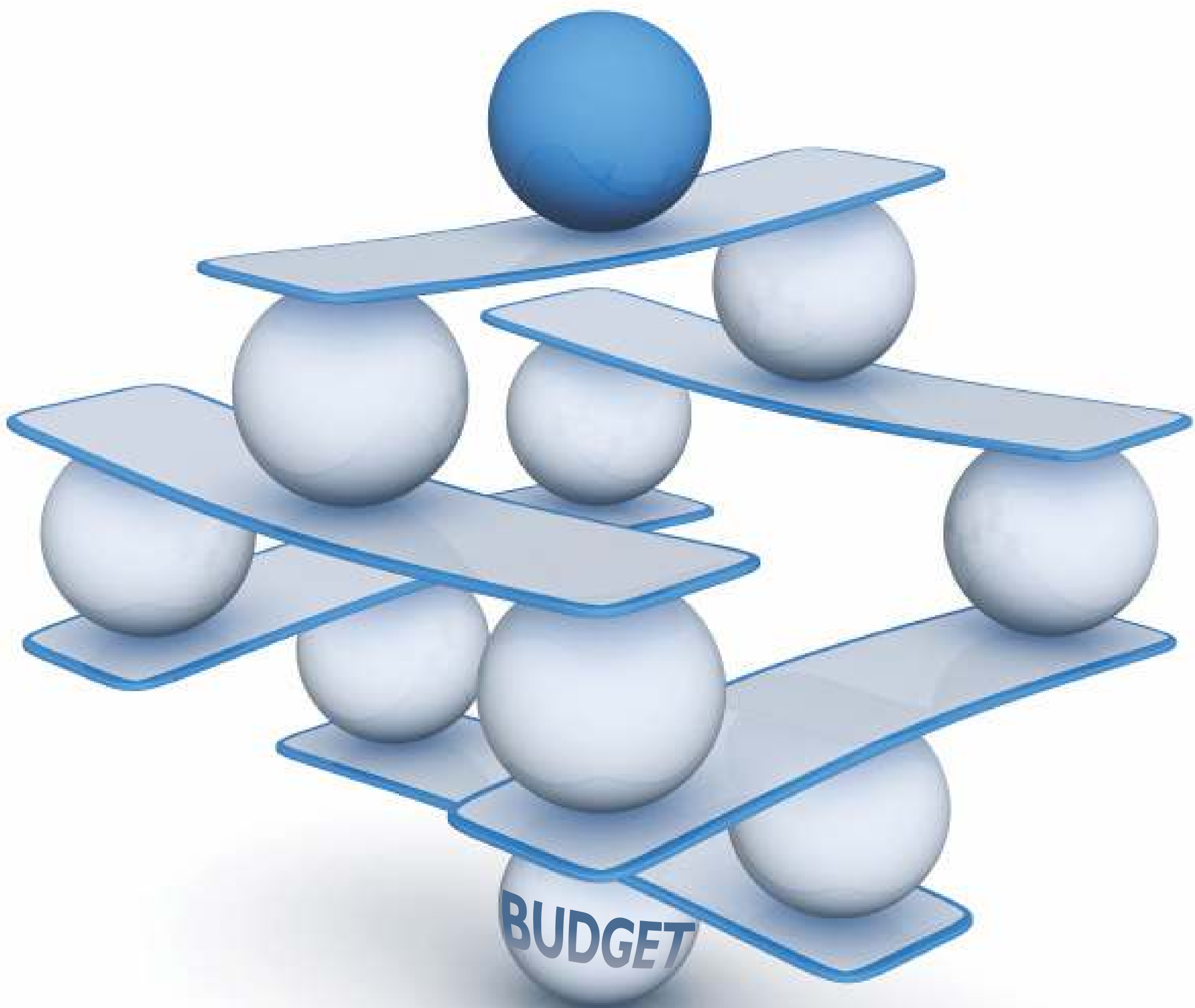
An Overview of

THE FINANCE BILL 2012



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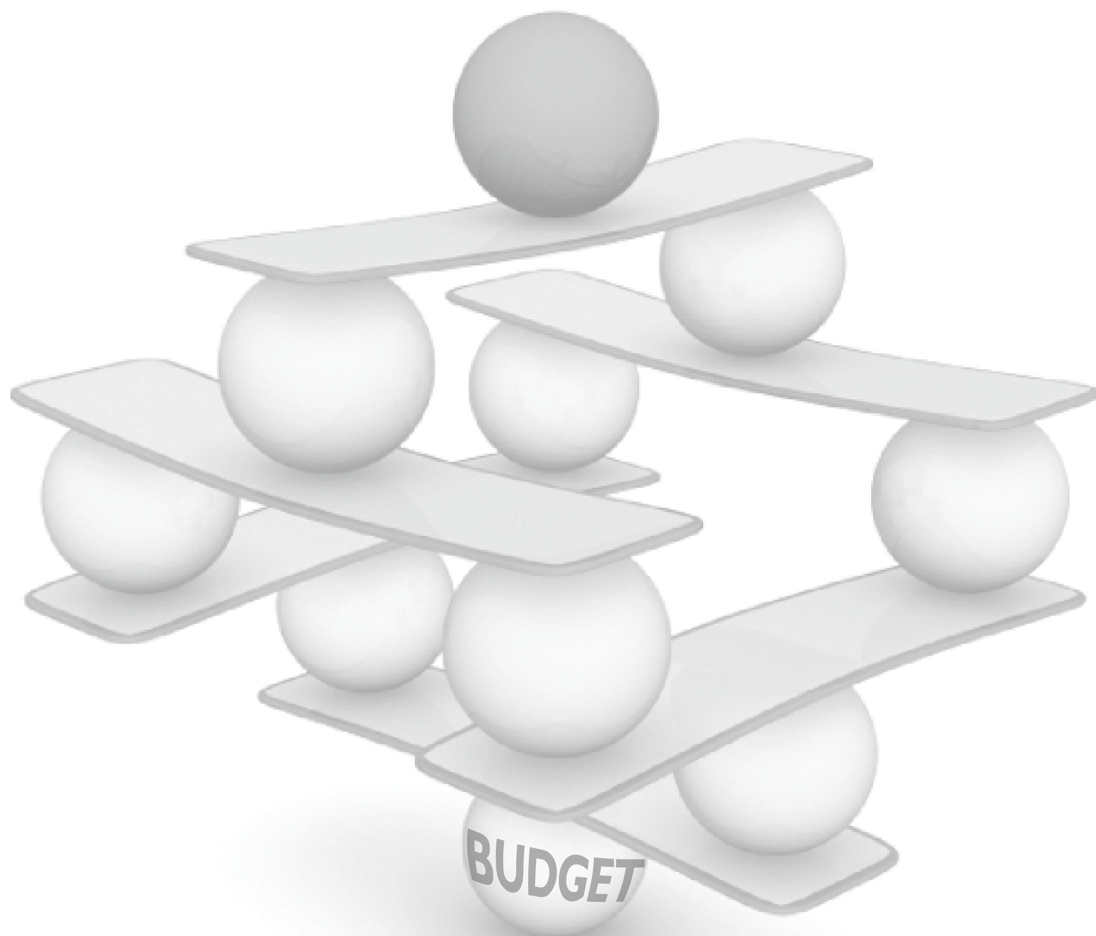

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Unless otherwise specifically mentioned, the amendments proposed are to be effective from A.Y. 2013-14 and are therefore applicable with respect to income arising on or after 1st April 2012. Specific mention is made at the relevant places, when the effective date of a proposed amendment is other than 1st April 2012. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Finance Bill, 2012 ("the Bill")

Any reference to the sections, unless otherwise stated, is to the sections of the Income Tax Act, 1961 ("the Act")

A. RATES OF TAX

In respect of rates of tax, the following changes have been proposed in the Bill:

- Increase in basic exemption limit by ₹ 20,000/- in case of Individual assessee.
- Deduction of interest on saving bank account upto ₹ 10,000.
- Higher basic exemption for Women assessee abolished.
- There is no change in tax rates for Firms, LLP, Domestic Companies, Companies Other than Domestic Companies, Co-operative Societies, etc.
- Scope of Alternate Minimum Tax is extended from LLP to all person other than companies.
- There is no change in applicability of Education Cess and Secondary & Higher Education Cess (3%) to all classes of assesses.
- The rate of Securities Transaction Tax on delivery based transactions has been reduced to 0.100% from 0.125%.
- There is no change in rates of Dividend Distribution Tax on Companies.
- There is no change in rates & threshold limit of Wealth Tax.
- Remuneration / fee / commission of non-executive / independent director are subject to withholding tax of 10%.
- Concessional rate of tax of 5% on interest payable on ECB by specific companies
- Tax to be collected at source on receipt of cash against sales of bullion and jewellery @1% other than purchase of gold for personal consumption
- Payment made to non-resident entertainer is now subject to tax at the rate of 20%.

The proposed income tax rates (including Surcharge, Education Cess and Secondary and Higher Education Cess) for A.Y. 2013-14 have been given below in **Table 1** for ready reference. These income tax rates are applicable on any income earned during the period from 1st April, 2012 to 31st March 2013.

The rates of Dividend Distribution Tax, Securities Transaction Tax and Wealth Tax are given in **Table 2**.

TDS & TCS rates are contained in Table **3.**

TABLE – 1 (Income Tax Rates)

Particulars	Threshold limit for Surcharge ₹	Tax Rates	
		Without Surcharge	With Surcharge
Individual, HUF, AOP & BOI	N.A.		
Resident & Non-Resident Assessee			
Upto ₹ 2,00,000		Nil	N.A.
₹ 2,00,001 to ₹ 5,00,000		10.30%	N.A.
₹ 5,00,001 to ₹ 10,00,000		20.60%	N.A.
₹ 10,00,001 onwards		30.90%	N.A.
Resident Senior Citizen Assessee aged from 60 years to 79 years			
Upto ₹ 2,50,000		Nil	N.A.
₹ 2,50,001 to ₹ 5,00,000		10.30%	N.A.
₹ 5,00,001 to ₹ 10,00,000		20.60%	N.A.
₹ 10,00,001 onwards		30.90%	N.A.
Resident Senior Citizen Assessee aged 80 years & above			
Upto ₹ 5,00,000		Nil	N.A.
₹ 5,00,001 to ₹ 10,00,000		20.60%	N.A.
₹ 10,00,001 onwards		30.90%	N.A.
Partnership Firm	N.A.	30.900%	N.A.
Limited Liability Partnership	N.A.	30.900%	N.A.
Domestic Company (Other than Foreign Company)	1,00,00,000	30.900%	32.445%
Company other than Domestic Company (Foreign Company)	1,00,00,000	41.200%	42.024%
Local Authority	N.A.	30.900%	N.A.
Co-operative Society			
Upto ₹ 10,000		10.300%	N.A.
₹ 10,001 to ₹ 20,000		20.600%	N.A.
₹ 20,001 onwards		30.900%	N.A.
Minimum Alternate Tax			
Domestic Company	1,00,00,000	19.055%	20.008%
Company other than Domestic Company	1,00,00,000	19.055%	19.436%
Alternate Minimum Tax			
Any person including LLP (other than Company) claiming certain deductions	N.A.	19.055%	N.A.

Particulars	Threshold limit for Surcharge ₹	Tax Rates	
		Without Surcharge	With Surcharge
STCG on Listed Securities			
Individual, HUF,AOP & BOI	N.A.	15.450%	N.A.
Partnership Firm / LLP	N.A.	15.450%	N.A.
Domestic Company	1,00,00,000	15.450%	16.223%
Company other than Domestic Company	1,00,00,000	15.450%	15.759%
STCG on assets other than listed securities			
Individual, HUF,AOP & BOI	N.A.	As per slab	As per Slab
Partnership Firm / LLP	N.A.	30.900%	N.A.
Domestic Company	1,00,00,000	30.900%	32.445%
Company other than Domestic Company	1,00,00,000	41.200%	42.024%
LTCG on assets other than Listed Securities			
Individual, HUF,AOP & BOI	N.A.	20.600%	N.A.
Partnership Firm / LLP	N.A.	20.600%	N.A.
Domestic Company	1,00,00,000	20.600%	21.630%
Company other than Domestic Company	1,00,00,000	20.600%	21.012%
Rates of tax on Specific Income			
Interest from Infrastructure debt fund received by Non-Resident individual (section 115A)	N.A.	5.150%	N.A.
Interest from Infrastructure debt fund received by Non-Resident other than individual (section 115A)	1,00,00,000	5.150%	5.253%
Interest from External Commercial Borrowing (ECB) payable by specified company to Non-Resident (section 115A)	1,00,00,000	5.150%	5.253%
Dividend Received by Indian Company from Foreign Subsidiary (section 115BBD)	1,00,00,000	15.450%	16.223%

TABLE – 2 (Other Direct Tax Rates)

Particulars	Tax Rates
Dividend / Income Distribution Tax	
By Domestic Company (section 115-O)	16.223%
By Money Market Mutual Fund or Liquid Fund (section 115-R)	
For income distributed to Individual / HUF	27.038%
For income distributed to others	32.445%
By Other Mutual Funds (section 115-R)	
For income distributed to Individual / HUF	13.518%
For income distributed to others	32.445%
Securities Transaction Tax	
Delivery based purchase of an Equity Share in Company or a Unit of an Equity Oriented Fund (upto 30.06.12)	0.125%
Delivery based purchase of an Equity Share in Company or a Unit of an Equity Oriented Fund (w.e.f. 01.07.12)	0.100%
Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund (upto 30.06.12)	0.125%
Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund (w.e.f. 01.07.12)	0.100%
Non-Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund	0.025%
Derivatives (Future & Options)	0.017%
Sale of option in securities where option is exercised	0.125%
Repurchase of Units of an Equity Oriented Fund	0.250%

Particulars	Threshold limit ₹	Tax Rates
Wealth Tax (Individual, HUF & Company)	30,00,000	1.000%

TABLE – 3 TDS RATES FOR THE A.Y. 2013-14 (in%)

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI / AOP	Firm / LLP	Co-operative Society/Local Authority	Company
192	Salary	As per Slab	Normal Rate (Incl. cess)	N.A.	N.A.	N.A.
193	Interest on Securities					
	(1) Interest on Debentures or Securities (Listed) (upto 30.06.2012)	2,500*	10.00	10.00	10.00	10.00
	Interest on Debentures or Securities (Listed / Unlisted) (w.e.f. 01.07.2012)	5,000**	10.00	10.00	10.00	10.00
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10.00	10.00	10.00	10.00
	(3) Any Other Interest on Securities (Unlisted)	0	10.00	10.00	10.00	10.00
194	Dividend other than dividend covered by section 115-O	2,500*	10.00	10.00	10.00	10.00
194A	Interest other than Interest on Securities (cases other than below)	5,000	10.00	10.00	10.00	10.00
	Where the payer is					
	(1) Banking Company	10,000	10.00	10.00	10.00	10.00
	(2) Co-operative Society engaged in banking business	10,000	10.00	10.00	10.00	10.00
	(3) Post Office under a deposit scheme framed by Central Government	10,000	10.00	10.00	10.00	10.00

(* in case of resident individual only) **(** in case of resident individual / HUF only)**

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI / AOP	Firm / LLP	Co-operative Society/Local Authority	Company
194B	Winning from Lotteries	10,000	30.00	30.00	30.00	30.00
194BB	Winnings from Horse Races	5,000	30.00	30.00	30.00	30.00
194C	Payments to Contractors					
	(1) In case of Contractors / Sub-Contractor / Advertising	30,000[1]	1.00	2.00	2.00	2.00
	(2) Contractor / Sub-Contractor in Transport Business	30,000[1]	NIL[2]	NIL[2]	NIL[2]	NIL[2]
194D	Insurance Commission	20,000	10.00	10.00	10.00	10.00
194E	Non-Resident Sportsman / Sports Association (upto 30.06.2012)	0	10.00	10.00	10.00	NA
	Non-Resident Sportsman / Sports Association / Entertainer (w.e.f. 01.07.2012)	0	20.00	20.00	20.00	NA
194EE	Deposits under NSS to Resident / Non-Resident	2,500	20.00	20.00	20.00	NA
194F	Repurchase of units of Mutual Fund / UTI from Resident / Non-Resident	0	20.00	20.00	20.00	NA

[1] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceed ₹75,000/- then tax will be required to be deducted even where individual transaction is less than the threshold limit of ₹ 30,000

[2] Nil rates will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 20%. (Transporter means persons engaged in plying, hiring, and leasing of Goods Carriages).

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI / AOP	Firm / LLP	Co-operative Society/Local Authority	Company
194G	Commission on Sale of lottery tickets to Resident /Non-Resident	1,000	10.00	10.00	10.00	10.00
194H	Commission or Brokerage to Resident	5,000	10.00	10.00	10.00	10.00
194I	Rent to Resident					
	(a) Rent for Machinery / plant / equipment	1,80,000	2.00	2.00	2.00	2.00
	(b) Rent for other than in (a)	1,80,000	10.00	10.00	10.00	10.00
194J	Fees payable to resident for Professional / Technical Services to Resident	30,000	10.00	10.00	10.00	10.00
	Remuneration, fees, commission paid to Director which is not in nature of Salary (w.e.f. 01.07.2012)	0	10.00	NA	NA	NA
194LA	Compensation to Resident on acquisition of immovable property (upto 30.06.2012)	1,00,000	10.00	10.00	10.00	10.00
	Compensation to Resident on acquisition of immovable property (w.e.f. 01.07.2012)	2,00,000	10.00	10.00	10.00	10.00
194LAA	Payment on transfer of certain immovable properties (other than agriculture land) (w.e.f. 01.10.2012)					
	(a) Properties situated within Specified area	50,00,000	1.00	1.00	1.00	1.00

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI / AOP	Firm / LLP	Co-operative Society/Local Authority	Company
	(b) Properties situated other than Specified Area	20,00,000	1.00	1.00	1.00	1.00
194LB	Interest paid to Non-Resident by Notified Infrastructure Debt	0	5.00	5.00	5.00	5.00
194LC	Interest paid by Specified Company to Non-Resident (w.e.f. 01.07.2012)	0	5.00	5.00	5.00	5.00
195	Payment of Other Sums to Non-Resident (Other than specified in section 194LB)	Rate Specified under Part II of First Schedule of Bill, including applicable surcharge and education cess subjected to rate specified under applicable DTAA				
196B	Income from units (including long term Capital Gain on transfer of such units) to an offshore fund	0	10.00	10.00	10.00	10.00
196C	Income from foreign currency bonds or GDR of Indian Company	0	10.00	10.00	10.00	10.00
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20.00	20.00	20.00	20.00

Note:

a) In order to strengthen the PAN Mechanism, any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates: (a) prescribed in the Act; (b) at the rate in force i.e. the rate mentioned in the Finance Act; or (c) of 20%

b) On applicability of section 94A, the tax is required to be deducted at source at the higher rate of 30%
c) All rates of TDS for Non-Resident assessee shall be increased by applicable Surcharge, Education Cess and Secondary and Higher Education Cess.

TCS RATE FOR THE A.Y. 2013-14 (in %)

Section	Nature of Payment	Threshold Limit in ₹	Individual / HUF/ BOI / AOP	Firm / LLP	Co-operative Society/Local Authority	Company
206C	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.00	1.00	1.00	1.00
	Timber obtained by any mode and any other forest produce	0	2.50	2.50	2.50	2.50
	Scrap	0	1.00	1.00	1.00	1.00
	Parking lot /Toll plaza / Mining and Quarrying	0	2.00	2.00	2.00	2.00
	Tendu leaves	0	5.00	5.00	5.00	5.00
	Minerals, being coal or lignite or iron ore	0	1.00	1.00	1.00	1.00
206C(1D)	Cash Sale of Bullion & Jewellery (consumption for personal use by buyer is excluded) (w.e.f. 01.07.2012)	2,00,000	1.00	1.00	1.00	1.00

B. PERSONAL TAXATION

B.1 Exemption of sum received on life insurance policy

All the sum received or allocated by way of bonus on life insurance policy are exempt from tax and not to be included in the total income according to section 10(10D). One of the exceptions of the said section i.e. Section10(10D)(c) excludes the coverage of sums received from an insurance policy whose premium is in excess of 20% of the sum assured which shall be included in the total income.

It is proposed to amend the said section by adding new sub clause (d), the period for the inclusion of the sum received from such policies having the excess premium of 20% of sum assured has been restricted to 31st March 2012, and any sum received from the life insurance policy issued on or after 1st April 2012, received from an insurance policy whose premium is in excess of 10% (reduced from 20% to 10%) of the sum assured shall be included in the total income.

However, it must be kept in mind that any sum received from the policy under the revised provision i.e. sub clause (d) shall not be included in the total income of the heirs in case of death of an insured person.

B.2 Deduction for Life Insurance Premium

As per the existing provision of section 80C of the Act, the assessee being an individual or a Hindu Undivided Family is eligible to get the deduction of Life Insurance Premium paid if the premium amount payable for a year is not more than of 20% of sum assured under the policy. Further the amount received on maturity of such LIC Policy is also exempt U/s. 10(10D).

The Bill proposes to amend the provision of section 10(10D) by stating that no such exemption is available if the policy premium is not more than 10% of the sum assured in respect of policy issued on or after 01.04.2012. Consequential amendment is proposed in section 80C to provide that benefit of investment in such type of policy is also not allowed if the policy premium is more than 10% of the sum assured in respect of policy issued on or after 01.04.2012.

B.3 Deduction for Mediclaim Insurance

As per existing provision of section 80D, deduction upto a sum of ₹ 15,000/- on premium paid for insurance on the health (Mediclaim) or any contribution made to the Central Government Health Scheme of the assessee and his family is allowed. A further deduction of ₹ 15,000/- is admissible if the medical insurance is taken for parents of the assessee. It is also provided in the existing provision that if the insured is a senior citizen, the said limit will become ₹ 20,000.

It is now proposed that if any payment is made on account of preventive health check-up of the assessee or his family then the same would be also eligible for the deduction U/s. 80D upto ₹ 5,000/- within the existing limit of deduction. This amount can be paid in cash.

Such amendment also reduces the age limit for senior citizen from 65 years to 60 years for the claim of deduction U/s. 80D and 80DDB.

B.4 Deduction in respect of donation

As per the existing provision of section 80G of the Act, an assessee is eligible to get deduction with respect to donations made to certain funds, charitable institutions, subject to certain conditions. The donation can be made in any mode other than in kind.

It is proposed to insert new sub-section (5D) of section 80G of the Act, to provide deduction in respect of donation of any sum exceeding ₹ 10,000/- to the assessee in computing the total income, only if the sum is not paid by cash.

As per the existing provision of section 80GGA of the Act, the assessee whose gross total income is not chargeable under the head profit and gains of business or profession is entitled to deduction in respect of donations for scientific research association approved by prescribed authority or rural development. The donation can be made in any mode.

It is proposed to insert new sub section (2A) of section 80GGA of the Act, to provide deduction in respect of donation of any sum exceeding ₹ 10,000/- to the assessee in computing the total income, only if the sum is not paid by cash.

B.5 Deduction on interest on savings bank account

In order to provide relief to small investor, the Bill proposes to introduce new section 80TTA of the Act to provide deduction aggregating to ₹ 10,000/- to individual and HUF assessee, by way of interest on deposit in a savings account with –

a) a banking company to which the Banking Regulation Act, 1949 applies;
b) a co – operative society engaged in carrying on business of banking; or
c) a post office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898

It is further proposed that if the deposit in a saving account is held by, or on behalf of firm, an association of persons or body of individual, no deduction shall be allowed under this section to the firm or to the Partner or member in respect of such sum.

It must be kept in mind that interest on Time Deposits [Fixed Deposits] is not eligible for the deduction.

B.6 Definition of "Relative" for HUF

Section 56(2)(vii) provides for donee based taxation of gifts in the hands of individual or HUF including transfer of any property for inadequate consideration. The said provision also specifically exclude from taxation the gifts or deemed gifts received from a relative. The existing definition of relative includes the cases of only individuals and does not include in its purview gifts received from or by an HUF. Therefore, all the gifts received by an HUF were taxable in the hands of HUF.

An amendment is proposed for extending the definition of relative to include in relation to an HUF any member of an HUF. Accordingly any gift received by an HUF from its member or any gift received by any member from HUF is not chargeable to tax in the hands of the recipient.

Any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed income. However the said provision is not applicable when such amount is received from a relative. The scope of relative is specified with regards to individual and not with regard to an HUF.

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

Attention is invited to the provisions of section 64 (2) of the Act providing for clubbing of income from any property transferred by a member of HUF to the HUF for inadequate consideration. While the gift would not be chargeable to tax in the hands of the recipient HUF, the provisions of section 64 (2) would continue to apply and the individual member throwing the property in common hotchpotch will still be liable to be taxed on the income arising from such property.

C. BUSINESS INCOME

C.1 Benefit of additional depreciation to power industries

As per the provision of section 32(1)(ia) any assessee who is engaged in the business of manufacture or production of any article or thing is entitled to claim additional depreciation of 20% of the actual cost of new plant and machinery in the year of acquisition and installation.

To boost new investment in power sector the Bill proposes to extend the benefit of additional depreciation to the assessees engaged in the business of generation or generation and distribution of power.

C.2 Weighted deduction for scientific research

Section 35(2AB) provides that a weighed deduction of 200% of expenditure (including capital and revenue expenditure but excluding expenditure on land and building) incurred on approved in-house scientific research and development facility shall be available. Such deduction is available to a company which is engaged in the business of manufacture or production of any article or things or the business of bio-technology. Presently the benefit of such deduction is available only in respect of expenditure incurred upto 31st March, 2012.

To boost expenditure on Research and Development in the corporate sector the Bill proposes to extend the last date for eligible expenditure to 31st March, 2017. Accordingly, now the expenditure incurred on in house R & D facility will be eligible for weighted deduction of 200 %, if incurred upto 31st March, 2017.

C.3 Deduction in respect of capital expenditure on specified business

(a) Addition of 3 new businesses for eligibility

Section 35AD provides for investment linked deduction in respect of capital expenditure incurred on specified businesses. Under this provision, entire capital expenditure incurred by an assessee for the specified business [excluding land, goodwill and financial instruments] are allowed as deduction in the year of incurring such expenditure. Under the existing provisions there are 8 businesses. To this list of 8 businesses, the following 3 businesses are sought to be added for the investment linked deduction, provided these businesses commence its operations on or after 1st April, 2012:

a) business of setting up and operating an inland container depot or container freight station notified or approved under the Customs Act, 1962;
b) business of Bee-keeping and production of honey and beeswax;
c) business of setting up and operating a warehousing facility for storage of sugar.

(b) Introduction of weighted deduction for some businesses

To give further impetus to investment in the following businesses, a provision is sought to be introduced for granting weighted deduction of 150% of the capital expenditure [excluding expenditure on land, goodwill or financial instrument] provided such businesses commence its operations on or after 1st April, 2012:

a) Cold Chain Facilities
b) Warehousing facilities for storage of agricultural produce
c) Building or operating anywhere in India a hospital with at least 100 beds for patients
d) Developing and building a housing project under affordable housing scheme
e) Production of fertilizer in India

(c) Special Provision for Hotel

As per the original provisions of section 35 AD of the Act, a 2 star hotel was eligible for deduction U/s. 35 AD. However, there was no clarity about what happens if this hotel, while being continued to be owned by the assessee, is given to some other person for operating it. It is now provided that the owner of a hotel will continue to get the benefit of section 35 AD, even where operation of a hotel is given to some other person.

C.4 Deduction for expenditure incurred on agriculture extension projects

Agricultural extension is the function of providing need- and demand-based knowledge in agronomic techniques and skills to rural communities in a systematic, participatory manner, with the objective of improving their production, income, and (by implication) quality of life. Extension is essentially education and it aims to bring about positive behavioral changes among farmers.

In order to boost the agriculture extension service industry in India, it is proposed to insert new section 35CCC to allow weighed deduction of 150% of the expenditure on notified agriculture extension project.

C.5 Deduction for expenditure on skill development project

The Department of Industrial Policy & Promotion (DIPP) has announced direct tax incentive for expenditure incurred for skill development project to encourage private sector to set up their own institution to develop skill.

In order to incorporate such tax benefit under the Act the Bill proposes to insert new section 35CCD to allow weighted deduction of 150% of expenditure (other than expenditure on land and building) on notified skill development project.

C.6 Disallowance of business expenditure on account of non-deduction of tax

Presently if the assessee fails to deduct tax (which is otherwise deductible at source under the Act) on payment of interest, commission, brokerage, rent, royalty, fees for professional and technical service, payment to contractor/subcontractor after deduction if the assessee fails to pay such amount on or before the due date of filing of return of income, such expenditure is not allowable as deduction U/s. 40(a)(ia) of the Act.

As per several decisions rendered, if the payee of the sum had paid necessary tax on the amount on which the tax was required to be deducted at source, the payer was not required to deduct the tax thereon. However, there was no provision in section 40(a)(ia) of the Act to grant deduction of the amount in such an event.

The Bill proposes to provide relaxation from above stringent provisions. The Bill provides that if the payee has already included the income for computing his income and paid necessary tax thereon then tax shall not be recovered from the assessee. This is sought to be provided by amending the provisions of section 201 of the Act.

It is further provided that if the assessee is not deemed to be assessee in default under the proposed first proviso to section 201(1), on account of necessary compliance by the assessee, then no disallowance U/s. 40(a)(ia) shall be made. It may be mentioned that as per the proposed first proviso to section 201(1) an assessee will not be considered as assessee in default if following conditions are fulfilled:

a) The recipient payee has furnished his return of income U/s. 139.
b) The recipient payee has taken into account such sum for computing income in such return of income.
c) The recipient payee has paid the tax due on the income declared by him in such return of income.
d) The payer furnishes a certificate stating the above facts from a Chartered Accountant in prescribed form.

If all the above conditions are satisfied, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the recipient payee. In such situation no disallowance can be made U/s. 40(a)(ia).

It is to be noted that the above proposed beneficial provision is not made applicable in respect of payment to non-resident.

It would have been advisable to make this provision retrospective (like many other provisions of the Act which have been made retrospective in this Bill).

We are however of the view that the courts are likely to apply this provision even for pending assessment / appeals.

C.7 Enhancement in limit for Tax Audit

Presently any person carrying on business or profession is required to get his accounts audited if his turnover exceeds the threshold limit of ₹ 60 lacs for business and ₹ 15 lacs for profession.

In view of increased level of business and to reduce the compliance burden of small businessmen and professionals it is proposed to raise the said threshold to ₹ 1 crore for business and ₹ 25 lacs for profession.

C.8 Presumptive taxation for small businesses

Section 44AD was substituted by the Finance (No.2) Act, 2009 w.e.f. 01.04.2011 to provide for a presumptive income scheme for small businesses having turnover or gross receipt not more than ₹ 60 lacs. As per the said provision a sum equal to 8% of the total turnover or gross receipts is deemed to be the profits and gains from business unless the assessee shows lower income by getting books of accounts audited.

The Bill proposes to raise the threshold limit to ₹ 1 crore to cover more number of small businesses in its purview w.e.f. 01.04.2013.

Further the Bill also proposes to provide that the benefit of Section 44AD would not apply to:

a) Persons carrying on profession as referred to in section 44 A (1)
b) Persons earning income in the nature of commission / brokerage; or
c) A person carrying on any agency business

This exclusion is made applicable with retrospective effect from A.Y. 2011-12.

C.9 Income of Venture Capital Fund

The current explanation to this provision defines the venture capital undertaking as any domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of nanotechnology, information technology relating to hardware and software development, seed research and development, bio-technology, research and development of new chemical entities in the pharmaceutical sector, production of bio-fuels, building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand, developing or operating and maintaining or developing, operating and maintaining any infrastructure facility or dairy or poultry industry.

As per the proposed amendment the above definition is to be substituted with the definition given in the SEBI (Venture Capital Funds) Regulations, 1996 made under the SEBI Act, 1992 which explains, "venture capital undertaking" as a domestic company:

(i) Whose shares are not listed on a recognized stock exchange in India;
(ii) Which is engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by the Board with the approval of the Central Government by notification in the Official Gazette in this behalf.

The said negative list covers the following activities:

i. Non-Banking Financial Services,
ii. Gold financing,
iii. Activities not permitted under the industrial policy of Government of India, and
iv. Any other activity which may be specified by the Board in consultation with Government of India from time to time.

This amendment is significant amendment and it opens up gates of Venture Funding for all areas of businesses other than the negative list as stated above.

D. CHARITABLE TRUSTS

D.1 Withdrawal of exemption of Charitable Trust U/s. 10(23C)

With effect from A.Y. 2009-10, a new concept was introduced for restricting the exemption of a charitable trust engaged in activities of advancement of any other object of general public utility, if such trusts were engaged in any commercial activity [Referred as "Ineligible General Trusts"]. As a natural corollary to the same, some consequential amendments are made in the Act.

Section 10(23C) of the Act grants exemption to the charitable institutions engaged inter alia in activities which are of national importance or importance throughout state or states and approved trust U/s. 10(23C)(v) being a wholly public religious trusts or wholly for public religious and charitable purpose. It is now provided that where activities of such trusts include activities which are of commercial nature being any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration and the aggregate value of the receipts from such activities exceeds ₹ 10 lacs in a previous year, the benefit of exemption U/s. 10(23C) would not be available.

This provision can bring major difficulties to some of the large religious trusts which sell religious publications in the form of books, periodicals, cassettes, CDs, etc.

This amendment is made with retrospective effect from 1st April, 2009 and shall accordingly apply from A.Y. 2009-10 onwards.

A clarificatory retrospective amendment is also made by inserting Section 13 (8) to ensure that income of an Ineligible General Trust does not get exemption in any other manner.

E. TAXATION OF COMPANIES

E.1 Tax on certain dividends received from foreign companies

Section 115BBD was introduced by the Finance Act, 2011 to provide for lower rate of tax of 15% on income received by Indian company from a foreign company in which it holds 26% or more of its equity share capital. Such lower rate benefit was available only for A.Y. 2012-13.

The Bill proposes to extend such benefit for or a period of one more year i.e. A.Y. 2013-14.

E.2 Allotment of shares in case of demerger

Section 2(19AA) of the Act, prescribes the manner in which a demerger is effected. One Clause (iv) in the definition specifies that the resulting company is required to issue shares on proportionate basis to the shareholders of the demerged company in consideration of the demerger. Though in case of "amalgamation" it is mentioned that shares held by the Amalgamated Company prior to merger will be ignored for the purpose of determining the shareholding, there were no such corresponding provision in definition of "Demerger".

An anomaly and hardship were caused in cases of demerger where the "Resulting Company" already holds some shares of the "Demerged Company' as it would amount to allotment of shares of the "Resulting Company" to self. This is neither permitted nor appropriate. To remove this hardship, an amendment is proposed wherein the Resulting Company is required to allot shares proportionately to the shareholders of the Demerged Company after excluding the shares of the Demerged Company already held by the Resulting Company.

Though, this provision is purely for removal of hardship and lacuna in the law, the amendment is only prospectively and will apply in relation to A.Y. 2013-14 onwards.

E.3 Income from venture capital funds

The provisions of Chapter XII – F provide for taxability of incomes received from investment in Venture Capital Funds directly in the hands of the person who has made such investment. While a pass through status was given to the Venture Capital Funds / Venture Capital Companies, these provisions were drafted in such a manner that the income from these funds was taxable on a receipt basis rather than on accrual basis. Accordingly, if the VCF / VCC does not distribute the income earned and utilises the money in reinvestment, then the ultimate beneficiary / shareholder was not liable to pay tax thereon.

The Bill proposes to amend Section 115U in a manner to convert the receipt basis taxation into accrual basis taxation of the income from Venture Capital Funds. The necessary amendments have been made in the sections providing for considering the income on accrual or credit basis. The propositions also include taxability of such income accruing or arising to a Venture Capital company or venture capital fund from investment in venture capital undertaking, not credited to their account.

The Bill further explains that once the income is considered on accrual basis, it need not be considered again on receipt basis in the year of receipt.

E.4 Increase in rates of daily tonnage income

Chapter XII G of the Income Tax Act, 1961 contain the provisions relating to "Tonnage Tax Scheme" applicable for presumptive taxation of the shipping companies. Tax is levied on the shipping companies based on the tonnage of the material handled by it on a presumptive basis.

The Bill proposes to amend the applicable rates for daily tonnage income as under:

Qualifying ship having net tonnage	Amount of daily tonnage income
Upto 1000	₹ 70 for each 100 tons
Exceeding 1000 but not more than 10000	₹ 53 for each 100 tons
Exceeding 10000 but not more than 25000	₹ 42 for each 100 tons
Exceeding 25000	₹ 29 for each 100 tons

This is primarily made for making the rates more commensurate with the rising prices and general level of income of shipping companies during recent times due to rise in the fuel costs.

F. CAPITAL GAINS

F.1 Computation of sales consideration in case of non ascertainability

In various judicial pronouncements including decision of Supreme Court in the case of **CIT V. B. C. Srinivasa Setty 128 ITR 294**, it was held that when sales consideration of capital asset is not determinable under the provision of the Act, the gain arising from transfer thereof is not taxable under the Act as charging provisions fail. This was more particularly applicable when the consideration was payable in kind or by way of an asset to be created in future. Take an example of a joint development project or development project where the land owner is paid consideration by way of duly constructed portion in the future or as share in the revenues generated from development of project. In such a situation, the assessee took the stand that the capital gains is payable only when the consideration becomes final and ascertained and till then the capital gains is postponed.

It is proposed, by introducing new section 50D, that where in the case of a transfer, consideration for the transfer of a capital asset is not ascertainable or cannot be determined then for purpose of computing capital gain under the Act, the fair market value of such capital asset on the date of transfer shall be taken to be the full market value of consideration.

F.2 Extension of exemption to HUF on sale of agricultural land

Section 54B provides exemption from capital gain arising from transfer of land used for agriculture purpose, if the capital gain is utilized for acquiring another land used for agricultural purposes. One of the conditions for eligibility of the condition was that the land should have been used by the assessee or its parents during the two years immediately preceding the date of the transfer. The Bill proposes to extend the benefit of exemption to agricultural land held by HUF also. Accordingly, w.e.f. A.Y. 2013-14, where a land being used for agricultural purposes by an HUF shall also be eligible for exemption U/s. 54B if the capital gain is invested in another land used for agricultural purposes.

F.3 Exemption from Capital Gain if invested in equity share of a Company

To encourage investment in manufacturing sector of Small and Medium Enterprises (SME) as per the policy announced in National Manufacturing Policy (NMP) in 2011, it is proposed to insert a new section 54GB so as to provide exemption from long term capital gains arising to an Individual or an HUF on sale of residential property (house or plot of land). The exemption is available if such Individual or HUF incorporate a company in India and has more than 50% of share capital or voting rights (after subscription of shares by them). Such company should be engaged in the business of manufacturing of article or thing and having status of small or medium enterprise under Micro

Small and Medium Enterprises Act, 2006 ("the SME Company"). The major conditions for claim of exemption are as under:

a) The residential property [land or residential house] held by individual or HUF should be long term capital asset.

b) The net consideration on transfer such capital asset is used by the individual or HUF for subscription of equity shares of SME Company on or before the due date of furnishing of return of income under sub-section (1) of section 139.

c) The Company should be formed after commencement of the previous year in which the transfer of the residential property but before the due date of filing the return of income for that year.

d) The capital gain to be exempted is computed in proportion of the amount invested in such shares to the amount of net consideration received.

e) The assessee should hold at least 50 % of the share capital / voting rights of the company after subscription of the shares.

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

g) Such new plant and machinery does not include used machinery, machinery or plant installed in office premises or any residential accommodation or guest house, office appliances, computer, computer software and vehicle.

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

i) Such equity share and new plant and machinery should be held for 5 years by the assessee and the Company respectively.

The Bill proposed that the exemption would be available in case of any transfer of residential property made on or before 31st March, 2017.

F.4 Reference to Valuation Officer

With a view to ascertaining the fair market value, section 55A empowers the Assessing Officer (AO) to refer the valuation of capital asset to a valuation

officer. Such reference can be made by the AO if he is of the view that the value so claimed by the assessee is less than the fair market value.

Provisions of section 55 give an option to an assessee to substitute fair market value of an asset as at 01.04.1981, if the subject asset is acquired by it before 01.04.1981.

In case the valuation is made with respect to cost of acquisition as on 01.04.1981, the AO cannot make reference to valuation officer if in view of the AO, such value adopted by the assessee is more than the fair market value. Such view was also expressed by Gujarat High Court in the case of **Hiaben Jayantilal Shah 181 Taxmann 191**. This was posing difficulties in making references to the valuation officer for ascertaining the fair market value of an asset as at 01.04.1981.

To cover this type of situation the Bill proposes to amend the provision of section 55A to enable the Assessing Officer to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value. Therefore, in case where the Assessing Officer is of the opinion that the value taken by the assessee as on 01.04.1981 is higher than the fair market value of the asset as on that date, the Assessing Officer is empowered to make a reference U/s. 55A to the Valuation Officer for determining the fair market value of the property.

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

F.5 Cost of acquisition consequent on conversion in certain cases

For providing tax neutrality for conversion of partnership firm and sole proprietorship into a company, a transfer of an asset by a firm / proprietorship concern to a company was not treated as transfer and was accordingly not subjected to capital gains tax. This amendment was brought into effect from A.Y. 1999-2000. As a natural corollary, a provision ought to have been inserted to provide that cost of acquisition of the asset so transferred to the Company shall remain same as in the hands of the firm / proprietor immediately prior to transfer. This would ensure tax neutrality.

Unfortunately no such provision was made and accordingly, against the spirit of law, various persons had taken advantage of increased cost of acquisition, where the properties were transferred by a firm / proprietor to a company at a price which was higher than its own cost of acquisition, etc. This was unintended and possibly misuse of the provision.

An amendment is proposed in the section 49 of the Act with retrospective effect from A.Y. 1999-2000 to provide that cost of acquisition in the hands of company

in case of such conversion would be same as the cost of acquisition in the hands of firm / proprietor as the case may be.

F.6 Definition of "capital asset" and "transfer"

Section 2(14) of the Act, defines "capital asset". Under the said definition a capital asset is defined as any property of any kind held by a person but does not include stock in trade for business or profession, personal property of the person except jewellery, work of art etc. , any agriculture land and specified bonds as issued or notified by Central Government.

In well known matter of Vodafone, the Government had taken a stand that when shares of a foreign company was transferred, the same also involved transfer of management and control of an Indian Company and to that extent transfer was that of an Indian Capital Asset. This argument did not find favour with the Hon'ble Supreme Court and the SC held that componentization of a comprehensive deal is not appropriate to tax a transaction. To nullify the effect of the judgement in case of Vodafone International Holdings, BV 247 CTR 1 (SC) the term "property" has been explained to include any rights in or in relation to an Indian Company, including rights of management or control or any other rights whatsoever.

Similarly definition of transfer as per section 2(47) is defined to include transfer of share or shares of a company registered or incorporated outside India, if the same results into disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India)

The above amendments are proposed with retrospective effect from 1st April, 1962.

G. MINIMUM ALTERNATE TAX / ALTERNATE MINIMUM TAX

G.1 Profit and loss account of banking, insurance and companies engaged in generation or supply of electricity

Provisions of Section 115JB, applicable to a company-assessee, provide for payment of tax being the higher of tax calculated at the rate of normal rates applicable to it or the rate provided under this section i.e., 18.50% (plus applicable surcharge and cess).

The tax under this section is payable on the book profits, and therefore it mandates the companies to prepare their profit and loss account as per provisions of the [Indian] Companies Act, 1956. Banking companies, insurance companies and electricity companies were required to prepare their accounts under special enactment and not under Schedule VI to the [Indian] Companies Act, 1956. These companies were facing difficulties in complying with the provisions of Section 115JB and preparation of their accounts in accordance with Schedule VI of the [Indian] Companies Act, 1956.

An amendment is proposed to this section wherein it is provided that the Companies to which the provisions of a special enactment is applicable in so far as preparation of profit and loss account is concerned, may determine their book profits in accordance with such special enactment.

Companies covered by the proviso to section 211(2) are banking companies, insurance companies and companies in generation or supply of electricity.

G.2 Adjustments to book profit

The Book profits of a Company are to be determined as per the profit and loss account prepared and thereafter certain adjustments are carried out therein. It has been the view of the Government that any impact on the book profits due to revaluation of assets should be ignored for determining the book profits. Repeated amendments have been made in the provisions of MAT for achieving this purpose.

However, some cases were still escaping the axe of MAT. Take a case where the assessee in a year revalues the asset and transfer the amount pertaining to revaluation to a revaluation reserve. After end of the said year or years, the assessee sells this asset. In such an event as per accepted accounting practice, the assessee would credit to the profit and loss account only difference between the carrying amount of the asset [which is already revalued] and the sale price. Therefore, amount pertaining to revaluation would not come to the profit and loss account. On this count, the profit to that extent was not subjected to MAT. This was against the spirit of the law. To curb the same, the Bill proposes that if an asset is sold, the amount standing to the revaluation reserve of such asset on the date of sale shall be added to the book profits of the company.

G.3 Alternate Minimum Tax (AMT) for entities other than companies

The Finance Act, 2011 had introduced new provisions (sections 115JC to 115JF) in respect of alternate minimum tax to be imposed on the adjusted total income of Limited Liability Partnerships.

The Bill proposes to extend the provisions of this Chapter to all persons other than Company assessee. It may be noted that the Companies are in any case covered by more stringent Minimum Alternate Tax [MAT].

The provision which was till date applicable only to LLPs would now be applicable also to Individuals, HUFs, Partnerships, AOPs, BOIs, Artificial Juridical Persons, etc. It is provided however, that in case of Individuals, HUFs, AOPs, BOIs and Artificial Juridical Persons [i.e. other than Partnership Firms and LLPs], the provisions will apply only if their adjusted total income [as mentioned herein] exceeds ₹ 20.00 lacs ["Covered Persons"].

The thrust of the AMT was to restrict the benefit of deductions available under Chapter VIA-C [Deduction in respect of certain incomes] or section 10AA [SEZ Units] to such other persons.

Covered Persons shall be liable to pay AMT of 18.50% on adjusted total income (plus applicable surcharge and education cess) where tax payable on total income computed under the regular provisions is lower than the AMT so computed.

The adjusted total income means total income as computed under the Act as increased by:

- deductions in respect of certain incomes claimed U/s. 80HH to 80RRB and
- deduction claimed in respect of newly established units under SEZs as per section 10AA.

Covered Persons shall be required to obtain report from a Chartered Accountant and shall furnish the same with return of income.

The AMT paid U/s. 115JC shall be allowed as credit as per section 115JD to the extent the AMT paid exceeds the regular tax payable. The credit shall be allowed to be carried forward for 10 assessment years and shall be allowed to be set-off where the regular tax is higher than the AMT and to the extent the regular tax exceeds the AMT.

H. DEDUCTIONS AND EXEMPTIONS

H.1 Extension of time limit for power sector

Under the existing provision of section 80IA(4)(iv) of the Act, the deduction in respect of profits or gains is available to an undertaking which:

a) is set up for generation or generation and distribution of power and begins to generate power
b) starts transmission or distribution by lying a network of new transmission or distribution lines
c) undertakes substantial renovation and modernization of existing network of transmission or distribution of lines.

Under the existing provision the undertaking was required to be set up, start or undertake expansion, on or before 31st March, 2012. The clause is proposed to be extended by one more year and thus the requirement of set up, start or undertake expansion has been extended to 31st March, 2013.

H.2 Exemption of income earned in INR from sale of crude oil in India

A new section 10(48) has been inserted in the proposed budget which excludes any income received by a foreign company in India in Indian Currency on sale of crude oil to any person in India, subject to the conditions that income received in India is under an agreement or arrangement entered into or approved by the Central Government which is notified by the Central Government having regard to the national interest and such foreign company is not in receipt of any other income from any other activity.

H.3 Tax on distribution of profit / dividend

Section 115-O provides for payment of tax @ 15% on the amount of dividend declared, distributed or paid. It further provides for the reduction of the amount of dividend received from a subsidiary which has paid tax under this section. This provision was introduced to remove cascading effect of multiple DDT in case of holding company structure. However, the provisions did not cover cases of multiple layers of holding companies and applied only in case of the last layer of holding company.

The Bill proposes to amend the provisions relating to such dividends received from subsidiaries. The proposed amendment provides for reduction of such dividends from the amount of dividend declared, distributed or paid by the Company under this Section only if

a. Such dividend is received from its subsidiary and
b. The subsidiary has paid the tax which is payable under this section on such dividend.

In the original provision, there was an additional condition that the recipient company was allowed deduction of the dividend received from subsidiary only if it was not a subsidiary of another company. This restriction is removed. Further, it is provided that the deduction will be admissible even where the subsidiary has not paid any DDT [due to applicability of this provision].

I. PROVISION AGAINST MONEY LAUNDERING

I.1 Taxation of Share Application Money, etc.

As per section 68 of the Act if any sum is found credited in the books of an assessee and such assessee either does not offer any explanation about nature and source of money or the explanation offered by the Assessee is found to be not satisfactory by the Assessing Officer, then such amount may be taxed as income of the assessee.

In the case of receipt of share application money/share premium by the company it was held in following judicial pronouncement that the company is not required to prove the genuineness of such share application money/share premium received from the shareholders and a company is required to only prove the identity of such share applicants:

a) Shree Barkha Synthetics Ltd v. ACIT 155 Taxmann 289 (Raj.)
b) CIT Vs. Lovely Export (P.) Ltd 216 CTR (SC) 195.
c) CIT Vs. Value Capital Services (P.) Ltd 307 ITR 334 (Delhi.)

These decisions therefore posed difficulties on the tax departments to tax bogus share application money in the hands of the Company.

The Bill proposes that where a closely held company receives share application money, share capital or share premium from resident investor, the onus to prove the genuineness of such investment is on the recipient company. The Company has not only to prove the identity of the investor, but the Company has also to prove nature and source of such investment to the satisfaction of the AO.

It may be noted that these provisions do not apply to publicly listed companies or investment by non-residents. While exclusion of publicly listed companies is acceptable, the reason for exclusion of non-residents is not understandable.

Further, investment by venture capital fund or venture capital company is not covered by the amended provision.

I.2 Applicable Rate of Tax

Like section 68 which deals with cash credits, there are other provisions in the nature of section 69 dealing with unexplained investment, section 69A dealing with unexplained money, section 69B dealing with unexplained investment not fully disclosed in the books and section 69C dealing with unexplained expenditure.

A new section 115BBE is sought to be inserted to provide that if any amount is treated as income of an assessee under the above mentioned deeming fiction of section 68, 69, 69A, 69B or 69C then such income shall be chargeable to tax at flat rate of 30% [i.e. maximum marginal rate of tax]. This would ensure that a person does not introduce such income in the hands of low taxed assessee and thus reduce burden of taxation in their hands.

I.3 Taxation of share premium in excess of fair market value as income

During recent times several cases have come to light where a closely held company would issue and allot shares at a very high price [which cannot be supported by any logical computation] and thereafter the investor would transfer these shares at a low price to the promoter. This has been widespread used for money laundering and conversion of black money and also to generate artificial losses in the hands of the subscriber of shares at a high price. There was a need to curb this practice.

Accordingly, the Bill proposes to amend section 56(2) to provide that any consideration received by a closely held company for issue of shares at a premium higher than fair market value of such shares then the difference would be taxable as income in the hands of issuing company.

The fair market value is higher of the following:

a) Value as determined in accordance with method prescribed under the Act
b) Value as computed by such company and substantiated to the satisfaction of the Assessing authority having regards to the value of its assets including intangible assets.

The Bill however provides that the above provision is not applicable in respect of amount received by a venture capital undertaking from a venture capital company or a venture capital fund.

J. INTERNATIONAL TAXATION

J.1 Tax on non- resident entertainer

Section 115BBA provides special rate of tax of 10% in respect of income earned by non-resident sportsmen and sport associations. Two amendments are proposed in these provisions:

a) The provisions are extended to non-resident entertainer for any income from his performance in India.
b) The Bill also proposes to increase the special rate of tax from current 10% to 20%.

J.2 Income from business connection and property / assets in India

A non-resident is taxable in India in respect of income which accrues to him in India or income which is deemed to accrue or arise to him in India or an income which is received by him or on his behalf in India. In this context, the concept of accrual of income in India becomes very important. The said issue is also a matter of major debate in cases of international taxation.

Under current provisions of section 9(1)(i), income accruing directly or indirectly through transfer of capital assets situated in India is deemed to accrue in India and is accordingly also taxable in India in the hands of non-residents. In recent ruling by Hon'ble Supreme Court in the case of Vodafone International Holdings B.V. v/s UOI [247 CTR 1], this concept came up for consideration. The question that came up for consideration was that when the shares of a company situated outside India is transferred, resulting into transfer of controlling interest in an Indian Company, would be considered as income accrues to him through transfer of capital asset in India. The Supreme Court held that the term "through transfer" does not include cases of looking through the transaction and would therefore not include indirect transfer of control of Indian Company as chargeable to tax in India.

This was a major set-back for the Indian Tax Department and apart from the said case of Vodafone, there would be several other cases which could have escaped taxation in India. One estimate of such taxes escaping the tax net was whopping ₹ 14,000 Crores. Though the department had lost the matter in the Hon'ble Supreme Court, to effectively tax such transactions, a set of retrospective amendments are brought in the Act, completely changing the scenario of capital gains taxation, especially of companies which are held by the foreign companies through one or more special purpose vehicles set up outside India for either taking treaty benefit or for the purpose of taking advantages of structuring.

Set of amendments proposed by the Finance Bill are all with retrospective effect from 1st April, 1962 [i.e. from the inception of the Income Tax Act, 1961]. The set of amendments and its implications are mentioned below:

- Section 2(14), which define capital asset is modified to include rights in or in relation to an Indian Company including rights of management or control or any other rights whatsoever. One of the arguments put forth by the Government in Vodafone matter was that transfer of the shares of the foreign Company [i.e. the BVI Company] were not only transfer of shares but was also transfer of management and control of Indian Company and such management and control were property situated in India and are therefore otherwise taxable. This amendment gives credence to such argument.
- Section 2(47) defines transfer. The said definition is sought to be expanded to include cases of creation, transfer or directly or indirectly disposing off of an asset or interest by way of characterizing the same by transfer of shares of a company registered or incorporated outside India.
- Section 9 is sought to be amended by inserting various explanations in it to provide that the word "through" used in Section 9(1)(i) shall include "by means of", "as a consequence of" or "by reason of". This would mean that any income accruing by means of transfer of capital asset in India. This amendment is also for nullifying one of the reasons adopted by the Hon'ble Supreme Court for deciding the matter against the Department.
- More draconian provision is sought to be introduced to provide that shares or interest in an entity registered or incorporated outside India shall always be deemed to be situated in India if such share or interest, directly or indirectly, derive its value from assets located in India. This was a provision which was sought to be inserted in the Direct Tax Code with prospective applicability. Unfortunately, this provision which substantially expands the scope of taxation is sought to be inserted with more than 50 years of retrospectivity. This would mean that even transfer of 1 share outside India of a company which has substantial investment in India would become taxable in India.

While enthusiasm of the tax department to tax the transactions of the nature of Vodafone cannot be doubted and faulted, retrospective amendment of such nature cannot be accepted by any logical mind. Under the garb of clarificatory amendment, huge expansion of scope is sought to be made. It is difficult to believe the clarificatory nature of the amendment especially when the Supreme Court has already given its view and therefore need for clarification is not required.

J.3 Income from royalty

Conflicting decisions of courts in respect of definition of royalty and its applicability have been delivered in so far as it pertains to softwares and

satellite rights. In case of software there are different types of rights which are granted including in cases where the rights are granted only for using software like a book, whereas in other cases the rights are given for duplicating the same or making use of such software for developing applications or modifying the same.

Section 9(1)(vi), Explanation define the term Royalty for ascertaining its place of accrual. The definition of royalty include any consideration for transfer of all or any right in respect of various rights, property or information, like copyrights, patents, commercial or business information, etc. With a view to clarifying the situation under the law an explanation to section – 9(1)(vi) is proposed to be inserted with retrospective effect from 01.07.1976. As per this explanation any consideration for transfer of all or any right to use computer software (including granting of license) shall be considered as transfer of all or any rights and accordingly be including in the definition of royalty. This would be irrespective of medium through which such right is transferred.

Further, as per the another explanation proposed to be inserted with retrospective effect from 01.07.1976 any payment in respect of any right, property or information is to be considered as royalty irrespective of the possession or control over such right or property is with the payer or not. Further it is also to be considered as Royalty irrespective of the fact that such rights or property is directly or indirectly used by the payer and irrespective of the fact that such right or property is situated in India or not.

The definition of Royalty included consideration paid for use of secret formula or process. Arguments were successfully advanced in respect of use of satellite that the processes are not secret and therefore usage of such rights is not covered by the definition of Royalty. An amendment is sought to be made retrospectively w.e.f. 01.07.1976 for providing that the term process shall include 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.

J.4 Tax Residency Certificate

The proposed amendment requires the person claiming benefit under treaty to produce Tax Residency certificate from the Government of the respective Country.

Section 90 (Double Taxation Avoidance Agreements or "DTAA") and Section 90A (Tax Information Exchange Agreements or "TIEA's") deal with the power of the Central Government to enter into an agreement with the foreign countries, specified territory and specified associations for double taxation reliefs. The benefits of these sections and the agreements entered therein are available to persons who are residents of one of the countries to the said

agreements. However it has been noticed, that persons who are not resident of either of the countries also avail the benefit of these agreements. Further, the Act did not provide for any process by which the residency of these persons were to be established.

In view thereof and to streamline the process of granting the benefit of treaty to any person, amendments are proposed in section 90 and section 90A making it obligatory for a person to produce a Certificate of Residence from the assessee claiming benefit of treaties under these sections. Such certificate shall be issued by the Government of the Country where the person is a resident and it shall be in a format to be prescribed by the Central Government containing such information as may be prescribed.

J.5 Effective date of terms not defined under the Act or Treaty

Section 90(3) and 90A(3) provide for the method of interpretation of terms used in a treaty but not defined therein. The provision proposes to authorise the Central Government to issue notification for defining the terms which are neither defined in the Treaty nor in the Act. However, there was a dispute about the date of applicability of such notification. Whether such notification shall apply from the date of its issue or from the date on which the respective treaty becomes effective.

The amendment proposes to explain this section further by providing that terms used in DTAA, not defined therein or under the Act, however defined under a notification as referred above shall be applicable and effective from the date of entry into force of the DTAA, irrespective of the date of the notification.

The proposed amendment has retrospective effect from 1st October, 2009 in case of section 90 and from 1st June, 2006 in case of section 90A.

J.6 Expansion of scope of definition "Related Party"

The scope of definition of Related Party for the purpose of section 40A(2)(a) is proposed to be expanded. As per the proposed provision if a company has substantial interest in business or profession of the assessee and the said company has also substantial interest in another company then the another company and the concerned assessee are proposed to be considered as related parties.

J.7 Special Rate Taxation of Interest on ECB

Under current provisions, interest payable to Non-resident other than a company or to a foreign company is liable to be taxed at the rate of 20% U/s. 115A. The Bill proposes to tax such interest at concessional rate of 5%. However, such interest should be payable by on specified businesses. The specified company engaged in the business of

- ✓ Generation or distribution or transmission of power;
- ✓ Operation of aircrafts;
- ✓ Manufacture or production of fertilizers;
- ✓ Construction of road including toll road or bridge;
- ✓ Construction of port including inland port
- ✓ Construction of ships in a shipyard;
- ✓ Construction of dam
- ✓ Developing and building an affordable housing scheme project

Consequential provisions for tax deduction at source are proposed to be inserted under new section 194LC.

This provision is proposed with effect from 1st July 2012

K. TRANSFER PRICING AND CROSS BORDER TRANSACTIONS

K.1 Definition of International Transactions

The present regulations dealing with transfer pricing contain a descriptive definition of "international transaction". Present definition of international transaction puts its weight behind having an impact on "profits, income, losses or assets of an enterprise. Doubts have been expressed that when a transaction which does not have an impact on any one of them [like corporate guarantee, etc.] can it be still termed as international transaction. Further, various aspects like corporate restructuring, mergers, acquisitions, etc. were also not specifically covered by the definition of international transaction, though by implication it could have been included.

In view to resolve dispute and for providing clarity as to what would constitute an international transaction it has been proposed to insert an inclusive and more detailed list of transactions which are to be treated as international transactions for the purpose of applying transfer pricing provisions. The said list is proposed to be appended as an explanation to section 92B.

As per the proposed explanation the international transactions shall include, inter alia,

- the transactions in respect of capital financing, including lending or guarantee, any type advance payment, deferment of payment or receivable or any other debt arising during the course of business;
- transaction of business restructuring or reorganization, entered into between Associated enterprises irrespective of the fact that it has bearing on the profit, income, losses, or assets of such enterprises. This part of explanation has expanded the scope of definition of international transactions U/s. 92B.
- transfer or lease or use of any intangible. The intangible, as further explained, shall include marketing, technical, artistic, data processing related, engineering related, customer related, human capital related intangibles or any other similar item that derives value from intellectual content.

A comprehensive approach is adopted for including all types of transactions with related party, which may or may not have immediate bearing on the profits / income / losses / assets / liabilities. It may however, be seen that while an explanation is inserted, there is no attempt to alter the basic provision for the definition of the international transaction which still keeps its legs on any impact on profits / income / losses / assets / liabilities.

The amendment is proposed to be made with retrospective effect from 1st April, 2002.

K.2 Computation of Arm's Length Price

Section 92C of the Act provides for the provisions relating to the computation of the arm's length price ("ALP") wherein the Act prescribes selection of the Most Appropriate Method ("MAM"), from the various prescribed methods, for computation and determination of the ALP. It also provides that where more than one price is determined by application of the MAM, the arm's length price shall be taken to be the arithmetic mean of such prices.

Further, the provisions before amendment by Finance Act, 2011 provided that where there is variation between the ALP and the price at which the international transaction is actually undertaken, and if the variation does not exceed 5% of the price at which the international transactions actually undertaken, the transaction shall be considered to be at arm's length.

It has been argued and debated at length that it is inappropriate to have a static cushion of 5% margin across the industry segments and nature of the transactions. The margin should be with reference to the industry, transaction, segment, etc.

The Finance Act, 2011 provided flexibility in fixing such cushion. At the time of such change in Finance Act, 2011 it was expected to have more logical and transaction specific or industry specific cushion. The Bill proposes to limit the right of the Government to provide cushion beyond 3% of the ALP.

Before the amendment by Finance (No. 2) Act, 2009, the provisions in respect of such cushion, as per the various judicial decisions, was allowed as standard deduction if variation between the ALP and the price at which the international transaction is actually undertaken exceeds 5%. In view to prevent such claims the provisions were amended vide Finance (no.2) Act, 2009 w.e.f. 01.10.2009.

However, in various decisions it has been claimed that the cases pertaining prior to 01.10.2009 the assessees were still entitled to take 5% cushion even where actual variation was beyond the said 5% limit. With a view to preventing further disputes in this regard the Bill proposes to provide with retrospective effect from 01.10.2009 that even for matters prior to 1st October, 2009, the assessee will not be entitled to take 5% variation as standard deduction.

However, the Bill also proposes to provide that completed assessments shall not be re-opened despite this retrospectivity.

K.3 Reference to Transfer Pricing Officer ("TPO")

Section 92CA(1) of the Act provides that where during the course of an assessment, the Assessing Officer notices that an assessee has entered into an international transaction with its Associated Enterprise ("AE"), he shall, if he

considers it necessary, refer the computation of ALP in relation to the said international transaction U/s. 92C to the TPO.

It was understood that the reference to the Transfer Pricing Officer is made for determining the ALP of a particular international transaction. The Transfer Pricing Officer was not empowered to determine the ALP of any other international transaction which came to his notice during the transfer pricing proceedings.

In order to remove doubts, section 92CA(2A) was inserted by Finance Act, 2011, to empower the TPO to exercise his powers to such other international transactions which may come to his notice while carrying out the TP Assessment, as if such newly noticed transaction is also referred by the AO.

The Bill proposes to further strengthen the powers of the TPO. It is now provided that even in cases where the assessee has not filed Accountant's Report U/s. 92E [in form 3 CEB], the TPO can exercise his powers if he comes to notice of any international transaction, as if this transaction is referred to him. This power is vested with the TPO with retrospective effect from 1st June, 2002.

However, the Bill also proposes to provide that completed assessments shall not be re-opened despite this retrospectivity.

K.4 Dispute Resolution Panel

In case of assessments involving Foreign Companies or transfer pricing adjustment an alternative dispute resolution mechanism was introduced in the form of Dispute Resolution Panel [DRP] consisting of 3 commissioners / directors. Orders of the DRP were appealable by the assessee before the Income Tax Appellate Tribunal. However, the Department was not entitled to file appeal against the said order of the DRP and therefore it were becoming final and binding orders to the department. Due to this the orders of the DRP were predominantly in favour of the department and hardly provided any scope for genuine dispute resolution.

As a major departure from the earlier provisions, the orders of the Disputes Resolution Panel have been made appealable before ITAT by the Department also. This appears to have been made for providing more freedom to the DRP to take judicial view of the matter.

This amendment is proposed with effect from 1st July 2012

Further, a doubt was expressed about the powers of the DRP to enhance the adjustment proposed by the TPO / AO in their order. In view of language of the provision, it was generally opined and held in various judicial

pronouncements that the DRP can do the enhancement only on the matters which were considered by the AO / TPO and not beyond it. It appears that the same was against the legislative intent and accordingly, for providing clarity in respect of powers of the DRP the Bill has proposed an explanation to be appended to Section 144C(8). It is explained that DRP has power to enhance the variation in all aspect and in respect of all the issues involved in draft order passed by the Assessing Officer.

This amendment is proposed with retrospective effect from 1st October 2009.

K.5 Advance Pricing Agreements ("APA")

Transfer pricing has been focused area of Tax Authorities as well as the tax payers. In view of the uncertain tax risk and increased level of TP examination activity by tax authority, it has been prime concern in international trade by multinational corporate to have more assurance in organizing their tax risks and possible exposure to risks.

There is no statutory provision or guideline available under present Transfer Pricing regime in India in respect of selection of comparable, use of data not available in public domain, selection of tested party, and other transactions specific issues like inter-corporate loans, royalty, intangible valuation, valuation of shares and tangible properties. The APA can help resolve such issues to a certain extent.

APA means a pre-transaction agreement between Tax Payer and the Tax Authority to determine the prices of transactions at which Tax Payer would enter into with its Associated Enterprises. The transactions entered by the Tax Payer at the prices so agreed shall be considered to be Arm's Length.

The Bill proposes to introduce new provisions under section – 92CC and 92CD enabling tax payer to enter into an agreement with CBDT for deciding transfer price of a particular international transactions of the certain period of time but not exceeding 5 years.

APA shall be entered into by CBDT with approval of Central Government. The Transfer Prices agreed by CBDT and the Tax payer under APA shall be binding to Tax payer as well as the tax authorities.

The transaction for which APA is entered into is not subject to TP assessment by AO/ TPO under the relevant provisions of the Act. However, the APA shall be transaction specific and assessee specific. The transactions not covered by APA are subject to transfer pricing assessment.

Further, with APA, an option to use any method other than prescribed five methods is available for determining ALP of such international transaction especially for which the said prescribed method are difficult to be applied.

The APA would reduce the burden of compliance requirement by the taxpayer in respect of selection of comparable, selection of methods, data and other compliances in respect of determination of ALP. However, the proposed provisions do not exempt tax payer from maintaining transfer pricing documentation U/s. 92D read with Rule 10D.

The APA will cease to apply if there is a change of law or change in the facts. Further, the Board has power to cancel an APA if the same is found to have been obtained by fraud or misrepresentation. Upon such declaration, the APA shall be deemed to be *void-ab-initio* and the transactions will be subjected to the scrutiny under normal TP Regulations.

The Bill proposes to include the orders passed by the Assessing Officer U/s. 92CD as appealable order.

The APA would help to Multinational Enterprises in organizing tax exposure / risk in India as well as corresponding country as the level of juridical double taxation which arises from unilateral adjustment to the concluded transaction.

K.6 Penalty for transfer pricing adjustments

Section 271AA provided for penalty for failure to keep and maintain information and document in respect of international transaction. The present provisions of section 271AA provide for penalty only for failure to keep and maintain documents as required by section 92D. The proposed amendment takes into ambit the cases of:

- failure to maintain the documents;
- failure to report international transaction which was required to be reported; and
- maintaining or furnishing incorrect information or document relating to international transaction.

The quantum of penalty has been maintained at the same level. However, the scope of penalty has been expanded.

L. TRANSFER PRICING PROVISION TO SPECIFIED DOMESTIC TRANSACTIONS

Presently the Transfer Pricing Provision contained in Chapter X [Section 92 to 94A] is applicable in respect of international transaction. As per the provisions of this chapter any income arising in India from international transaction shall be computed at Arm's Length Price ("ALP"). The objective behind the introduction of this chapter is to ensure that the prices of international transaction should not be affected by the relationship between the associated enterprises and accordingly it should not affect the due tax liability payable in India by an assessee.

The aforesaid transfer pricing regulations apply in relation to related party transactions where at least one of the parties is a non-resident. It therefore includes cases of a resident with related party non-resident or between two related non-residents [like dealings by a PE of a foreign company in India with its HO or with other subsidiaries of the foreign company]. These provisions provide extensive regulations for maintenance of records, methods of ascertaining the Arm's Length Pricing of a transaction, analysis to be carried out, certification by an independent accountant, special assessment by transfer pricing officers, etc.

As per the current provisions aforesaid transfer pricing regulations are not applicable to the domestic transactions between two resident related parties as referred under section 40A(2)(b) of the Act.

Recently in a dispute pertaining to determination of profits of a unit eligible for incentive, the SC was faced with the issue of determining the price at which the transactions were carried out by such unit with another ineligible unit. The SC referred the matter back to the AO, giving direction that the same may be referred to the Transfer Pricing Officer for handling a pure domestic transaction. It appears that a cue has been taken from the said decision and it is now provided that in cases where large quantum of related party transactions or transactions between eligible and ineligible units are involved, it would be appropriate to determine the pricing of these transactions by resorting to the TP Regulations.

Considering the same, the Bill proposes that TP regulations are also applicable to the "Specified Domestic Transactions" [SDT]. SDT are defined to be

a) any expenditure in respect of which payment has been made to a person referred to in 40A(2)(b). [It may be kept in mind that related party transaction per se does not include items of sale / income for the seller / service provided].
b) transaction between eligible business [businesses claiming specified deductions U/s. 80IA/80IB and other deductions U/s. 80A, being profit linked undertaking based incentives] and other business of the assessee.
c) transaction between any unit eligible U/s. 10 AA [SEZ Unit] and other unit of the assessee or other persons who are related to the assessee, to ascertain

that the affairs are not so organized that the eligible units have more than reasonable profits.

d) any other transaction as may be prescribed

However these transactions shall not be considered as specified domestic transactions if the aggregate value of such transactions does not exceed sum of ₹ 5 crore during the financial year.

It may be kept in mind that once an assessee is having Specified Domestic Transaction and it has also crossed the monetary barrier of ₹ 5.00 crore, specified herein, the assessee would be exposed to a whole set of compliances applicable to the international transactions and these compliances will include:

- Maintenance of elaborate records and detailed transfer pricing documentation
- Determination of ALP by following one of the 5 prescribed methods and its justification
- Obtaining a report from a Chartered Accountant in respect of maintenance of records and determination of ALP
- Assessment by the Transfer Pricing Officer
- Reference to the Dispute Resolution Panel, etc.

Further, in view of the above amendments, the burden of proving the market value of transaction shifts from the revenue to the assessee.

Explanation 7 to section 271(1)(c) dealt with the levy of penalty for additions made on account of adjustment in the arm's length price of international transactions with associated enterprises. Explanation 7 presently provides that penalty U/s. 271(1)(c) would be levied on the transfer pricing adjustments if the assessee fails to prove to the satisfaction of the Assessing Officer that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence. Amendments are proposed to include within the scope of the transfer pricing provisions SDT also. Accordingly, the provisions are sought to be amended to provide for penalty in case of transfer pricing adjustment for domestic transactions which come within the purview of the transfer pricing.

In addition to the above all penalty provisions for non-compliance with transfer pricing provision is also made applicable to SDT.

We need to wait for modification to the Income Tax Rules, 1962 for seeing the quantum of documentation required to be maintained by an assessee under the TP Regulations for the SDT. If requirement to maintain documentation for the SDT is same as that of the international transactions, then the cost of compliance to an assessee would far outweigh the possible benefits which the Government would have by introducing these provisions.

M. GENERAL ANTI AVOIDANCE RULES

Tax Avoidance is the legal utilisation of the tax regime to one's own advantage, to reduce the amount of tax that is payable by means that are within the law. Tax evasion on the other hand a situation where efforts are made to evade taxes by illegal means. The pretended reality of a transaction may be different from its legal and economic reality. This situation is a borderline between tax avoidance and tax evasion. Both tax avoidance and tax evasion represent tax non-compliance and activities which are unfavourable to a country's tax system.

"Every man is entitled, if he can, to order his affairs, so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax gatherers may be of his ingenuity, he cannot be compelled to pay an increased tax." Lord Tomlin observed in IRC v. Duke of West Minister on Tax Avoidance.

The Bill proposes to introduce General Anti Avoidance Rules ("GAAR") for identifying such transactions and taxing the economic reality of the transaction. GAAR are introduced by the Bill, by inserting new Chapter X-A (Section 95 to Section 102) in the Act.

As per the definition in the proposed section an arrangement would be treated as impermissible avoidance arrangement ("IAA") if the main purpose or one of the main purposes is to obtain a tax benefit. The amendment further provides that an arrangement which results in any tax benefit shall be presumed to have been entered into for the main purpose of obtaining a tax benefit unless the assessee proves that obtaining the tax benefit was not the main purpose of the arrangement. Accordingly in all cases of tax saving, a rebuttable presumption against the assessee for considering that the said transaction is done with main purpose of obtaining a tax benefit.

Having identified that by way of an arrangement or any part thereof a tax benefit is derived, the department is required to prove satisfaction of one of following 4 alternative tests:

a) arrangement has created rights and obligations which are not ordinarily created between the parties dealing at arm's length,
b) the arrangement results in misuse or abuse of provisions of the Act,
c) the arrangement lacks commercial substance or is deemed to have lacked commercial substance;
d) is entered into in a manner which are not employed for bona fide purposes.

Accordingly any arrangement which results into tax benefit satisfies any one of the above conditions, then the arrangement can be termed as an IAA.

It is worth noting that in a case where the entire arrangement may not satisfy any of the conditions above, one of the steps in or part of the arrangement may fall within

the above mischief. In such an event that part or step in the arrangement may be treated as IAA and may be ignored or modified, etc.

Therefore, if there is a genuine investment flowing into a country, but if a person has used an investment vehicle for obtaining tax benefit, the action of choosing the investment vehicle can be treated as IAA. This can cause serious difficulties in many cases.

Applicability:

1. GAAR is applicable to any assesse who has entered into an arrangement which is found to be IAA. The tax from such IAA shall be determined as per this Chapter.
2. GAAR shall be applied to whole or any part of the arrangement which is found to be IAA.
3. The provisions of this Chapter shall override all the provisions of the Act and may be applied even where the same is not beneficial to the assessee.
4. Rules under this Chapter shall be considered to be additional provisions while determination of tax liability under the Act. The Bill provides for guidelines to be framed for monitoring the application of these provisions.

Consequences:

The tax on such IAA under this Chapter is determined having regard to any of the following:
1. The whole of the IAA or any part therein can be disregarded / re-characterized / combined.
2. Considering substance over form in case of related persons / accommodating parties by treating the persons as one and the same.
3. Reallocation and re-characterization of revenue or capital accruals / receipts / expenses / deductions / reliefs or rebates.
4. Relocation of the place of residence / situs of asset or transaction at a place / location other than that provided under the IAA
5. Lifting the corporate veil by application of the "Look Through" approach to the IAA.
6. Re-characterization of equity and debt

Lacking Commercial Substance

An arrangement or any part thereof may be considered to be lacking commercial substance if

i. The substance of the arrangement contrasts its form.
ii. It involves "Round Trip Financing", "an Accommodating Party", elements that have effect of offsetting each other, or any transaction which disguises the main subject matter such as its value, location, source, ownership, control, etc.

iii. The residence / location of the party / transaction / asset is such which has been chosen specifically for obtaining tax benefits and not commercial benefits.

While determining whether a transaction lacks commercial substance or not, no regard shall be had to

i. The period or time of the arrangement,
ii. tax payments under the arrangement;
iii. the provisions for exit routes under the arrangement

Round Trip Financing means an arrangement in which, through a chain of transactions

a. Funds are transferred among parties; and
b. Major purpose of such transactions is tax benefit over commercial benefit

For the purpose of above the source, timing, sequence, means, manner or mode of transfer of such funds shall be disregarded.

Accommodating Party means a party whose main purpose of direct or indirect participation is to obtain a tax benefit for the assese. An Accommodating Party need not be a related party.

Process of Assessment

The procedure for declaring any arrangement of the assessee as IAA, new section 144BA is introduced.

- If on the basis of material or information available with the AO at the time of making an assessment / re-assessment, if AO is of the view that the provisions of GAAR are applicable then a reference is required to be made to the Commissioner by the AO.
- If Commissioner is also of the view that provisions of GAAR are attracted then the Commissioner is required to issue a notice to the assessee stating reasons and basis for such an opinion, giving time, not exceeding 60 days to the assessee to file its objections.
- If the assessee fails to file its objections then the Commissioner himself can treat the arrangement as IAA and proceed accordingly.
- If the assessee files objections, then the Commissioner is required to give an opportunity of being heard to the assessee. Upon hearing the assessee, the Commissioner may drop the proceedings if he is satisfied about the explanation given by the assessee, else, make a reference to an Approving Panel [to be appointed by the Board consisting of not less than 3 income tax authorities having rank of Commissioner or above].
- Upon such reference, the Approving Panel is required to give its opinion within a period of 6 months from end of the month in which reference is made to the Panel.

- It must be kept in mind that there is no time limit for the Commissioner to make reference to the Approving Panel after receiving objections from the assessee.

Approving Panel

- CBDT is empowered to constitute an Approving Panel being a collegium of at least 3 income tax authorities of the rank of Commissioners of Income Tax or above. The Approving Panel on being referred the matter, after examining all the records and information relevant in the matter shall issue directions for either declaring the arrangement as IAA or otherwise as it deems fit. It is also empowered to decide the year or years for which it would be treated as IAA.
- The directions shall be binding on commissioner as well as the Assessing Officer. The Approving Panel is empowered to collect evidence, conduct enquiries including requiring the income tax authority to make further enquiry. The Approving Panel is required to provide reasonable opportunity of being heard to the assessee and to the AO if the proposed direction is prejudicial to the interest of the assessee or the revenue, as the case may be. The Approving Panel is required to issue the directions within a period of 6 months from the end of the month in which reference the commissioner was made.
- In case of difference of opinion on any point, the view of the majority of the members of the Approving Panel shall prevail. Directions issued by the Approving Panel shall be binding on the AO. AO is required to pass the order in accordance with such directions.
- In case where Approving Panel specifies that declaration of the arrangement as IAA, the AO is required to complete the assessment, in pursuance of which the reference was made, in accordance with the directions of the Approving Panel.
- It is also provided that if the direction of the Approving Panel also affects any previous year other than the year for which reference was made and the order of the Approving Panel so provide, then the AO may proceed to complete assessment for such other year in accordance with such direction and there would not be any requirement to make any fresh reference to commissioner or Approving Panel. However, the order of the AO shall be subject to approval by the Commissioner if any tax consequences are determined in such order.
- Time commencing from the date on which the AO makes a reference to the Commissioner, upto the date on which opinion is received from either Commissioner or the Approving Panel, as the case may be, is excluded for computing the period of limitation for completing assessment.
- Upon receipt of the order of the AO in accordance with the directions of Approving Panel, the assessee may file an appeal directly before the Income Tax Appellate Tribunal U/s. 253 of the Act.

N. RETURNS, ASSESSMENT AND APPEALS

N.1 Expansion of scope of compulsory filing of return of income

To trace the investment and foreign accounts of Indian resident held outside India, the Bill proposes to amend section 139(1) to provide that any person who is resident in India and having any asset located outside India or have signing authority in any account located outside India shall furnish a return of income on or before the due date of fling of return of income, even in a case where he otherwise does not have any taxable income in India.

N.2 Extension of time limit for Non-Corporate Assessee

The Finance Act, 2011 has given extended time limit upto 30th November for filing of return of income in case of a company which is required to furnish a transfer pricing report referred to in section 92E. The Bill proposes to extend the benefit of such time limit to all non-corporate assessee also who is required to furnish a transfer pricing report of referred to in section 92E. The due date of filing of return of income in such case is proposed to 30th November of the assessment year.

This provision is applicable w.e.f. 1st April, 2012.

N.3 Processing of Intimation U/s. 143(1)

Presently the Assessing officer is required to issue intimation U/s. 143(1) (for processing of return of income) specifying the sum determined to be payable or refundable to the assessee. Further in case of refund computed in the intimation, the same is to be granted to the assessee.

The Bill provides that processing of such return shall not be necessary in case notice of selection of case for regular scrutiny is issued to the assessee U/s. 143(2) of the Act. This proposed amendment may have the effect of withholding the refund due as per return of income by the tax department if his case is selected for scrutiny. It is therefore necessary that high-tax payer should estimate the advance tax liability precisely so as not to claim refund in view of higher payment of prepaid taxes.

N.4 Expansion of Scope of Reassessment

Section 147 empowers the Assessing Officer (AO) to re-open a completed assessment in case he has reason to believe that any income chargeable to tax has escaped assessment. In such case he can issue notice of reassessment U/s. 148 of the Act. The maximum time limit for issuance of notice U/s. 147 is presently 6 years from the end of relevant assessment year. Accordingly if the tax department comes to know of an income escaping assessment which

pertains to period prior to such period, then the tax department cannot take any action and the income would go without tax payment.

The Finance Minister in his speech stated that such time limit of six years is not sufficient to gather information about assets located outside India and longer time limit is required to be given for reassessment in such cases. The Bill by various amendments proposes as under:

a) Income shall be deemed to have escaped assessment where a person is found to have any asset including financial interest in any entity located outside India.
b) Time limit for reopening the assessment (by issuance of notice U/s. 148) will be 16 years from end of the relevant assessment year where the income, in relation to any asset (including financial interest in any entity) located outside India, has escaped assessment.
c) It shall not be necessary for the tax department to prove that the income has escaped assessment on account of any failure on the part of the assessee.

To strengthen the provisions of reporting of international transaction, which are subject matter of transfer pricing provisions, the Bill also proposes to expand the scope of reassessment U/s. 147 by providing that income shall be deemed to have escaped the assessment where assessee has failed to furnish a report in respect of any international transaction which he was required U/s. 92E.

The Bill proposes to clarify that the aforesaid amendment shall be applicable for any assessment year beginning on or before 01.04.2012. This amendment is therefore retro-active and may revive the cases of foreign assets for earlier periods.

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

N.5 Extension of time limit of passing assessment/reassessment order

Under the Act, sections 153 and 153B provide different time limits for completion of different types of assessments viz. regular assessment, reassessment, search assessment etc. (143(3), 147, 153A, 153C) and also in cases where reference to the Transfer Pricing Officer is made.

Prior to December, 2006, all the time barring assessments were getting completed on 31st March of a year. Therefore, it was becoming difficult for the tax department to collect the money as per regular assessment in the same year in which the assessments were getting completed. To obviate this difficulty, it was provided by various amendments to curtail the time limit for completing assessment by 3 months such that time barring dates fell on 31st December of each year.

The Bill proposes to shift back to 31st March as the time barring date by amending the provision of section 153 and 153B. The same is summarized as under:

Type of Assessment	Existing Time Limit for issuance of assessment order	Proposed Period
U/s. 143(3)/153A	21 months from end of the A.Y.	24 months
Cases of Assessments U/s. 143(3) / 153A where reference is made U/s. 92CA	33 months from end of the A.Y.	36 months
U/s. 147	9 months from end of the F.Y. in which notice for re-assessment is issued	12 months
Cases of re-assessment where reference is made U/s. 92CA	21 months from the end of the F.Y. in which notice for re-assessment is issued	24 months
Orders in consequence of order U/s. 250 or 254 or 263 r.w.s.143	9 months from the end of the F.Y. in which order received	12 months
Above orders where reference is made U/s. 92CA	21 months from the end of the F.Y. in which order received	24 months

India has entered into several tax information exchange agreements and double tax avoidance agreements, authorizing the tax authorities to seek information from other jurisdictions. Time taken by a commissioner to make a reference and obtain information is excluded for computing the time for completing the assessment. However, there was an outer ceiling of 6 months provided and therefore maximum time allowed to be excluded was only 6 months. Since it was felt that 6 months is short time for exchange of information in international environment, the said period is sought to be extended to 1 year for seeking such information.

Consequent upon introduction of provisions of General Anti Avoidance Rules [GAAR], it is proposed that the period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance agreement is received by the commissioner under proposed section 144BA and ending with the date on which direction is received by the Assessing Officer will be excluded for computing the above time limit of passing an assessment order. The way, in which the process is defined under GAAR, there is an open ended time available to the Commissioner to make a reference to the Approving Panel. However, once a reference is made to the Approving Panel

constituted under GAAR, the Approving Panel is required to give its opinion in 4 months.

This amendment will be applicable from 1st July 2012.

N.6 Assessment in case of Search or requisition

Section 153A empowers the Assessing officer to issue notice of assessment for six assessment years preceding the assessment year in which search is conducted. Issuance of such notice for all the 6 years and consequently completing assessment is compulsory in case of action of search U/s. 132 of the Act. Similar provisions are applicable also in related cases, where documents / unaccounted income as a result of search in some third party (153C).

There were several cases noticed where either in searched cases or in cases of related parties, the undisclosed income detected may pertain to only some of the 6 years, but the AO was required to do fresh assessment for all the 6 years and was causing unnecessary work for the AO and also for the assessee.

The Bill proposes to authorize Central Government to notify any class or classes of the cases in which case notice for 6 years is not required to be issued. However this will not be applicable for assessment year for which pending assessment / re-assessment proceedings have abated.

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

N.7 Rectification of mistake in respect of intimation of processing of TDS Return

Section 154 provides for the rectification of mistake apparent from record which has crept in an order passed by an income tax authority.

With effect from A.Y. 2010-11, a new process of processing the TDS return was started for either granting refund or raising demand consequent upon processing of the TDS returns.

Powers have been given to the AO for rectifying the intimation issued by the AO after processing TDS returns and consequently either raise demand or grant further refund.

Further it is also proposed that any sum determined to be payable by the assessee on such intimation after processing TDS return shall be deemed to be notice of demand for the purpose of section 156 of the Act.

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

N.8 Interest on Withdrawal of Refunds

As per existing provisions an assessee is granted refund at the time of processing the return. However, if at the time of completing the assessment it is found that the refund was granted in excess, then the refund so granted is withdrawn. A provision in the form of Section 234D was introduced with effect from 1st June, 2003, providing for charging interest on the refund so withdrawn and the assessees were liable to pay such interest.

Most of the courts have held that interest under the said section 234D would be chargeable only in cases of assessment years commencing on or after 1st June, 2003 and accordingly for refunds withdrawn for and upto 2003-04, were not subjected to interest. The Bill proposes to retrospectively clarify that such provision is applicable even to any assessment years prior to 1st June, 2003 if the proceedings in respect of such assessment year is completed after the said date.

N.9 Authorization in search cases

The department has been following a practice of writing names of all main occupants of a premises when search was conducted U/s. 132 or a requisition was made U/s. 132A of the Act. This had resulted into some successful arguments by the assessee that assessments U/s. 153A subsequent to such searches were invalid and the assessee had escaped taxation in such cases, even where unaccounted income was unearthed in such cases.

To obviate this difficulty a retrospective amendment is sought to be made by insertion of section 292CC to provide that it shall not be necessary to issue an authorization U/s. 132 or requisition U/s. 132A separately in the name of each person covered under the search. Mention of names of more than one person in the authorization or requisition would not create a presumption that the authorization is issued in the name of an association of persons or body of individuals consisting of search persons. The assessment or reassessment shall be made separately on each person specified in the authorization or requisition.

The amendment is mainly focused for rectifying the errors done by the department while issuing the search warrants.

The proposed amendment is given retrospective effect from 1st April, 1976.

N.10 Appeal to Commissioner (Appeals)

With effect from 1st April, 2010, provisions of section 200A were introduced providing for processing of the return of TDS like return of income. The provisions also enable the AO to raise the demand or grant refund of tax to the assessee after processing the return of TDS. The Act provides for issuance of intimation U/s. 200A after processing the TDS returns.

There was no provision for filing appeal against the intimation issued U/s. 200A to the deductor.

The proposed amendment specifically provides for filing an appeal by the deductor against intimation issued U/s. 200A. Amendments are also made in the provisions of section 154 permitting the AO to rectify mistake apparent from record which may have crept in processing the return of TDS.

The proposed amendment is effective from 1st July, 2012.

O. TAX DEDUCTED / COLLECTED AT SOURCE AND ADVANCE TAX

O.1 Deduction of tax in case of Non-Residents (Section 195)

An Explanation is proposed to be inserted to Section 195 on applicability of provisions of that section. It is consequent upon the decision of Hon'ble Supreme Court in the case of **Vodafone International Holdings B.V. v/s UOI [247 CTR 1]**

The Hon'ble Justice Mr. Radhakrishnan, J. in his part of order opined that a non-resident who is not having any presence in India is not required to deduct tax at source, though the payment made by him / it is liable to deduction of tax at source. This was not intended and was not in accordance with the legislative intent.

With a view to nullifying the effect of the observation of the Hon'ble Supreme Court in the above referred case in respect of withholding tax obligation of non-resident an amendment is proposed **with retrospective effect from 01.04.1962.** In this amendment it is provided that a person shall be liable to deduct tax irrespective of the fact that the non-resident has place of business or business connection in India or any other presence in any manner whatsoever.

Further, as per the existing provisions of Section 195(2) a payer is required to make an application to AO for determining portion of income taxable if that person considers that the whole of sum payable to non-resident is not taxable. However, the existing provision does not provide for making an application for determining whether the subject payment is chargeable to tax or not.

The Bill proposes to insert new provision U/s. 195(7) for compulsory reference to the AO for determining whether sum payable to Non-resident is chargeable to tax or not for specific class of persons or cases as may be notified by CBDT

O.2 Increase in threshold limits of deduction of tax from various payments

The Bill proposes to increase various threshold limits for deduction of tax from various payments like Interest on debentures and compensation on acquisition of Immovable property. The proposed amendments w.e.f. 1st July 2012 made under the new provisions are as under:

Section	Name of Payment	Existing	Proposed
193	Interest on Debentures	₹ 2,500	₹ 5,000
194LA	Compensation on acquisition of Immovable property	₹ 1,00,000	₹ 2,00,000

O.3 TDS on Interest on debentures

Presently any interest payable on debenture to Individual or HUF who is resident in India is subject to TDS U/s. 193.

No tax is required to be deducted at source if the payment is made to Individual and such payment is for debenture listed on a recognized stock exchange. The bill proposes to expand such benefit of non-deduction of tax to HUF and to all debentures whether listed or unlisted. Further the exemption limit for non-deduction is increased from ₹ 2500 to ₹ 5000/-.

This amendment is effective from 1st July 2012.

O.4 TDS on Entertainers

Consequent upon amendment to Section 115 BBA of the Act, the rate of tax deducted at source from payment to Non-resident sportsmen, athletes and sports associations, entertainers shall be subjected to withholding tax U/s. 194 @ 20 % [plus applicable cess and surcharge, if any].

This amendment is effective from 1st July 2012.

O.5 TDS on fees for professional or technical services

There was a doubt about commission / remuneration paid to non-executive or independent directors are liable to withholding tax or not as it would not fall under any of the provisions directly. For removing the said doubt scope of section 194J is proposed to be increased by the Bill by providing that tax is required to be deducted at source @10% on payment of remuneration, fees for commission to directors other than those on which tax is required to be deducted U/s. 192 of the Act.

O.6 TDS on payment on transfer of immovable property

In order to ensure that the real estate transactions come within the tax net, the Bill proposes to insert new section 194LAA with effect from 01.10.2012 providing for TDS on transactions in immovable property [being land, building or any part of the building].

As per the proposed section purchaser [or transferee] of an immovable property to deduct TDS @1% on consideration paid or payable to resident transferor for transfer of immovable property, i.e. land or building or part of a building, to the resident transferor. The provisions do not apply if total value of the consideration does not exceed ₹ 50 lakhs if the immovable property is situated in specified area and ₹ 20 lakhs in other cases. Specified area for this purpose means urban agglomeration of Greater Mumbai, Delhi, Kolkata,

Chennai, Hyderabad, Bengaluru, Ahmedabad and districts of Faridabad, Gurgaon, Gautam Budh Nagar [NOIDA], Ghaziabad, Gandhinagar and City of Secunderabad.

Purchase of Agricultural Land is excluded from the application of this provision, provided such agricultural land is situated beyond the specified distance from city limits as provided for in section 2(14) of the Act. Therefore, agricultural lands situated within such limits are covered by the provisions of TDS. It is also mentioned that purchase and sale of land as part of stock in trade are also included for TDS.

The Bill also proposes that in case where stamp duty value adopted by the stamp duty valuation authority is more than the apparent consideration the TDS is to be done with reference to the stamp duty valuation.

Further it is also provided that no registering officer shall register any such document, unless the transferee furnishes a proof of deduction of tax and its payment.

The TDS is required to be made either at the time of payment or credit of the sum to the credit of the seller whichever is earlier. Advance payment of land is therefore also covered by the TDS provisions.

While this increases substantial compliance requirement for each of the purchaser of the immovable properties, it is provided that a purchaser of property which otherwise does not have a Tax Deduction Account Number, need not obtain the TAN only for deduction / payment of tax under this provision.

This new provision will be applicable w.e.f. 1st October 2012.

O.7 Issuance of Form No. 15H for no deduction of tax

Normally a resident can file form No. 15H with the tax department for non-deduction of tax at source from various sources only if his total income for the year from such sources does not exceed the maximum amount not chargeable to tax. However, in case of senior citizens special dispensation was made to permit non-deduction of tax at source even where their income from these sources exceed maximum amount not chargeable to tax, provided their tax on total income is Nil. While defining senior citizen, the age continued to be 65 years and was not amended in line with the amendment made in other places reducing the said age to 60 years.

To correct the said mistake, it is now provided that the benefit of such dispensation would be available to senior citizens from the age of 60 years.

This new provision will be applicable w.e.f. 1st July 2012.

O.8 Relaxation to assessee in default for non-deduction/payment of TDS/TCS

As per the existing provision if an assessee fails to deduct tax at source/tax collection at source in accordance with the applicable provision of the Act or does not pay or after deducting fails to pay, the whole or part of such tax then such person is deemed to be assessee in default and subject to provision of interest and penalty.

It was decided in various judicial pronouncements that if the recipient of the income has already shown the concerned sum in his total income and also paid tax on the amount paid without deduction of tax at source, the assessee cannot be considered as assessee in default in view of provision of section 191 of the Act.

The Bill proposes to make amendment to give statutory recognition of these judicial pronouncements stating a payer will not be considered as assessee in default if all the following conditions are fulfilled:

a) The recipient payee has furnished his return of income U/s. 139.
b) The recipient payee has taken into account such sum for computing income in such return of income.
c) The recipient payee has paid the tax due on the income declared by him in such return of income.
d) The payer furnishes a certificate stating the above facts from a Chartered Accountant in prescribed form.

This is a good amendment putting at rest lot of litigation in this regard. It would be better if this amendment had been brought about with retrospective effect. However, we are of the view that the courts are likely to interpret that the amendment shall also apply to all pending matters.

It is also provided, as a natural corollary, that the person who has failed to deduct tax at source, may nonetheless be liable to pay interest for non-deduction of tax at source for the period commencing from the date on which the tax ought to have been deducted and upto the date on which the recipient filed the return of income. While this amendment is logical, it is felt that if the recipient has paid the tax earlier than filing of the return charging of interest should stop from the date on which the tax is already paid by the recipient.

The benefit of the aforesaid amendment is not applicable in respect of payment to non-resident.

Further the time limit for passing an order to treat the assessee as assessee in default has been increased from 4 years to 6 years from the end of the financial year in which TDS return has been filed.

This new provision will be applicable w.e.f. 1st July 2012.

O.9 Increase in item on which Tax is to be collected at Sources

Provisions of section 206 C of the Act provides for Tax Collection of tax at source, where the seller while selling a product is required to collect the tax from the purchaser and make payment of the same to the credit of the Government. To various items which are subject matter of such TCS, with effect from 1st July, 2012, item Minerals, being Coal or Lignite or iron ore is included and the rate of TCS is specified at 1 %.

To prevent unaccounted transactions in jewellery, it is provided to include transactions in cash for jewellery purchase and sale are also included in the list of TCS @ 1 %. Accordingly, a seller who sells jewellery in cash to a buyer (otherwise than a buyer in retail sale for self-consumption) is required to collect tax at source @ 1 %. A monetary limit of ₹ 2.00 lacs has been prescribed and accordingly transactions in excess of ₹ 2.00 lacs are only brought within the purview of TCS on jewellery transactions.

This new provision will be applicable w.e.f. 1st July 2012.

O.10 Advance Tax

As per section 207 r.w.s. 208, every person is liable to pay advance tax, if advance tax payable is more than ₹ 10,000. In order to reduce compliance requirements of senior citizens the Bill proposes that senior citizens not having income from business or profession are not required to pay any tax in advance and it would be due compliance if such senior citizens pay tax at the time of filing return of income.

Further it is also proposed in section 209 that no credit of TDS/TCS is to be given for computing the advance tax if such person receives income without deduction or collection of tax which is otherwise deductible/collectible under the Act.

O.11 Fees for non filing of TDS / TCS return

The Bill proposes to insert new section 234E to provide for payment of fee of ₹ 200 per day of failure to finished TDS/TCS return. However the total amount of fees payable should not exceed the amount of TDS/TCS.

This provision will be applicable w.e.f. 1st July 2012.

P. SETTLEMENT COMMISSION AND ADVANCE RULING

P.1 Settlement in Search Cases

Section 245C of the Act provides for an option to an assessee to avail of the settlement of cases by filing a settlement application before the settlement commission set up under the Act. The amendment proposed by the Finance Bill provides that a person shall be deemed to have a substantial interest in a business or profession of the person searched if, in a case of company, the person on the date of search beneficially holds not less than 20 % of the shares having voting power. In any other case, such person is, on the date of search, beneficially entitled to not less than 20% of the profits of the business.

The earlier clause provided for beneficial ownership *"at any time during the previous year"* in contrast to *"on the date of search"* as per the proposed amendment. This has been done for ensuring that the persons do not take undue advantage of the provisions by changing the shareholding subsequent to the date of search.

The proposed amendment is effective from 1st July, 2012.

P.2 Application for advance ruling

Applications for getting an advance ruling were required to be accompanied with fees of ₹ 2,500. The proposed amendment has sought to increase the minimum fees from ₹ 2,500 to ₹ 10,000. The proposed amendment has also provided for prescription of fees in this behalf and higher of the prescribed fees or ₹ 10,000 would be required to be paid.

Q. PENALTY AND PROSECUTION

Q.1 Penalty in search cases

Presently, penalty in search cases is covered by provisions of section 271AAA. These provisions are applicable in respect of the previous years for which the return is not filed and the due date whereof has not expired on the date of initiation of search and also the financial year in which the search is initiated. Existing section 271AAA provides that no penalty will be levied for the specified previous years if assessee makes complete disclosure of undisclosed income during the course of search, including the manner of earning undisclosed income, pays the taxes thereon and also substantiates the manner of earning undisclosed income. The said provisions also provide for penalty of only 10% if the assessee fails to substantiate, declare, pay the tax, etc. These provisions were found to be too lenient in favour of the assessees who are searched as compared to the assessees in whose case additions were made based on regular assessment.

The above scheme of section 271AAA is applicable for search U/s. 132 initiated on or after 1st day of June, 2007.

A new section 271AAB is proposed to be introduced after section 271AAA for dealing with levy of penalty for search U/s. 132 initiated on or after 1st July, 2012 covering the specified previous year referred to above. These provisions are sought to substitute existing liberal provisions of penalty.

The proposed section 271AAB in contrast to section 271AAA provides as follows:

<table>
<tr><th colspan="2">Conditions</th><th>Section 271AAA</th><th>Section 271AAB</th></tr>
<tr><td>1.</td><td>Complete disclosure of undisclosed income during the course of search in statement U/s. 132(4) and specifies the manner of earning such income; and</td><td rowspan="3">No penalty</td><td rowspan="4">10% penalty of the undisclosed income</td></tr>
<tr><td>2.</td><td>Substantiates the manner in which such income has been derived; and</td></tr>
<tr><td>3.</td><td>Pays tax together with interest on the undisclosed income before the specified date; and</td></tr>
<tr><td>4.</td><td>Furnishes return of income declaring such undisclosed income before the specified date.</td><td>No condition for filing the return of income</td></tr>
<tr><td>5.</td><td>Does not make disclosure of undisclosed income during search and does not specify the manner of</td><td>10% of undisclosed income</td><td>20% of undisclosed income</td></tr>
</table>

	Conditions	Section 271AAA	Section 271AAB
	earning such income; But, declares the undisclosed income in the return of income filed before the specified date and pays the tax thereon together with interest		
6.	Does not make disclosure of undisclosed income and does not disclose in the return of income or does not make payment of taxes	10%	30% to 90% of undisclosed income

Definition of the undisclosed income and specified previous year has remained same, however, a new term specified date has been inserted and defined to mean the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued U/s. 153A for furnishing of return of income expires, as the case may be.

Order levying penalty U/s. 271AAB is an appealable order before the Commissioner (Appeals).

Q.2 Penalty for failure to furnish TDS returns / statements

A new section 271H has been inserted which provides for penalty @ ₹ 10,000 to ₹ 1,00,000 for failure to furnish the TDS returns or statements. The said section also applies to furnishing of incorrect information in the TDS statement/returns.

However, no penalty U/s. 271H would be levied if the statement/return is filed before the expiry of a period of one year from the time prescribed for filing the statement/return.

Consequential amendment has been made in section 272A which provides for levy of penalty @ ₹ 100 for each day of default. However, total amount of penalty cannot exceed the amount of tax deducted at source. After the insertion of section 271H no penalty for failure to furnish the returns/statements can be levied U/s. 272A(2)(k) @ ₹ 100 per day.

Amendment has also been made in section 273B to provide that no penalty under section 271H shall be levied in case the assessee proves that there was reasonable cause for the failure to furnish the return/statement in time.

The proposed amendment is effective from 1st July, 2012.

Q.3 Prosecution

Amendments have been made in:
- section 276C (willful attempt to evade tax)
- section 276CC (willfully fails to furnish returns of income)
- section 277 (false statement in verification)
- section 277A (falsification of books of accounts or document)
- section 278 (abatement of false return)

The above provisions provided for differential level of fine / imprisonment depending upon the quantum of tax sought to be provided. Existing provisions provide that if the amount of tax sought to be evaded is ₹ 1.00 lac or less then the rigorous imprisonment shall be between 3 months to 3 years, whereas where the amount of tax sought to be evaded exceed the said sum of ₹ 1.00 lac then the rigorous imprisonment can go to 6 months to 7 years. The threshold of ₹ 1.00 lac is sought to be increased to ₹ 25.00 lacs and accordingly, unless amount of tax sought to be evaded exceeds ₹ 25.00 lacs, increased level of penalty would not be applicable.

It is further provided that in smaller cases [i.e. below ₹ 25.00 lacs of tax evasion] maximum rigorous imprisonment shall be of 2 years in place of original 3 years.

The proposed amendment is effective from 1st July, 2012.

Q.4 Setting up of fast track / special courts

New set of Sections 280A to 280D is sought to be inserted enabling the Central Government to set up Special Court for trying the offences under the Income Tax Act in consultation with the High Court of the State.

Salient features of the proposed scheme is as under:
- The Central Government in consultation with the Chief Justice of the High Court shall designate one or more of courts of First Class Magistrate as special court.
- Such designation could be for specific area or areas or for such cases or class or group or class of cases as may be specified.
- The Special Court is authorised to concurrently try other offences with which the accused may be charged under the CrPC.
- Once the designated court is set up, it shall have exclusive jurisdiction in respect of cases / classes / areas so designated. However, pending cases shall continue to be tried by the respective courts.
- The special court is empowerd to take cognizance of the offence on a complaint being made.
- The cases shall be tried as summons cases, despite the cases involve imprisonment or with fine or with both. The provisions of CrPC applicable to summons cases shall accordingly be applied.

- The person conducting the case before the Special Court shall be deemed to be a Public Prosecutor under the CrPC.
- The Central Government shall have a right to appoint a Special Public Prosecutor for a case or class or group of cases. Such Public Prosecutor should be a person who should be in practice as an advocate for not less than 7 years requiring special knowledge of law.

R. NOTICES, DEMANDS – VALIDATION CLAUSE

The Bill proposes to include clause no. 113 for validation of notice issued or demand raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from transfer of a capital asset situated in India, in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of agreement or otherwise outside India.

It is proposed that any notice sent or purporting to have been sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause shall be deemed to have been validly made and such notice or levy of tax shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India. The validating clause shall operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority.

It is observed that such clause is proposed to counter the claim of the assessee to challenge the validity of issuance of notice on the ground of non-taxability of transaction of capital gain in India. This amendment is primarily for preventing Vodafone / other cases to contend that their matters are covered by a decision of supreme court / high court and therefore cannot be subjected to the amended provision.

This validation clause shall take effect from coming into force of the Finance Act, 2012. However, it may be mentioned that the Finance Bill does not provide for the effective date of this Clause.

S. WEALTH TAX

S.1 Qualification of residential house as asset

As per the section 2(ea)(i)(1) of the Wealth Tax Act, 1957, a residential house which is allotted by the company to an employee, officer or director having gross salary less than ₹ 5,00,000/- would not qualify as an asset for the Wealth Tax.

The Bill, proposes to increase the limit of such gross salary of ₹ 10,00,000/- for the purpose of attracting the wealth tax.

S.2 Wealth escaping assessment

Amendments are also proposed in section 17 & 18 of the Wealth Tax Act, 1957 (relating to reassessment and issuance of notice for reassessment) in line with amendment made in the Act so as to cover within the scope of section 17 & 18 the cases of assets (including financial interest in any entity) which are located outside India.

This amendment is proposed with effect from 1st July 2012.

S.3 Extended time to complete assessment

The time limit to complete the various assessment proceedings under the Wealth Tax Act, 1957 is proposed to be increased by three months in line with amendment proposed under the Act.

All such amendment is proposed with effect from the 1st July, 2012.

S.4 Exemption from applicability of Wealth Tax Act, 1957

Presently certain entities *viz*. Companies registered U/s. 25, Co-operative Societies, Social Club, Political Parties, Mutual Fund specified U/s. 10(23D) are not liable for Wealth Tax. The Bill has proposed to extend such benefit to Reserve Bank of India.

This amendment is proposed with retrospective effect from 01.04.1957.

T. SERVICE TAX

T.1 Rate changes

(w.e.f. 1st April, 2012)

(a) **The rate of service tax has been raised from 10% to 12%.**

(b) **Consequent changes in composition rates are as under:**

- For life insurance: 3% for the first year premiums while retaining the rate @1.5% for the subsequent years and eligible for full Cenvat credit.
- Money changing: raising existing rates proportionately by 20%.
- Distributor or selling agent of lotteries: raising the specified amounts proportionately and suitably rounded off to ₹ 7,000 and ₹ 11,000.
- For works contracts from 4% to 4.8%.

(c) **Rate for Cenvat reversal for exempt services revised from 5% to 6%:**
The rate of Service Tax has been raised from 5 % to 6 % of the value of the exempted goods and exempted services in case he opts not to maintain separate accounts for receipts, consumption and inventory of inputs as well as for the receipts and use of input services.

(d) **The tax structure for air transportation:**
The basis of applicability of Service Tax in respect of Transport of Passengers by Air (Subject to the condition that no credit on inputs and capital goods is taken) is being changed as under:

Class	Existing rate	Revised rates
Domestic (Economy)	10% of gross Value of ticket or ₹ 150/- per journey, whichever is less	12% Ad Valorem with an abatement of 60%
International (Economy)	10% of gross Value of ticket or ₹ 750/- per journey, whichever is less	
Domestic (Other than Economy)	Standard rate of 10%	

T.2 Introduction of Negative List Approach

Service Tax was levied on category of Services specified by the Act. The Bill, has now changed the base to a Negative List approach.

Negative list approach shall come into effect from a date to be notified, after the Bill, receives the assent of the President, whereby all the services except those listed in the Negative List or those which are specifically exempt shall attract Service tax at the prescribed rates.

The Provisions relating to positive list approach, namely, sections 65, 65A, 66, and 66A currently appearing in Chapter V of the Finance Act, 1994, will cease to operate from a date to be notified later, as and when the negative list approach begins to operate.

To support the negative list approach to taxation of services, draft Place of Provision of Services Rules, 2012 is being proposed. The draft Place of Provision of Services Rules contains the principles on the basis of which taxing jurisdiction of a service can be determined. The new rules will replace the existing Export of Services Rules 2005 and the Taxation of Services (Provided from outside India and Received in India) Rules, 2006. Rule 5 of the Export rules will be incorporated in Service Tax Rules. 34 services are exempted from Service Tax.

Services defined in Negative list:

1. Services by Government or a local authority
2. Services by the Reserve Bank of India
3. Services by a foreign diplomatic mission located in India
4. Services relating to agriculture
5. Trading of goods
6. Any process amounting to manufacture or production of goods
7. Selling of space or time slots for advertisements other than advertisements broadcast by radio or television
8. Service by way of access to a road or a bridge on payment of toll charges
9. Betting, gambling or lottery
10. Admission to entertainment events or access to amusement facilities
11. Transmission or distribution of electricity
12. Educational services
13. Services by way of renting of residential dwelling for use as residence
14. Services by way of extending deposits, loans or advances (on interest / discount) and *inter se* sale or purchase of foreign currency amongst banks or authorised dealers
15. Service of transportation of passengers by a stage carriage; railways (other than first class airconditioned coach); metro, monorail or tramway; inland waterways; public transport and metered cabs, radio taxis or auto rickshaws
16. Services by way of transportation of goods—
    - by road except the services of—
      (*A*) a goods transportation agency; or
      (*B*) a courier agency;
    - by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
    - by inland waterways
17. Funeral, burial, crematorium or mortuary services including transportation of the deceased.

T.3 Changes in Abatements

Sr. No.	Name of the service	Existing Rate	Revised Rate
1	Financial Leasing Services including Equipment leasing and hire purchase	NIL	90%
2	Transport of passengers with or without accompanied belongings by rail	NIL	70%
3	Supply of food or any other article of human consumption or any drink, in premises, including hotel, convention center, club, pandal, shamiana or any place specially arranged for organizing a function	NIL	30%
4	Transport of passengers by air, with or without accompanied belongings	NIL	60%
5	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	NIL	40%
6	Services provided in relation to chit	NIL	30%
7	Transport of goods in a vessel from one port in India to another	NIL	50%

T.4 Reverse Charge Mechanism

With amendment in Section 68(2) of the Finance Act, 1994:

- The onus of payment of service tax on reverse charge basis shall be partly on service provider and partly on service receiver.
- The scheme shall be applicable on three specific services i.e. hiring of means of transport; construction and man power supply.
- A notification will be issued after the Bill, receives the assent of the President, specifying the manner and extent of service tax payable by service provider and service receiver in the case of the above three services.
- Suitable amendment is also being made in the concept of 'person liable to pay' provided in Rule 2(1)(d) of Service Tax Rules, 1994.

T.5 Renting of Immovable Property Service

A new section 80A is proposed to be inserted in which the penalty shall be waived for all those taxpayers who pay the service tax due on the renting of immovable property service (as on 06.03.2012), in full along with interest.

The scheme of penalty waiver will be open only for a period of six months from the date of enactment of the Bill,.

T.6 Retrospective Exemptions

These exemptions will come into effect on the date of enactment of the Bill.

(a) Vide Notification No.24/2009-ST dated 27.07.2009 service tax on repair of roads is already exempted. Vide section 97 of the Finance Act, 1994, the exemption granted to repair of roads is being extended for the earlier period from 16.06.2005 to 26.07.2009.

(b) Management, maintenance or repair service undertaken in relation to non-commercial Government buildings is being exempted from service tax vide section 98, with effect from 16.06.2005 till the new charging section, namely section 66B, comes into force.

(c) In the last budget, sub-rule 6A was inserted under rule 6 of the Cenvat Credit Rules, 2004 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A is being given retrospective effect from 10.02.2006 [clause 144 of the Bill].

(d) Service provided by an association of dyeing units in relation to common effluent treatment plants was exempted from service tax vide Notification No.42/2011-ST dated 25.07.2011. The scope of the exemption is being expanded and the amended notification is being given retrospective effect from 16.06.2005[clause 145 of the Bill].

T.7 Legislative changes

(a) Vide notification no. 1/2012 – Service Tax, which shall come into force on the date of its publication in the Official Gazette, the exemption vide existing notification No. 42/ 2011 – Service Tax, dated the 25.07.2011 shall be amended as under include registered co-operative societies and all those entities which are into processing of effluent discharged by units. Earlier notification specified that only those effluent processing units which catered to dyeing units will be exempted.

(b) Notification 8/2009 was brought to give effect to the tax rate of 10%. Now that the new rate proposed is 12% this notification becomes redundant and hence the new notification 2/2012 now rescinds this notification.

(c) Amendment in the notification no. 6/2005-Service Tax, dated the 1st March, 2005 vide notification no. 5/2012 – Service Tax (w.e.f. 01.04.2012) in needed as the concept of continuous service was introduced last year. The definition of aggregate value has been put in as a part of explanation to this notification. However, the concept of tax liability on accrual was not covered by this definition. That is now remedied. If the invoices are issues or required to be issued, these will become part of the aggregate value.

T.8 Amendments in Rules

1. Cenvat Credit Rules, 2004

(a) Simplification of procedure for refund of unutilized credit on the account of exports

As per the new scheme, the correlation between exports and input services used in such exports is no more required to be established, as it was required earlier under Rule 5, to claim refund of unutilized CENVAT credit on account of export.

Accordingly, duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover. The notification prescribing the detailed manner and safeguards will be issued by the Policy wing shortly.

(b) Credit is being allowed on motor vehicles. The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed to the service provider

Presently, credit on all motor vehicles is not available except to a few specified service providers. This has been liberalized and credit on motor vehicles, other than those falling under tariff heading 8702, 8703, 8704 and 8711 will be allowed to the service provider.

Also, the credit of service tax paid on their hiring, insurance and repair will also be allowed.

(c) Credit of Service Tax paid on insurance and service station service will be allowed to

- Insurance companies in respect of motor vehicles insured and re-insured by them; and
- Manufacturers in respect of motor vehicles manufactured by them.

(d) Credit on goods can be taken without bringing them into premises of the service provider

Rule 4(1) requires goods to be received in the factory of the manufacturer or in the premises of the provider of the output services. Sub-rules 4(1) and 4(2) have been amended to allow service provider to take credit of inputs or capital goods without bringing them into the premises subject to due documentation regarding their delivery and location.

(e) Amendment in Rule 7 to ensure introduction of scientific method of distribution of credits of input services by input service distributor (ISD)

Presently the distribution of the input services by an input service distributor is done at its discretion applying logical bases. Rule 7 for input service distributors is being amended to introducing a scientific method of distribution of input service such that

- credit of service tax attributable to service used wholly in a unit will have to be distributed only to that unit and,
- credit of service tax attributable to service used in more than one unit will have to be distributed pro-rata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

(f) Credit of service tax paid on reverse charge basis to all the service receiver will be allowed on the basis of service tax payment challan

Previously availment of credit on the tax payment challan of service tax paid on reverse charge basis was allowed only to four service receivers.

Under the Bill, Rule 9(1)(e) has been amended to allow availment of credit on the tax payment challan in case of payment of service tax by all the service receivers on service charge.

2. Service Tax Rules, 1994

(a) The time limit specified under Rule 4A for issuance of invoice has been increased

The time limit prescribed for issuance of invoice by the person providing service has been increased to thirty (30) days form earlier limit of fourteen (14) days. This will be 45 days for Banks and financial institutions providing banking services.

(b) Rule 6(4B) is amended to allow unlimited amount of permissible adjustments

The monetary limit of **two lakh rupees** prescribed under Rule 6(4B) has been removed. Now the same can be adjusted without any monetary limit.

(c) At present, in the case of export and, individuals and firms rendering eight specified services, the point of taxation is the date of payment subject to certain conditions. This special dispensation is being shifted from the Point of Taxation Rules to the Service Tax Rules

In case of Individuals and partnership firms, if the aggregate value of services provided from one or more premises does not exceed ₹ 50 Lacs, the service provider will have the option to pay tax on taxable services, on the basis of receipt of payment.

The specified services include the services provided by Architects, Interior decorators, Chartered Accountants, Cost Accountants, Company Secretaries, Scientists and Legal Consultants.

(d) In case of exporters, the period extended by the Reserve Bank of India on specific requests is also being included in the period for which the tax liability is allowed to be deferred.

Where under FEMA the exporter gets additional time limit to receive the payment in convertible foreign exchange the department had taken a stand that since the provisions of service tax mentions 6 months anything beyond that is not export and hence taxable. Now with this amendment any extension granted will not make the export taxable as long as the convertible foreign exchange is received within the extended period.

(e) The option of deferred payment is being allowed for all service providers rather than for specific services

The facility will be available only to individuals and partnership firms (including limited liability partnership) upto a turnover of taxable services of Rupees Fifty lakhs subject to the condition that their turnover of taxable services in previous year was below Rupees Fifty lakhs. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

3. Point of Taxation Rules, 2011

(a) Change in the definition of "Continuous supply of service"

"Continuous Supply of Service" was restrictive to services provided for a period exceeding three months. This definition has now been amended and shall include all services of recurrent nature where the obligation for payment may be periodically or from time-to-time. The time limit of three months is not applicable now.

(b) Point of Taxation in case of Continuous Supply

With a change in the definition of `Continuous Supply of Service', the point of Taxation in case of continuous supply of services shall be the time when the invoice for the service provided or to be provided is issued.

Moreover the provisions of rules 4 and 5 relating to changes in rates or application of tax on new services would also be applicable to continuous supply of services;

(c) Change in definition of date of payment (insertion of Rule 2A)

i. With the change of charging the service tax on all services other than those appearing in negative list, the date of payment could be a subject of litigation.

With the introduction of new rule, the date of payment shall be the earlier of:

- the date on which the payment is entered in the books of accounts, or

- the date on which the payment is credited to the bank account of the person liable to pay tax.

In case where the rate is changed or new service is subject to tax between the two dates, the date of payment shall be the date of credit in the bank account if the account is credited through a banking instrument more than four working days after the date of such change.

ii. If any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received.

(d) An option has been provided to determine point of taxation in respect of small advances upto ₹ 1000 in excess of the amount indicated in invoice

(e) New residual rule 8A has been inserted to ascertain point of taxation:

The Central Excise Officer can decide the point of taxation to the best of his judgment, where the point of taxation cannot be determined as per any of the prevailing rules, in absence of the date of invoice or the date of payment or both.

T.9 Amendments in Chapter V of the Finance Act, 1994
(w.e.f. from the date of enactment of the Bill)

i. Relevant date
A new section 67A is introduced which shall prescribe the relevant date for application of rate of exchange, valuation or rate of service tax which shall be considered for calculation of Service Tax.

ii. Special Audit Provisions
A new Section 72A is inserted by which the Service Tax Officer can direct the service provider to get his accounts audited by a Chartered Accountant or a Cost Accountant nominated by the Chief Commissioner of Central Excise. These special audit provisions shall give comprehensive powers to the Service tax Officials.

iii. Issue of Demand
The period for issue of demands in normal situations is being raised from 12 months to 18 months. This amendment is in made to have the benefit of audited accounts available for the purpose of scrutiny of returns;

iv. Settlement Commission
Section 83 is amended to align with the provisions of the Central Excise Act, 1944 so as to encourage the quick settlement of disputes And to make the revision mechanism i.e. revision of orders passed by the Commissioner (Appeals), by Central Government, prescribed in the Central Excise Act, 1944, applicable to service tax, to the extent possible.

v. **Period for filing Appeals (Section 85 & 86)**

The periods for filing appeals in service tax (Section 85 & 86) are being aligned with Central Excise (Section 35 & 35E) to harmonize the limitation for filing assessee appeal before Commissioner (Appeals) and revenue New limitations (i.e. max. time limit for filing appeals) will apply to decisions or orders passed after the date on which the Bill, receives the asset of the President.

vi. **Compounding of Offence (Section 94(2))**

Section 94(2) is being amended to obtain powers (a) to provide for the manner of compounding and to specify the amount of compounding of offences along the lines of Central Excise (Compounding of Offences) Rules, 2005; (b) to provide for rules for settlement of cases, along the lines of Central Excise.

U. EXCISE

U.1 Legislative

- Section 4 is being amended to define the `inter connected undertakings' for Valuation of excisable goods chargeable to duty on *ad valorem* basis. `Inter connected undertakings' has been defined as it was appearing in the Monopolies and Restrictive Trade Practices Act, 1969. This will have greater impact where the goods are transferred within the group or between two interconnected undertakings with a purpose of reducing the overall excise burden.
- Section 9 amends the duty evasion limit to attract Imprisonment for a term extending to seven years.

Nature of an offence	Earlier limit of duty evaded	Revised limit of duty evaded
Offences specified under Section 9	₹ 1,00,000	₹ 30,00,000

- An amendment is proposed in Section 9A to provide that all offences shall be non- cognizable, except an offence punishable with imprisonment of three years or more under Section 9. It implies that officer may arrest an accused without warrant if the accused has committed an offence punishable with imprisonment for a term of three years or more.
- As per clause (c) of section 11AC of the Act is amended to provide that the benefit of reduced penalty shall be available only if the reduced penalty is paid along with duty and interest payable thereon within given time limit.
- Powers of officer-in-charge of police station have been given to Joint/Asst. Commissioner.
- Restriction on granting of bail by Court or Magistrate has been added by Section 13A.
- Notification No.1/2010-CE dated 6th February, 2010 has been retrospectively amended to clarify that the exemption **period of ten years** available to the units that have undertaken substantial expansion in the State of Jammu and Kashmir, for payment of Central Excise duty to goods cleared from new units or units shall be **calculated from the date of commercial production from the expanded capacity.**
- Deeming provision applicable to manufacture is being amended to include cigarettes. Accordingly the process of packing, or repacking in a unit container, labeling or relabeling of containers including the declaration or alteration of RSP on it or adoption of any treatment to render cigarettes marketable shall be treated as manufacture. This deeming provision would come into force immediately

U.2 Tariff

Increase in Basic Rate:

- The basic rate of Excise duty has been enhanced to 12% from the existing rate of 10% for all non-petroleum goods other than exempted goods, goods attracting merit rate or higher duty rates.
- Consequently, the merit rate of 5% is being enhanced to 6% while 1% excise duty applicable on 130 items is also being enhanced to 2% with a few exceptions.
- For petroleum goods, the *ad valorem* rate or *ad valorem* component (where the rates are mixed) is being revised to 14%.

The revision in Tariff is as under:

1. Increase in Tariff:

Item Description	Rates
Filter and non filter Cigarattes	10% *ad valorem* duty in addition to the existing specific duty.
Cigars, cheroots and cigarillos	From 10 % or ₹ 1227/- per thousand to 12 % or ₹ 1370/- per thousand (whichever is higher)
Indigenous Crude under the Oil Industry (Development) Act, 1974	The rate of cess enhanced to ₹ 4500/- per ton
Non Leather Footwear	Exemption limit increased to ₹ 500. For footwears exceeding ₹ 500, duty increased from 10 % to 12%.
Serially numbered gold bars other than tola bars Serially Numbered gold bars other than tola bars and gold coin of purity 99.5%	From 1.5% to 3% From 2% to 3%
Petrol/LPG or CNG driven cars not exceeding 400 mm and engine capacity not exceeding 1200 cc Diesel driven cars not exceeding 400 mm and engine capacity not exceeding 1500 cc Petrol driven cars with length exceeding 4000mm & engine capacity under 1200 cc Petrol driven vehicles having length exceeding	From 10% to 12% From 10% to 12%. From 22% to 24% From 22% + ₹ 15,000/- to

4000mm % engine capacity exceeding 1500 cc Diesel driven cars with length exceeding 4000mm & engine capacity under 1500 cc Diesel driven vehicles having length exceeding 4000mm & engine capacity exceeding 1500 cc	27% From 22% to 24% From 22% + ₹ 15,000/- to 27%.

2. Items Fully Exempted:

Item Description
Food preparations containing fruits and vegetables
Six specified Live Saving Drugs/Vaccines
Gold coins of purity 99.5% and above and silver coins of purity 99.9% and above
Parts and testing equipment for manufacture, repair and overhauling of aircraft
Intraocular Lens
Refills and inks in bulk

3. Reduction in Tariff:

Item Description	Rates
Processed Food Products of Soya	From 10% to 6% ad valorem
All goods manufactured and cleared in packaged form: From mini cement plant From other than mini cement plant	 6% + ₹ 120 per MT 12% + ₹ 120 per MT
Iodine	From 10% to 6%.
Matched manufactured by semi-mechanized units	From 10 % to 6 %
Pneumatic tyres, new or retraded, used in Aircraft	From 10 % to Nil
Parts, components and specified accessories viz. battery chargers, PC Connectivity Cables, Memory cards and hands-free headphones of mobile phones Lithium ion batteries packs for supply to electric/hybrid vehicle manufactures	Concessional Excise Duty at 2% without CENVAT credit being extended. From 10% to 6%
Specified parts of hybrid vehicles	From 10% to 6%.
Polypropylene, Stainless Steel Strip and Stainless Steel capillary tube for manufacture of syringe, needle, catheters, and cannulae Specified raw materials viz. stainless steel tube and wire, cobalt chromium tube, Hayness Alloy-25 and polypropylene mesh required for	Reduced to 6% on specified raw materials. Reduced to NIL.

Item Description	Rates
manufacture of Coronary stents/ coronary stent system and artificial heart valve Parts of Blood Pressure Monitors and Blood Glucose monitoring systems (Gluco- meters) on actual user basis.	 Reduced to 6%.
LED Lamps	Reduced to 6%.

V. CUSTOMS

V.1 Legislative amendments

- The Definition of "The Custom Airport" amended to include "air freight station" (AFS) under clause (10) of section 2 of Customs Act, 1962. The customs airport definition ensures that the entry points into the country are clearly defined. By adding air freight station (AFS) into the definition of airport it gives customs power equal to that as they exercise in airport. The air freight station is defined as to include container depots or AFS and these are both now within the meaning of the Airport.

  These amendments would empower the Central Board of Excise and Customs to appoint air freight stations for unloading of imported cargo and loading of export cargo as in the case of Inland Container Depots.

- **Insertion of new section 28AAA(Recovery of duties)** gives power to the Government to cancel the concessions and recover the duties as if the concessions never existed. Under Foreign Trade (Development and Regulation) Act, 1992 the Government of India gives many concessions to the exporters who also import for producing export goods. In case if the concessions have been obtained by any person by means of:
  a) collusion, or
  b) willful misstatement or
  c) suppression of facts,

  this provision gets attracted. The punishment can be interest, penalty and even attachment of property where there is difficulty in recovery of the duty.

- Section 47: The amendment gives CBEC to specify e-payment of customs duty by more than one class of importers.

- Amendment to Section 104: With this amendment power is delegated to a Customs Officer by this section to release any person arrested by him which are equivalent to Police officer under the Code of Criminal Procedure. The offence is now bailable and non-cognizable except where offences require imprisonment of 3 years or more.

- With insertion of Section 104A provide for the bail in case of offence punishable for a term of three years or more. It provides that Court or Magistrate shall not be granted by the on his own bond, unless certain conditions are fulfilled

- Enhancement of monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty.

Adjudicating Authority	Previous limit	Enhanced Limit
Deputy/Assistant Commissioner	₹ 2,00,000	₹ 5,00,000
Gazetted Officer	₹ 10,000	₹ 50,000

V.2 Exemption from additional duty to Foreign Going Vessels

Exemption from additional duty is being provided retrospectively to "Foreign going vessels" for the period from 1st March, 2011 to 16th March, 2012.

V.3 Amendments in Tariff:

- Section 8C of the Customs Tariff Act, 1975 is being amended and provides that safeguard duty on imports from the People's Republic of China may be imposed for a period exceeding 10 years also.
- The rate of Export duty on chromium ore if being amended from ₹ 3000/- per Ton to 30% ad valorem.

- Other changes in Tariff :

1. **Reduction in rate of Customs Duty**

Particulars of Products	Rates
Sugarcane Planter, root or tuber crop harvesting machine and rotary tiller and Weeder, parts and components for their manufacture	From 7.5 % to 2.5 %
Mechanized Handling Systems and Pallet Racking Systems used for horticultural produce (under Project import)	Concessional rate of basic Customs duty of 5 % and Nil CVD and SAD
Specified coffee Plantation and processing Machinery	From 10%/7.5% to 5%*
Coffee Brewing and Vending Machines	From 10% to 5% (upto 31.03.2014)
Parts of coffee Brewing and Vending Machines	From 10% to 2.5%
Specified Soluble fertilizers and liquid fertilizers (other than Urea)	From 7.5% to 5% and from 5% to 2.5% resp.
Coating Material for manufacture of electrical steel	From 10% to 5%
Ammonium Meta-vanadate	From 7.5% to 2.5%
Capital goods for Iron ore pellet plants	From 7.5% to 5%
Steam Coal	CVD reduced from 5% to 1%*
Surveying and Prospecting of Mines	From 10%/7.5% to 2.5%
Railway Safety and railway track laying machines	From 10% to 7.5%

Particulars of Products	Rates
Raw Materials for manufacture of essential parts of Wind Energy Generators	Concessional rate of 5%
Lithium ion Batteries used for battery packs for supply to electric and hybrid vehicle manufacturers	Nil Basic duty + Nil SAD and 6% CVD
Iodine	From 5% to 2.5%
Isolated Soya Protein and Soya Protein Concentrate	From 15%/30% to 10%
Probiotics	From 10% to 5%
Specified Life Saving drugs/Vaccines and their bulk drugs	From 10% to 5% and Nil CVD
Raw Materials used for manufacture of Syringes, needles, catheters, cannulae	Basic Duty 2.5% , 6% CVD and Nil SAD
Components used for manufacture of Blood Pressure Monitors and blood Glucose monitoring systems	Basic Duty 2.5% , 6% CVD and Nil SAD
Shuttleless Looms	From 5% to Nil
Automatic silk reeling and processing machinery and Raw silk testing equipments	From 5% to Nil
Wool waste and wool tops	From 10%/15% to 5%
Titanium dioxide	From 10% to 7.5%
Marine seawater pumps and Automatic fish/prawn feeders for aquaculture	From 10% to 5%
Artemia	From 30% to 5%
Boiler quality tubes and pipes for Boiler	From 10% to 7.5%
Items used for manufacture of adult diapers	Basic Customs duty 5% + 6% CVD + Nil SAD.

2. Items Fully Exempted from Custom Duty

Particulars of Products
Nickel oxide/hydroxide and nickel ore/concentrate
Initial Setting up and substantial expansion of Fertilizer Project (upto 31.03.2015)
Natural Gas/Liquified Natural Gas imported for Power Generation
Uranium Concentrate, sintered natural uranium dioxide, sintered uranium dioxide pellets used for generation of nuclear power
Equipment imported for Road Construction
Specified Lining equipment and tunnel excavation
Coal Mining Projects
New and Retrated Aircraft Tyres
Parts of Aircraft and testing equipment for maintenance and repair of aircraft imported by Third Party Maintenance, repair and Overhaul units
Equipments used for Solar Thermal Projects
Tri band Phosphor used in Compact Fluroescent lamps

Particulars of Products
Essential items for coronary stents/coronary stent systems & artificial heart valves
Aramid Yarn and fabric used for manufacture of bullet proof helmets supplied to defence and police
LCD and LED TV Panels > 20 inches
LEDs used for LED lamps
Parts of Memory cards
Waste Paper
Brass Scrap, timber logs and dredgers

A) Increase in Customs Tariff and withdrawal of Exemption

Particulars of Products	Rates
Completely Built units of large cars/MUVs/SUVs (Value exceeding US $ 40,000 and engine capacity exceeding 3000cc for Petrol and 2500cc for diesel)	Increased from 60% to 75%
Flat Rolled Products (HR and CR) of Non-alloy steel	Increased from 5% to 7.5%
Standard gold bars and platinum bars	Increased from 2% to 4 %
Non standard Gold	Increased from 5% to 10%
Gold ore/concentrate and dore bars for refining	Increased from 1% to 2 %
Items imported for manufacture of Connectors	Exemption withdrawn
Items imported for manufacture of cables and conductors for telecom use	Exemption withdrawn
Boric acid	Increased from 5% to 7.5%
Bicycles	Increased from 10% to 30%
Parts of Bicycles	Increased from 10% to 20%

B) Duty imposed

Particulars of Products	Rates
Digital Still Cameras with certain specifications	10%
Cut and polished colored Gemstones	2%

An Overview of

THE FINANCE BILL 2012

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The provisions contained in the Finance Bill, 2012 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.