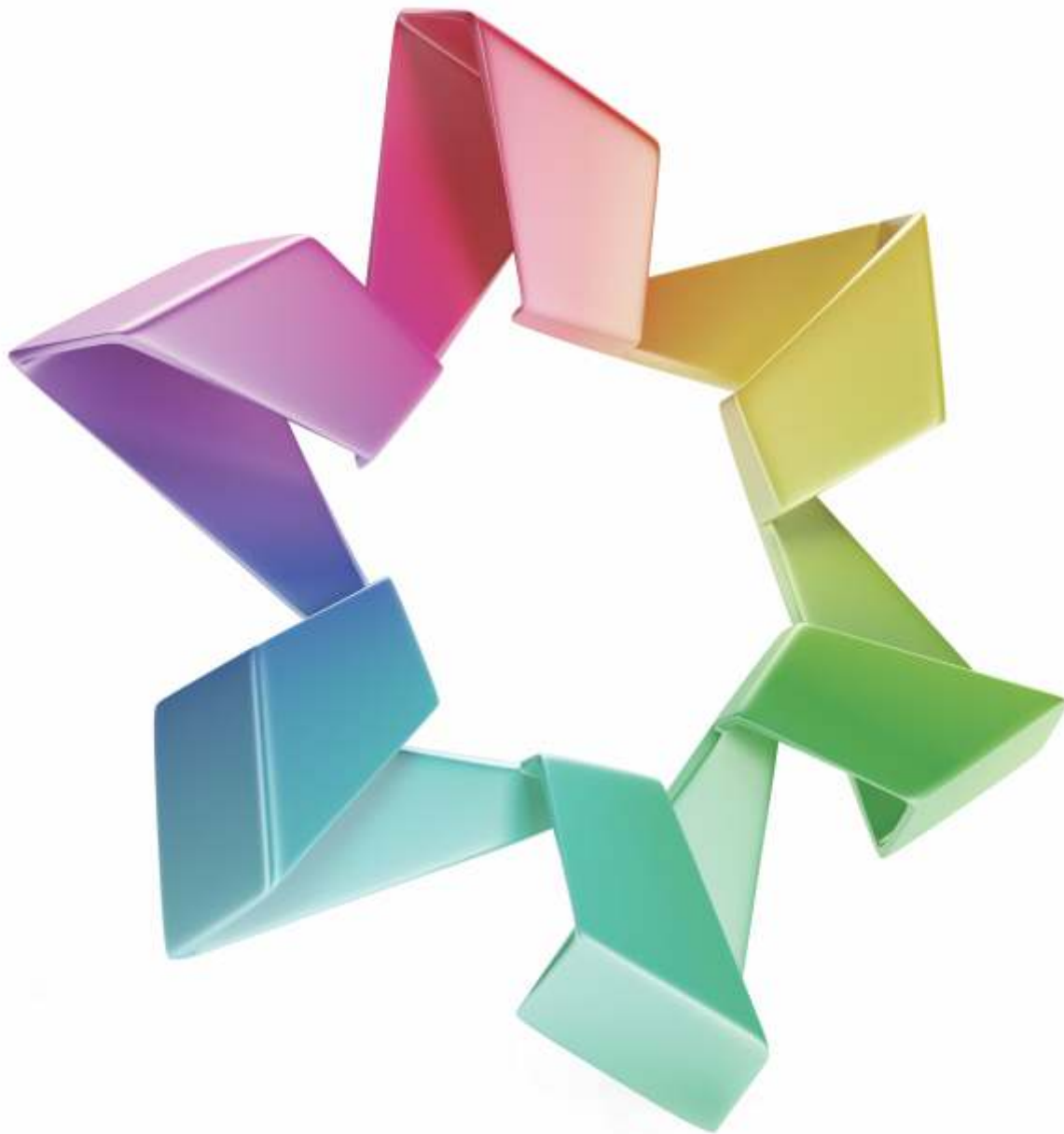


*An Overview of*  
**THE FINANCE BILL 2013**



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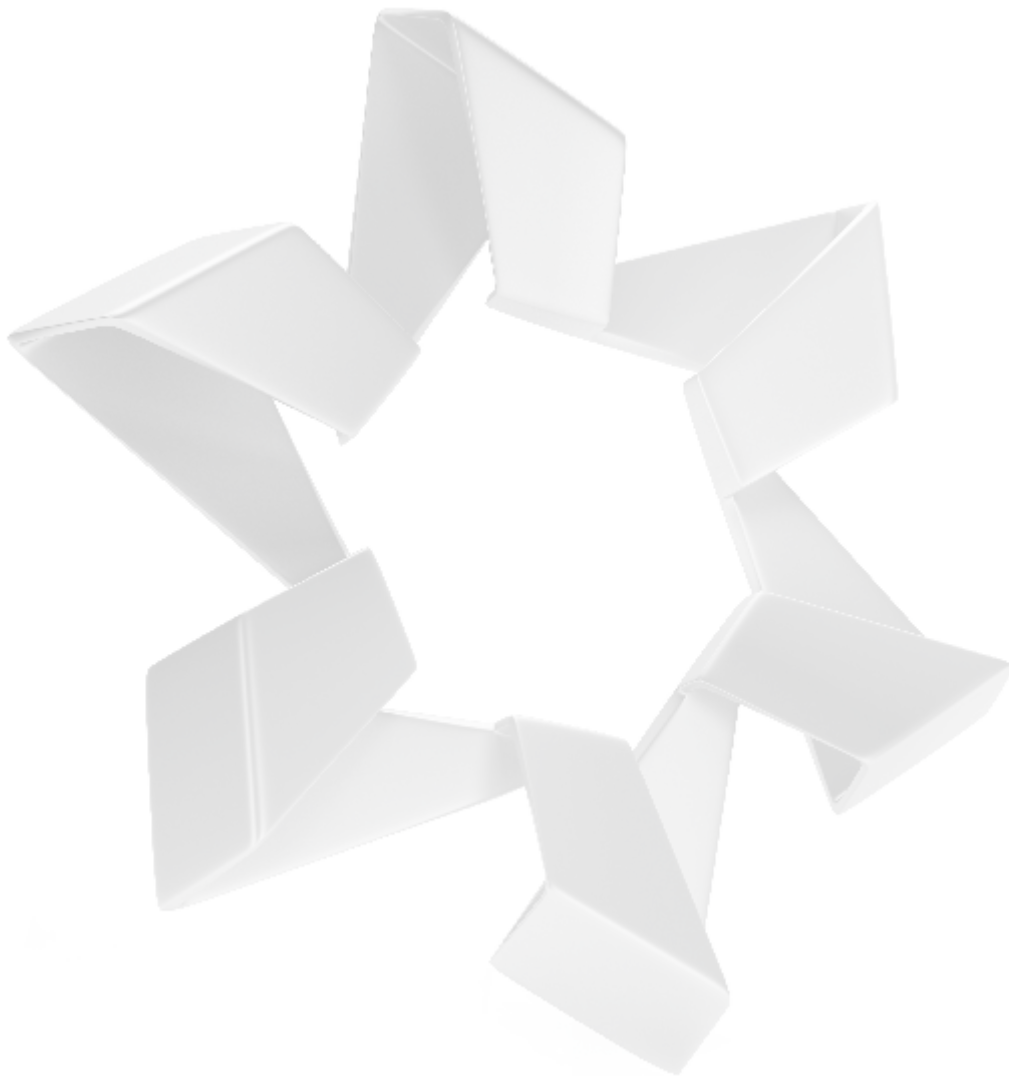


# *An Overview of* **THE FINANCE BILL 2013**

This booklet is prepared exclusively for the benefit and use of the clients of K. C. Mehta & Co. This should not be used as a substitute for professional advice. Reasonable care has been taken for ensuring the accuracy and the authenticity of the contents of this booklet. However, we do not take any responsibility for any error or omission contained therein on any account. It is recommended that the readers should take professional advice before acting on the same.

The provisions contained in the Finance Bill, 2013 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.

*An Overview of*  
**THE FINANCE BILL 2013**



**K C Mehta & Co.**  
Chartered Accountants

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## FINANCE BILL, 2013

Unless otherwise specifically mentioned, the amendments proposed provisions are to be effective from A.Y. 2014-15 and are therefore applicable with respect to income arising on or after 1<sup>st</sup> April 2013. Specific mention is made at the relevant places, where the effective date of a proposed amendment is other than 1<sup>st</sup> April 2013. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Finance Bill, 2013 ("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 has been proposed in the Bill:

- No Increase in basic exemption limit for Individual / HUF.
- Basic Income Tax Rates for all persons remained unchanged.
- Surcharge is levied at 10% if Total Income exceeds ₹ 1 crore in case of assessee other than company.
- Surcharge is increased from 5% to 10% in case of domestic company if total income exceeds ₹ 10 crores.
- Surcharge is increased from 2% to 5% in case of foreign company if total income exceeds ₹ 10 crores.
- Educational Cess remains 3%.
- Rebate of ₹ 2,000/- is proposed to be provided to Individual Resident Assessee whose total taxable income does not exceed ₹ 5 lacs.
- Securities Transaction Tax on certain transactions reduced.
- Commodity Transaction Tax (CTT) is to be levied at 0.010% on sale transactions executed on commodity exchanges in case of non-agricultural commodities.

The proposed income tax rates (including Surcharge, Education Cess and Secondary and Higher Education Cess) for A.Y. 2014-15 have been given below in **Table 1** for ready reference. These income tax rates are applicable on any income earned during the period from 01.04.2013 to 31.03.2014.

The rates of Dividend Distribution Tax, Securities/Commodities Transaction Tax and Wealth Tax are given in **Table 2, 3 & 4** respectively.

TDS & TCS rates are contained in **Table 5**.

TABLE - 1 (Income Tax Rates)

Particulars	Tax Rates		
	Without Surcharge	With Surcharge	
Total Taxable Income	Up to ₹ 1 Crore	Above ₹ 1 Crore and up to ₹ 10 Crores	Above ₹ 10 Crores
<b>Individual, HUF, AOP &amp; BOI</b>			
<u>Resident &amp; Non-Resident Assessee</u>			
Upto ₹ 2,00,000	Nil	Nil	Nil
₹ 2,00,001 to ₹ 5,00,000	10.300%	11.330%	11.330%
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%	33.990%
<u>Resident Senior Citizen Assessee aged from 60 years to 79 years</u>			
Upto ₹ 2,50,000	Nil	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000	10.300%	11.330%	11.330%
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%	33.990%
<u>Resident Senior Citizen Assessee aged 80 years &amp; above</u>			
Upto ₹ 5,00,000	Nil	Nil	Nil
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%	33.990%
Partnership Firm	30.900%	33.990%	33.990%
Limited Liability Partnership	30.900%	33.990%	33.990%
Domestic Company (Other than Foreign Company)	30.900%	32.445%	33.990%
Company other than Domestic Company (Foreign Company)	41.200%	42.024%	43.260%
Local Authority	30.900%	33.990%	33.990%
<b>Co-operative Society</b>			
Upto ₹ 10,000	10.300%	11.330%	11.330%
₹ 10,001 to ₹ 20,000	20.600%	22.660%	22.660%
₹ 20,001 onwards	30.900%	33.990%	33.990%
<b>Minimum Alternate Tax</b>			
Domestic Company	19.055%	20.008%	20.961%
Company other than Domestic Company	19.055%	19.436%	20.008%

Particulars	Tax Rates		
	Without Surcharge	With Surcharge	
Total Taxable Income	Up to ₹ 1 Crore	Above ₹ 1 Crore and up to ₹ 10 Crores	Above ₹ 10 Crores
<b>Alternate Minimum Tax</b>			
Any person including LLP (other than Company) claiming certain deductions	19.055%	20.961%	20.961%
<b>STCG on listed securities</b>			
Individual, HUF, AOP & BOI	15.450%	16.995%	16.995%
Partnership Firm / LLP	15.450%	16.995%	16.995%
Domestic Company	15.450%	16.223%	16.995%
Company other than Domestic Company	15.450%	15.759%	16.223%
<b>STCG on assets other than listed securities</b>			
Individual, HUF, AOP & BOI	As per slab	As per slab	As per slab
Partnership Firm / LLP	30.900%	33.990%	33.990%
Domestic Company	30.900%	32.445%	33.990%
Company other than Domestic Company	41.200%	42.024%	43.260%
<b>LTCG on assets other than listed securities</b>			
Individual, HUF, AOP & BOI	20.600%	22.660%	22.660%
Partnership Firm / LLP	20.600%	22.660%	22.660%
Domestic Company	20.600%	21.630%	22.660%
Company other than Domestic Company	20.600%	21.012%	21.630%
<b>Rates of tax on specific income</b>			
Interest from Infrastructure debt fund received by Non-Resident other than Company (section 115A)	5.150%	5.665%	5.665%
Interest from Infrastructure debt fund received by Other than Domestic Company (section 115A)	5.150%	5.253%	5.408%
Interest from External Commercial Borrowing (ECB) payable by Indian Company to Non-Resident (other than Companies) (section 115A)	5.150%	5.665%	5.665%
Interest from External Commercial Borrowing (ECB) payable by Indian Company to Non-Resident (section 115A)	5.150%	5.253%	5.408%
Dividend Received by Indian Company from Foreign Subsidiary (section 115BBD)	15.450%	16.223%	16.995%
Income from Royalty and Fees for Technical Services – for Non-Resident other than companies (section 115A)	25.750%	28.325%	28.325%
Income from Royalty and Fees for Technical Services – for Non-Resident Foreign Companies (section 115A)	25.750%	26.265%	27.038%

**TABLE - 2 (Dividend/ Income Distribution Tax)**

Particulars	Tax Rates
By Domestic Company (section 115-O)	16.995%
By Money Market Mutual Fund or Liquid Fund (section 115-R)	
For income distributed to Individual / HUF	28.325%
For income distributed to others	33.990%
By Other Mutual Funds (section 115-R)	
For income distributed to Individual / HUF (upto 31.05.2013)	14.163%
For income distributed to Individual / HUF (w.e.f. 01.06.2013)	28.325%
For income distributed to others	33.990%
By Mutual Fund under Infrastructure Debt Scheme (section - 115R)	
For income distributed to Non-residents (other than Company) and Foreign Company	5.665%

**TABLE - 3 (Securities / Commodities Transaction Tax)**

Particulars	Upto 30.05.2013	W.e.f 01.06.2013
<b>Securities Transaction Tax</b>		
Delivery based purchase or sale of an Equity Share in Company	0.100%	0.100%
Delivery based purchase of a Unit of an Equity Oriented Fund	0.100%	Nil
Delivery based sale of a Unit of Equity Oriented Fund	0.100%	0.001%
Non-Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund	0.025%	0.025%
Derivatives (Future & Options)	0.017%	0.010%
Sale of option in securities where option is exercised	0.125%	0.125%
Repurchase of Units of an Equity Oriented Fund	0.250%	0.001%
<b>Commodities Transaction Tax</b>		
Sale of Commodity Derivatives payable by Seller (for Commodities other than Agricultural products)	0.010%	0.010%

**TABLE - 4 (Wealth Tax)**

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

TABLE - 5 (TDS rates for the A.Y. 2014-15)

Section	Nature of Payment	Threshold Limit in ₹	Rate of TDS %
192	Salary	As per Slab	Normal Rate (Incl. cess)
193	Interest on Securities		
	(1) Interest on Debentures or Securities (Listed/Unlisted)	5,000**	10.00
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10.00
	(3) Any Other Interest on Securities (Unlisted)	0	10.00
194	Dividend other than dividend covered by section 115-O	2,500*	10.00
194A	Interest other than Interest on Securities (cases other than below) Where the payer is	5,000	10.00
	(1) Banking Company	10,000	10.00
	(2) Co-operative Society engaged in banking business	10,000	10.00
	(3) Post Office under a deposit scheme framed by Central Government	10,000	10.00
194B	Winning from Lotteries	10,000	30.00
194BB	Winnings from Horse Races	5,000	30.00
194C	Payments to Contractors		
	(1) In case of Contractors / Sub-Contractor / Advertising (In case of Individual / HUF)	30,000 <sup>1</sup>	1.00
	(2) In case of Contractors / Sub-Contractor / Advertising (Any other Assessee)	30,000 <sup>1</sup>	2.00
	(3) Contractor / Sub-Contractor in Transport Business	30,000 <sup>1</sup>	NIL <sup>2</sup>
194D	Insurance Commission	20,000	10.00

(\* in case of resident individual only)

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

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

<sup>2</sup> 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).

TABLE - 5 (TDS Rates for the A.Y. 2014-15)

Section	Nature of Payment	Threshold Limit in ₹	Rate of TDS %
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20.00 <sup>3</sup>
194EE	Deposits under NSS to Resident /Non-Resident	2,500	20.00 <sup>3</sup>
194F	Repurchase of units of Mutual Fund /UTI from Resident /Non-Resident	0	20.00 <sup>3</sup>
194G	Commission on Sale of lottery tickets to Resident /Non-Resident	1,000	10.00 <sup>3</sup>
194H	Commission or Brokerage to Resident	5,000	10.00
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	1,80,000	2.00
	(b) Rent for other than in (a)	1,80,000	10.00
194IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1.00
194J	Fees payable to resident for professional / technical services	30,000	10.00
	Remuneration, fees, commission paid to Director which is not in nature of Salary	0	10.00
194LA	Compensation to Resident on acquisition of immovable property	2,00,000	10.00
194LB	Interest paid to Non-Resident by Notified Infrastructure Debt	0	5.00 <sup>3</sup>
194LC	Interest paid by Specified Company to Non-Resident	0	5.00 <sup>3</sup>
195	Payment of other sums to Non-Resident (Other than specified in section 194LB)	Rates 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 <sup>3</sup>
196C	Income from foreign currency bonds or GDR of Indian Company	0	10.00 <sup>3</sup>
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20.00 <sup>3</sup>

<sup>3</sup> All rates of TDS for Non-Resident assessee shall be increased by applicable Surcharge, Education Cess and Secondary and Higher Education Cess.

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:
- (i) prescribed in the Act;
  - (ii) at the rate in force i.e. the rate mentioned in the Finance Act; or
  - (iii) of 20%
- b) On applicability of section 94A, the tax is required to be deducted at source at the higher rate of 30%

**(TCS rate for the A.Y. 2014-15)**

Section	Nature of Payment	Threshold Limit in ₹	Rate of TCS %
206C	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.00
	Timber obtained by any mode and any other forest produce	0	2.50
	Scrap	0	1.00
	Parking lot / Toll plaza / Mining and Quarrying	0	2.00
	Tendu leaves	0	5.00
	Minerals, being coal or lignite or iron ore	0	1.00
206C(1D)	Cash Sale of Bullion & Jewellery (consumption for personal use by buyer is excluded)	2,00,000	1.00



## **B. PERSONAL TAXATION**

### **B.1 Rebate of income tax in case of certain resident Individuals**

The Bill proposes to insert new section 87A to provide rebate to individual tax payers who are in lower income bracket whose total income does not exceed ₹ 5.00 lacs. The rebate shall be equal to the amount of income tax payable on the total income for any assessment year or an amount of ₹ 2,000, whichever is less. Consequently any individual having income up to ₹ 2,20,000 will not be required to pay any tax and every individual having total income above ₹ 2,20,000 but not exceeding ₹ 5,00,000 shall get a tax relief of ₹ 2,000.

Section 87 is consequentially proposed to be amended.

### **B.2 Exemption of sum received on Life Insurance Policy by certain persons**

Under the existing provisions contained in clause (10D) of section 10, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt, subject to the condition that the premium paid for such policy does not exceed ten per cent of the 'actual capital sum assured'.

The above limit of 10% was introduced through the Finance Act, 2012 and applies to policies issued on or after 01.04.2012. Some insurance policies for persons with disability (as referred to in section 80U) or suffering from specified diseases (as specified in the rules made under section 80DDB) provide for an annual premium of more than ten per cent of the actual capital sum assured. Due to the limit of ten per cent, these policies were ineligible for exemption under clause (10D) of section 10. Accordingly, the Bill proposes to enhance the limit of 10% to 15% in case of such policies issued on or after 01.04.2013.

### **B.3 Deduction for Life Insurance Premium by certain persons**

As per the existing provisions contained in subsection (3A) of section 80C, deduction is available in respect of any premium or other payment made on an insurance policy of up to 10% of the 'actual capital sum assured'.

It is proposed to amend sub-section (3A) of section 80C so as to provide that the deduction under the said section on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person referred to above shall be allowed to the extent the premium paid does not exceed 15% of the actual capital sum assured.

This provision is applicable in respect of policies issued on or after 01.04.2013.

#### **B.4 Deduction in respect of investment under Equity Savings Scheme**

The Finance Act, 2012 had introduced section 80CCG which provides that where an assessee, being a resident individual invested in listed equity shares in accordance with the scheme as notified by the Central Government, then he / she would be eligible to claim a deduction of 50% (subject to maximum of ₹ 25,000) of the amount invested in such equity shares. Rajiv Gandhi Equity Savings Scheme had been notified for claiming deduction U/s. 80CCG.

The benefit as per the existing section 80CCG is available only to investment made in listed equity shares as per the scheme. The Bill proposes to extend this benefit of investment by including units of equity oriented fund.

It is further proposed to provide that the deduction under this section shall be allowed for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units were first acquired by the new retail investor.

Also the limit of gross total income, being the eligibility criterion for this deduction, is proposed to be increased to ₹ 12 lacs from existing ₹ 10 lacs.

#### **B.5 Deduction in respect of Health Insurance Premium**

The existing provisions of section 80D provide that the amount paid by an individual towards insurance premium on his health or the health of the family or any contribution made towards the Central Government Health Scheme or any payment made on account of preventive health check-up of the assessee or his family is allowed to be deducted in computing the total income of the assessee, subject to prescribed limit.

The Bill proposes a change in section 80D to include other schemes as may be notified by the Central Government in addition to Central Government Health Scheme eligible for benefit U/s. 80D.

#### **B.6 Deduction of Interest on Loan for Residential House Property**

A new section 80EE has been introduced in the Bill which provides for a deduction of ₹ 1,00,000 being interest on loan taken for acquisition of residential house property. This deduction is available over and above the deduction of ₹ 1,50,000 U/s. 24 of the Act for self-occupied property.

The above deduction would be available provided:

1. The loan is taken from any financial institution which includes banks and housing finance companies.
2. The loan should have been sanctioned during 01.04.2013 to 31.03.2014.

3. The loan amount does not exceed ₹ 25 lakhs.
4. The value of residential property does not exceed ₹ 40 lakhs.
5. The assessee does not own any residential property on the date of sanction of the loan.

The benefit granted by this section is a onetime benefit available for A.Y. 2014-15. However, if in A.Y. 2014-15 the interest payable is less than ₹ 1,00,000 the balance interest can be claimed in A.Y. 2015-16.

#### **B.7 Payments received under Keyman Insurance Policy**

Sum received under a Keyman Insurance Policy is not eligible for exemption under section 10(10D). Explanation 1 to the said clause (10D) defines a keyman insurance policy to mean a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person, i.e. the insured (keyman) and the beneficiary (person carrying on business) were different under Keyman Insurance Policy.

However, there were instances where the person carrying on business had assigned the policy to the insured before maturity of the policy. In such circumstances, since the insured and the beneficiary were same, it remained out of purview of meaning of Keyman Insurance and accordingly was considered eligible for exemption U/s. 10(10D). With a view to check such practices to avoid payment of taxes, it is proposed to amend the provisions of clause (10D) of section 10 to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy and thereby not eligible for exemption U/s. 10(10D).

#### **B.8 Immovable Property received for Inadequate Consideration**

Presently, section 56(2)(vii)(b) provides that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds ₹ 50,000, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions section 56(2)(vii)(b) so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the excess of stamp duty value over consideration shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

It is also proposed that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not same, the stamp duty value may be taken as on the date of agreement, instead of the date of registration. This exception shall apply only in case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of agreement fixing the amount of consideration for transfer of such immovable property.

## C. BUSINESS INCOME

### C.1 Investment Allowance in respect of new Plant and Machinery

In order to incentivize the manufacturing sector, the Bill proposes to insert new section 32AC by providing deduction equivalent to 15% of the cost of new plant and machinery. However, such benefit is available only for A.Y. 2014-15 & 2015-16. Earlier, similar provisions were contained in section 32A of the Act wherein investment allowance was granted for investments in plant and machinery without any threshold.

The above benefit would be available to the assessee if it fulfills following conditions:

- (a) The assessee is a company;
- (b) The assessee is engaged in the business of manufacture or production of any article or thing;
- (c) Aggregate cost of plant and machinery acquired and installed during 01.04.2013 to 31.03.2015 (both inclusive) exceeds ₹ 100 crores.

If the above conditions are fulfilled, the assessee shall be eligible for deduction of 15% of the cost of new plant and machinery in the year in which such machinery is acquired and installed. However, if the total value of plant and machinery acquired and installed in during 01.04.2013 to 31.03.2014 (A.Y. 2014-15) does not exceed ₹ 100 crores, deduction in respect of all such machinery would be available only in A.Y. 2015-16.

As a safeguard mechanism, a lock in period of five years is provided. In case such new asset is transferred (otherwise than by amalgamation or demerger) within 5 years from the date of its installation, the amount of deduction claimed in respect of such asset is taxable as business income in the year of sale/transfer. In case of amalgamation or demerger, the condition of 5 years lock-in would apply to amalgamated company or resulting company after such amalgamation or demerger.

Following plant and machinery is not eligible for deduction under proposed section 32AC:

- Second-hand/used plant and machinery
- Plant and machinery installed in office premises or residential accommodation or guest house
- Office appliances including computers or computer software
- Vehicle
- Any plant and machinery, the cost of which is fully allowable as deduction (whether by way of depreciation or otherwise) under any other provision of the Act under the head profits and gains of business or profession of any previous year.

The above deduction is available in addition to the depreciation allowable in respect of such plant and machinery U/s. 32 of the Act. Also, it would not affect written down value for the purpose of computation of depreciation for subsequent year. Accordingly, the taxpayer would be eligible to claim deduction of ₹ 115 crores (including depreciation) spread across various years for investment of ₹ 100 crores if the conditions are fulfilled.

## **C.2 Deduction of Bad Debts to Banks**

Presently, a bank depending upon its category is entitled to claim deduction for provision for bad and doubtful debts made for different type of advances at the specified rate mentioned U/s. 36(1)(viia) of the Act. The bank is also entitled to claim of deduction for actual bad debt written off U/s. 36(1)(vii) of the Act if it is debited to provision for doubtful debt account created U/s. 36(1)(viia) of the Act and exceeds by the amount credited in such account. It has been interpreted by different courts/tribunals that comparison of such provision for bad and doubtful debt account U/s. 36(1)(viia) of the Act and actual bad debt written off U/s. 36(1)(vii) should be made type of account wise and should not be aggregated.

The Bill proposes to nullify these rulings by providing Explanation 2 to section 36(1)(viia) of the Act by stating that all such provision for doubtful debt accounts must be considered single account only with respect to all types of advances for computing the eligible amount of deduction for bad debt U/s. 36(1)(vii) of the Act.

## **C.3 Deduction for Commodities Transaction Tax**

The Bill proposes to levy the Commodities Transaction Tax on transactions carried out in commodity exchanges as specified under the Bill. To give the benefit of deduction of such Commodities Transaction Tax like Securities Transactions Tax as prevailing today, the Bill proposes to insert clause (xvi) in section 36(1) of the Act. The said clause provide that Commodities Transaction Tax paid by the assessee in respect of taxable commodities transaction is allowable as business deduction if such income from commodity transaction is chargeable to tax as business income.

## **C.4 Disallowance of amount paid to State Government**

Certain disputes had arisen with regard to allowability of claim of deduction in respect of fees / charges levied by the State Government and deduction in respect of surplus vested with the State Government by State Government undertakings.

The Bill proposes to disallow deduction of such charges by inserting clause (iia) by providing that no deduction shall be allowed in respect of any amount



paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge by whatever named called which is levied exclusively on or appropriated by, directly or indirectly, State Government undertaking by the State Government.

The Bill also defines State Government Undertaking based upon various criteria of shareholding, right, control etc. of State Government in such undertaking.

#### **C.5 Taxation of Real Estate Business Transaction at less than Stamp Duty Value**

Presently in view of provision of section 50C of the Act, sale consideration for transfer of land or building or both, held as capital asset, should not be less than the value adopted by Stamp Duty Valuation Authority. In case the sales consideration is less than value adopted by such authority, the sales consideration for capital gain tax purpose shall be taken at the value adopted by Stamp Duty Valuation Authority. Such provision was inserted in the Act to curb undervaluation of transaction for tax purpose.

As per the existing provision of the Act, it was interpreted that such provision was not applicable in case such land and building was held as business asset / stock-in-trade. This view was also confirmed in the following decisions:

- a. Kan Construction and Colonizers (P) Ltd. (TS-252-HC-2012-ALL)
- b. Inderlok Hotels (P) Ltd. v. ITO (2009) 32 SOT 419 (Mum)

It is proposed to apply this provision in like manner to the transaction of transfer of land or building or both held as business asset / stock - in - trade by inserting new section 43CA in the Act. The Bill provides that when consideration in respect of transfer of land or building or both is less than the value adopted or assessed or assessable by a stamp duty valuation authority, for computing the business income, the sales consideration shall deemed to be the value adopted by such stamp duty valuation authority.

It is also proposed that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not same, the stamp duty value may be taken as on the date of agreement, instead of the date of registration. This exception shall apply only in case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of agreement fixing the amount of consideration for transfer of such immovable property.

However, the controversy still exists whether the proposed amendment applies to land development rights.

## D. TAX ON DISTRIBUTION

### D.1 Taxation of Buyback of shares of Unlisted Company

Presently, every company distributing dividends is required to pay Dividend Distribution Tax U/s. 115-O at 15% (plus surcharge and education cess, as applicable) and such dividend is not taxed in the hands of shareholders. However, buyback of shares of company carried out in accordance with section 77A of the Companies Act, 1956 is not considered as dividends and any income arising therefrom is taxable in the hands of shareholders as Capital Gains. However, investors investing from certain countries are eligible for exemption from Capital Gains taxation in India under the Double Tax Avoidance Agreement (“DTAA”) signed by India. In such circumstances, buyback of shares does not yield any revenue to Indian tax authorities.

Due to its tax efficiencies, certain unlisted companies have been resorting to buyback of shares instead of declaration of dividend to repatriate profits to their parent company. The current proposal in the Finance Bill is aimed to plug this situation whereby it is proposed that in case of buyback, the Indian company whose shares are bought back would be required to pay tax at 20% (plus surcharge and education cess, as applicable) on the distributed income by inserting new Chapter XII-DA [Section 115QA to 115QC]. While such distributions will be taxed in the hands of company, shareholders will not be liable to tax on such income either in form of dividend or capital gains in view of insertion of section 10(34A).

The above amendment would be applicable only in respect of buyback of shares of companies whose shares are not listed on recognized stock exchange. Therefore, gains arising to the shareholders on account of buyback of shares of listed company would continue to be taxed in the hands of shareholders as capital gains. Distributed income in this regard would mean consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

While the amendment has been proposed as an anti-avoidance measure, it actually expands the taxation of such transactions even beyond what was intended before the amendment. Some of such cases are illustrated here –

- (a) While the legislature drew the inference that such buyback is a mechanism in lieu of dividend declaration, the legislature has provided taxation thereof at significantly higher rate as compared to dividend taxation. Dividends are taxed at 15% whereas the amendment proposes to tax such distributions at 20%.
- (b) While the amendment has been proposed to primarily plug the leakage in respect of buyback of shares by the non-resident



shareholders, the proposed levy would cover even the cases where shares of resident shareholders are bought back by the companies, which are otherwise taxable under the existing law also.

- (c) Under the present scheme of taxation, the shareholders would be required to offer the capital gains to tax after reducing the indexed cost of acquisition where shares are held for more than 12 months. However, such benefit of indexation would not be available under the proposed amendment.

The tax in respect of buyback is a levy on the company whose shares are bought back and the same is payable irrespective of whether the company is liable to pay income tax in respect of its normal income or not. No credit or deduction shall be allowed in respect of tax paid under the proposed provision. However, consequential amendment in Section 115JB (Minimum Alternate Tax on Book Profits) has not been made.

The tax is to be paid within 14 days from payment of consideration to the shareholder, failing which interest at 1% per month or part thereof is payable.

## **D.2 Tax on Distributed Income to Unit Holders**

Income distribution by the Mutual Fund is liable to tax in the hands of Mutual Fund U/s. 115R. Income distributed by the Mutual Funds to individual was liable to tax at 25% in case of distribution by money market mutual fund or a liquid fund, whereas the tax was levied at 12.5% in other cases. The proposed amendment abolishes the distinction between the type of funds and accordingly distributions to individuals and HUFs from other funds would also be taxed at 25%.

Income distribution by Mutual Fund under an Infrastructure Debt Fund Scheme to a non-resident (not being a company) or a foreign company, the Mutual Fund shall be liable to pay distribution tax at 5% of the income so distributed.

## **D.3 Deduction of Foreign Dividend for computing DDT**

Presently, section 115-O requires the Indian company to pay Dividend Distribution Tax (DDT) at 15% (plus applicable surcharge and education cess) on the dividends distributed by it to its shareholders.

Indian Company receiving dividend from its foreign subsidiary, for which tax is payable U/s. 115BBB, would now be eligible to deduct the same while calculation of the amount on which DDT is payable. This would effectively enable the Indian company to receive dividend from its foreign subsidiary

companies and distribute the same to its shareholders with overall additional tax incidence of only 15% (plus applicable surcharge and education cess).

#### **D.4 Tax on Distribution of income by Securitization Trusts**

Section 161 of the Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust.

The special purpose entities set up in the form of trust to undertake securitization activities were facing problem due to lack of special dispensation in respect of taxation under the Act.

In order to facilitate the securitization process, it is proposed to provide pass-through status to Securitization Trusts. Amendment in section 10 has been proposed to exempt income of such Securitization Trusts, the activities of which are regulated by either SEBI or RBI [Section 10(23DA)].

As per section 115TA, income distributed by a securitization trust to its investors shall be chargeable to tax in the hands of such a trust as below:

<b>Recipient status</b>	<b>Rate of tax on the income distributed</b>
Individual or HUF	25%
Recipient is not liable to tax	Nil
Any other person	30%

This is additional income tax payable by the Securitization Trust on distribution on income and such tax is to be paid within 14 days from the date of distribution or payment of income, whichever is earlier, failing which interest at 1% per month shall be payable.

The trust is also required to furnish a statement giving prescribed details on or before 15<sup>th</sup> September every year.

In order to avoid double taxation, section 10(35A) is proposed to be inserted to exempt the income by way of distributed income received from a securitization trust by any person investing in the said trust.

The above amendment will be effective from 1<sup>st</sup> June, 2013.

## E. CAPITAL GAINS

### E.1 Definition of Urban Land

There is a change in the definition of specified land which is colloquially known as urban land.

#### Capital Asset

Section 2(14) dealing with the meaning of capital asset includes agricultural land situated in urban area (herein after referred to as 'urban land'). The definition of urban land is proposed to be revised. The revision in the definition is given as below:

Points of differences	Existing provision	Proposed changes
Within the jurisdiction of municipality / cantonment board	Any area falling within the jurisdiction of a municipality or a cantonment board and which has a population of not less than 10,000	No change
Outside the area specified above	Any area which the Central Government may specify by a notification  Such area cannot be more than 8 kms from the local limits of the municipality or cantonment board as referred to above.	Requirement of a notification proposed to be removed.  Area is referred to in the table below

The below will be considered as Urban Land

Aerial distance from the municipality / cantonment board	Population of the area
Up to 2 kms	10,001 to 1,00,000
Up to 6 kms	1,00,001 to 10,00,000
Up to 8 kms	Above 10,00,000

With the growth of India, urbanization has also increased. However, the Government could not notify various areas in a timely manner and thereby land in such areas was not considered capital asset. The above changes proposed have brought objectivity to the definition of urban area and therefore with the expansion of urban area the area defined for urban land

would also automatically increase without need for further notification in this behalf.

The expression “population” is defined to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year. However, this is merely change in presentation as the existing provision provide for a similar meaning of the word “population” without separately defining the same.

Income derived from specified building is considered as agricultural income U/s. 2(1A) and is accordingly exempt U/s. 10(1) of the Act. However, if such building is situated in specified area, it is not considered agricultural income and thereby not eligible for exemption. Specified area for the purpose of agricultural income is defined in the same manner as urban land defined for the purpose of section 2(14) as discussed above.

## F. DEDUCTIONS AND EXEMPTIONS

### F.1 Deduction for Donation to National Children's Fund

As per current provisions, deduction U/s. 80G is allowed when donations are made by the assessee to certain eligible funds and institutions.

The Bill proposes to amend section 80G to provide 100% deduction in respect of donation made to the National Children's Fund instead of 50% deduction available presently.

### F.2 Deduction of contribution to Political Parties

Section 80GGB provides for deduction of contributions by companies to political parties and section 80GGC provides for deduction of contributions by other persons (except local authority and every artificial juridical person wholly or partly funded by the Government) to political parties.

An amendment is proposed in both the sections which deny deduction in respect of any contribution to political parties in cash.

### F.3 Deduction to Power Sector Units

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 laying 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 31.03.2013. 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 up to 31.03.2014.

### F.4 Deduction in respect of Employment to New Workmen

The existing provisions contained in section 80JJAA provide for a deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing subject to specified number of employees. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

The deduction was intended for providing benefit to the employees employed under the manufacturing segment. However, it was being claimed for employees employed in other sectors also as the term used in the existing section 80JJAA is “industrial undertaking”.

By the proposed amendment to substitute the word “factory” for “industrial undertaking” the legislative intent is being made clear that deduction would be available for employing additional workmen only in the factory and not otherwise. The definition of the term factory is borrowed from section 2(m) of the Factories Act, 1948.

It may be noted that no deduction under the said section would be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

#### **F.5 Exemption to income of Investor Protection Fund of Depositories**

Under the provisions of SEBI (Depositories and Participants) Regulations, 1996, as amended in 2012, the depositories are mandatorily required to set up an Investor Protection Fund. Under the existing provisions, section 10(23EA) provides that income by way of contributions from a recognized stock exchange received by Investor Protection Fund set up by the recognized stock exchange shall be exempt from taxation.

On similar lines, it is proposed that income, by way of contribution from a depository, of the Investor Protection Fund set up by the depository in accordance with the regulations prescribed by SEBI will not be included while computing the total income subject to same conditions as are applicable in respect of exemption to an Investor Protection Fund set up by recognized stock exchanges by insertion of section 10(23ED).

However, where any amount standing to the credit of the fund and not charged to income tax during any previous year is shared wholly or partly with a depository, the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

#### **F.6 Consequential amendments in Venture Capital Scheme**

The income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) is exempted from tax as per section 10(23FB). Further, Section 115U provides that any income received by a person out of investments made in a VCC or VCF shall be chargeable to income tax in the same manner as if it were the income received by such persons had he made investments directly in the VCU. VCU

is defined as a VCU referred to in the SEBI (VCF) Regulations, 1996 (“VCF regulations”).

VCF Regulations have been repealed and substituted by SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF regulations”) from 21.05.2012. Amendment is proposed in Section 10(23FB) with a view to provide consequential amendments due to change in SEBI regulations.

#### **F.7 Exemption to National Financial Holdings Company Limited**

New clause (49) has been proposed to be inserted in Section 10 granting exemption to the income of National Financial Holdings Company Limited, being a company set up by the Central Government. This clause has been inserted with retrospective effect from 01.04.2013, however, the exemption will be available only for AY 2013-14 & 2014-15.



## G. INTERNATIONAL TAXATION

### G.1 Tax Residency Certificate for claiming DTAA benefits

In order to claim benefits under Double Tax Avoidance Agreement (“DTAA”) entered into by India with foreign countries or specified territories, Finance Act, 2012 introduced requirement of obtaining Tax Residency Certificate (“TRC”). TRC was intended to be necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A and such intention of the Government was declared through Memorandum explaining Provisions of the Finance Bill, 2012. The said intention has now been incorporated in section 90 and 90A.

### G.2 Increase in tax rate of Royalty and Fees for Technical Services

Section 115A provides inter-alia for the rate of royalty and fees for technical services (“FTS”) chargeable in the hands of a non-resident or a foreign company received from the government or in pursuance to an agreement with the Indian concern.

Currently, the rate of income tax provided under section 115A on royalty and fees for technical services is 10%. However, the Bill proposes to increase the rate from 10% to 25%.

As per the existing provisions, since the rate of taxation of royalty and fees for technical services is low, the relief available under the Double Tax Avoidance Agreement (“DTAA”) assumed importance in only few circumstances. However, if the proposed increase in the rate is made, the relief under DTAA will be very important since most of the DTAAAs provide rate of royalty less than 25% yielding a substantial benefit.

In this regard, it would be relevant to note the important change brought in by the Finance Act 2012 whereby Tax Residency Certificate (“TRC”) has been made mandatory in order to claim DTAA benefits. Non-residents and foreign companies have been facing difficulties in obtaining TRC from their respective countries with the prescribed particulars. In event where TRC is not available, the assessee would not be in a position to apply DTAA at the time of withholding tax and given the steep increase in rate of tax on such payments under the Act, it is likely to significantly increase the cost of the assessee where tax is to be borne by the payer.

### G.3 Extension of Concessional Tax Treatment of Foreign Dividend

Section 115BBD was introduced by Finance Act, 2011 with effect from 01.04.2012 providing concessional rate of tax of 15% on dividend received from foreign companies. This benefit is available for dividend income arising upto 31.03.2013. It is proposed to extend this benefit to one more year, i.e. up to 31.03.2014.



## H. GENERAL ANTI AVOIDANCE RULES

### H.1 Deferment of General Anti Avoidance Rules

Finance Act, 2012 introduced General Anti Avoidance Rules (“GAAR”) for transactions identified as ‘Impermissible Avoidance Arrangement’ (“IAA”) by the Income Tax Department, onus being on the assessee to prove that such arrangement has not been entered into with the main purpose of obtaining tax benefit. The provisions of GAAR are contained under Chapter X - A (sections 95 to 102) and section 144BA of the Act.

Following a row from investors and corollaries immediately felt in the stock market, the Government decided to have a relook at the matter. For those who thought investment decisions are not driven by taxation issues, the proposal to introduce GAAR proved otherwise. Therefore, it is important to restate that the law is not intended to pester taxpayers but bring to tax transactions palpably designed to escape it without any commercial imperative.

A committee headed by tax expert Mr. Parthasarathi Shome (Shome Committee) had examined issues in implementation of GAAR and come out with several recommendations, many of which have been accepted by the Government and others that have been slightly modified.

The GAAR, an advanced instrument of tax administration, first suggested in 2009 as part of Direct Taxes Code, proposed in Finance Bill, 2012 to be effective from AY 2013-14, deferred to AY 2014-15 while passing the Finance Bill, 2012 and is now proposed to be further deferred to AY 2016-17 for effective implementation.

The Bill proposes certain changes in the GAAR provisions as enacted by Finance Act, 2012 upon the recommendations of the Shome Committee.

Presently, GAAR is to be effective from A.Y. 2013-14, however, the Bill proposes to defer applicability of GAAR by 2 years to A.Y. 2016-17.

### H.2 Applicability of GAAR

#### Current Provisions

As per the definition in the section 96 of the Act, an arrangement shall be treated as impermissible avoidance arrangement (“IAA”) if the main purpose or one of the main purposes is to obtain a tax benefit. It 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.

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.

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.

The provisions of this Chapter shall override all the provisions of the Act (including DTAA) and may be applied even where the same is not beneficial to the assessee.

### **Amendments proposed by the Bill**

The Finance Bill 2012 had originally proposed that the onus to prove that the arrangement has not been carried out for the main purpose of obtaining tax benefit would rest with the taxpayer. However, while passing the Finance Bill, 2012, the legislature shifted the onus of proving the main purpose of the arrangement from taxpayer to the tax authority. However, to the surprise of everyone, the Finance Minister has once again reverted to the original position whereby the onus to disprove the main purpose of attaining tax benefit has been shifted to the taxpayer.

In line with the recommendation of Shome Committee, the Bill amends the applicability to such arrangements where the main purpose, as opposed to one of the main purpose, is to obtain tax benefit. If one of the main purposes of the arrangement is to obtain tax benefit, it would now not be covered in purview of GAAR.

It may be noted that in conjunction with above, Shome Committee had also recommended that the main purpose to obtain tax benefit should be seen in context of the whole arrangement (and not only a part thereof) to regard any arrangement as IAA or where only a part of the arrangement is impermissible, the tax consequences of an “impermissible avoidance arrangement” should be limited to that portion of the arrangement. However, the Finance Bill, 2013 has not made any corresponding provision and thereby even where the main purpose of only a part of the arrangement is obtaining tax benefit, the whole arrangement can be considered IAA.

The Bill proposes to expand the meaning of lack of commercial substance by applying it to such arrangements which do not have significant effect on the business risk or cash flows of any party to the arrangement except the tax benefit arising out of the arrangement.

Further the Bill clarifies that the factors specified as not relevant while determining whether a transaction lacks commercial substance may be relevant but not sufficient for taking such decision.

### **H.3 Consequences**

Consequences on invocation of GAAR continue to remain same even under the new regime proposed to be effective 2 years later. In event where arrangement is considered as IAA, tax authority can take following action:

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

#### **H.4 Process of Assessment**

Section 144BA had been introduced by the Finance Act, 2012 describing the procedure for declaring any arrangement of the assessee as IAA, which has been proposed to be continued under the new regime as well, as described below:

- 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.

#### **H.5 Approving Panel**

##### **Current Provisions**

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 the 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 to 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 declares 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 the assessment for such other year in accordance with such direction and there would not be any requirement to make any fresh reference to the 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.

### **Amendments by the Bill**

#### **(a) Constitution of the Approving Panel**

Pursuant to the recommendations of the Shome Committee, the Bill has now entrusted the powers of appointment of the Approving Panel to the Central Government, as against entrusted to the Board by the Finance Act, 2012.

The Central Government shall constitute one or more Approving Panels as essential and each Approving Panel shall consist of three persons including a Chairperson. The term of the Approving Panel shall be normally one year and extendable to three years. The Approving Panel is conferred with additional powers equitable to Authority for Advance Rulings.

As proposed by the Bill, the constitution of the Approving Panel shall be as under:

1. The Chairperson of the Approving Panel shall be a person who is or has been a judge of a High Court.
2. One member shall be a member of the Indian Revenue Service not below the rank of Chief Commissioner.
3. One member shall be an academic or scholar having special knowledge of matters relating to taxation, business and international trade practices.

The formation of an Approving Panel for applications of GAAR to specific transactions, which will not be dominated by members from the Indian Revenue Service but include a judicial and an academic member, is an important change that should ease concerns and an unbiased opinion can be formed on the matter.

(b) Time Limit for issuing directions by the Approving Panel

The Bill proposes to exclude, the period taken by the Commissioner for collecting the information requested or conducting the inquiries as directed by the Approving Panel (maximum up to 1 year) and period of stay of proceedings in pursuance of an order of any court, in calculation of the time limit of six months for issuing directions by the Approving Panel U/s. 144BA. However, it also clarifies that if after the exclusions as stated above, the period remaining with the Approving Panel is less than sixty days then such period shall be extended to sixty days.

(c) Directions issued by the Approving Panel

The Bill proposes to bind the directions issued by the Approving Panel to the assessee, the Commissioner and the income tax authorities subordinate to him. Further, such directions are proposed to be rendered as non-appealable before any appellate authority U/s. 246A and 253 and also non-referable to the Dispute Resolution Panel U/s. 144C.

In view of deferral of GAAR provisions from AY 2014-15 to 2016-17, consequential amendments have also been carried out in Section 90, 90A, 144BA, 144C, 153, 153B, 245B, 245N, 246A and 253.



## I. RETURNS, ASSESSMENT AND APPEALS

### I.1 Return to be treated as defective return u/s 139(9)

Section 139(9) of the Act provides criteria of treating the return as defective return and procedure to rectify such defect and treating the same as invalid return if the defect is not rectified within the specified time limit. While section 140A requires the taxpayer to make payment of tax and interest due as per the return of income before filing the tax return. However, taxpayer has been taking position that return of income filed showing outstanding demand of tax and interest payable U/s. 140A of the Act and non-payment thereof at the time of filing of return of income cannot be regarded as defect U/s. 139(9) of the Act.

To curb this position the Bill proposes that the return of income shall be regarded as defective return U/s. 139(9) unless the tax together with interest, if any, payable U/s. 140A has been paid on or before the date of furnishing the return of income.

The Bill proposes to apply this provision w.e.f. 01.06.2013.

### I.2 Increasing in scope of special audit by Assessing Officer

Presently as per section 142(2A) of the Act, the Assessing Officer during the course of assessment proceedings, is empowered to issue direction for special audit in case he is of the opinion that it is necessary to carry out such special audit looking to the nature and complexity of the account of the assessee and interest of the revenue. Such direction can be given after obtaining the previous approval of Chief Commissioner/Commissioner of Income tax.

The Bill proposes to increase the scope of this provision by empowering the Assessing Officer to direct the taxpayer for special audit by considering the voluminous of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee.

The Bill proposes to apply this provision w.e.f. 01.06.2013.

### I.3 Time Limit for completion of Assessment and Re-Assessment

The existing provisions contained in section 153 provide that certain periods specified therein are to be excluded while computing the period of limitation for the purposes of the said section.

It is proposed to substitute clause (iii) in the Explanation 1 of section 153 so as to provide that the period, commencing from the date on which the Assessing

Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section or where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

The existing provisions also provides for exclusion of the period where a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A. In order to provide further clarity on the period of exclusion, it is proposed to substitute the aforesaid clause. The amended clause provides that the period, commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

These amendments will be effective from 01.06.2013.

In view of deferral of GAAR provisions from A.Y. 2014-15 to 2016-17, consequential amendments have also been carried out in section 153.

Time limit for completion of assessment in search matters is provided in section 153B. Section 153B is also proposed to be amended to provide changes in computation of time limit and exclusion therefrom for completion of assessment in search cases in line with section 153 as outlined above.



## **J. TAX DEDUCTED / COLLECTED AT SOURCE AND ADVANCE TAX**

### **J.1 Application of seized assets**

Section 132B of the Act prescribes provision of application of seized assets. As per existing provision of section 132B, seized assets may be adjusted against the existing liability under the Act and under the other direct tax laws including Wealth Tax.

Recently, Rajkot Bench of ITAT in the case of Shri Ram S. Sarda V. DCIT 17 Taxmann.com 23 (Rajkot) (2012) held that cash seized during course of search is required to be adjusted U/s. 132B of the Act against taxes due including advance tax for purpose of computation of interest under sections 234A, 234B and 234C.

The Bill proposes to provide that such advance tax payable by the assessee would not be included within the meaning of term “existing liability” for the purpose of section 132B of the Act. In such case, the assessee would be required to pay advance tax and it cannot be adjusted against the amount seized during the course of search proceedings.

The amendment is proposed to be applicable w.e.f. 01.06.2013.

### **J.2 TDS on transfer of immovable property other than agriculture land**

In order to ensure that the real estate transactions come within the tax net, the Bill proposes to insert new section 194-IA to provide for TDS on payment on transfer of immovable property.

As per the proposed section, the purchaser (or transferee) of immovable property is required to deduct TDS at 1% on consideration paid or payable to resident transferor for transfer of immovable property i.e. land or any building to the resident transferor. The provision does not apply if the amount of consideration does not exceed ₹ 50 lakhs.

Purchaser of agriculture land is excluded from the application of this provision provided such agriculture land is situated beyond specified distance from the city limit as provided U/s. 2(14) of the Act. Therefore agriculture land situated within such limit is covered by this provision of TDS. Further, purchase and sale of land as part of trading activities are also liable for TDS.

It may be interesting to note that the Finance Bill, 2012 had proposed to insert similar provision in form of section 194-LAA, however, the same was omitted while passing the Finance Bill, 2012. While the provision has been proposed to

be re-introduced, it carries lesser compliance requirements as compared to the one proposed in earlier year.

The amendment is proposed to be applicable w.e.f. 01.06.2013.

### **J.3 Withholding tax on income by way of interest from Indian Company**

As per the existing provisions of section 194LC, if an Indian Company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the Central Government, then the interest payment to a non-resident person would be subject to a concessional rate of TDS at 5%. The provision is applicable only when the money is borrowed in foreign currency.

In order to extend the benefit of concessional rate of TDS to rupee denominated long term infrastructure bonds issued by Indian Company in India, the Bill proposes that where a non-resident deposits foreign currency in a designated bank account and such money, as converted in rupees, is utilized for subscription to a long-term infrastructure bond issue of an Indian Company, then, for the purpose of this section, the borrowing by the Company shall be deemed to be in foreign currency and accordingly the TDS shall be deducted at 5%.

The designated bank account should be opened solely for the purpose of deposit of money in foreign currency and such money shall be used, after conversion, for subscription to a rupee denominated long-term infrastructure bond issue of an Indian Company.

The amendment is proposed to be applicable w.e.f. 01.06.2013.

## **K. PENALTY AND PROSECUTION**

### **K.1 Liability of partners / directors of LLP / Private Company**

As per the existing provision of section 167C of the Act, where any tax due from a Limited Liability Partnership (LLP) cannot be recovered from such LLP, then every person who was a partner of the LLP at the time during the period to which the non-recovery relates, shall be jointly and severally liable for the payment of such tax unless he proves that the non - recovery cannot be attributable to any gross neglect, misfeasance or breach of duty on his part. Similar provision also exists to recovery tax due from directors of private company U/s. 179 of the Act. Recently the Hon'ble Gujarat High Court in the case of Maganbhai H. Patel 26 Taxmann.com 226 held that term "tax due" does not include any interest or penalty payable under the Act and therefore it could not be recovered from director U/s. 179 of the Act.

To nullify the effect of the above decision, the Bill proposes to provide that the provision of section 167C and 179 is also applicable to the recovery of any interest or penalty or any other sum payable under the Act.

The amendment is proposed to be applicable w.e.f. 01.06.2013.

### **K.2 Penalty for failure to furnish AIR**

Section 285BA mandates for furnishing of Annual Information Return (AIR). Under the existing provision, penalty U/s. 271FA would be leviable if the person who is required to furnish an AIR fails to furnish such within the time period prescribed U/s. 285BA(2). Penalty for failure to furnish the return is ₹ 100 for every day during which the failure continues.

The Bill proposes amendment in section 271FA. As per the amended provision, if the AIR is not filed within the period specified in the notice U/s. 285BA(5), then penalty of ₹ 500 for every day beginning from the day immediately following the day on which the time specified under the said notice expires.

**L. MISCELLANEOUS**

**L.1 Power to make rules**

Section 295 empowers the Board to make rules in respect of matters specified in Chapter X-A regarding the General Anti Avoidance Rules, also with respect to remuneration of Chairperson and members of the Approving Panel, procedure and manner for constitution of, functioning and disposal of references by the Approving Panel.

**L.2 Extension of time limit for getting Provident Fund recognition**

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

The first proviso to sub-rule (1) of Rule 3, specifies that in a case where recognition under the Act has been accorded to any provident fund on or before 31.03.2006, but such provident fund does not satisfy the conditions set out in clause (ea) of Rule 4 on or before 31.03.2013, the recognition to such fund shall be withdrawn.

The Bill proposes to amend the first proviso, so as to extend the time limit from 31.03.2013 to 31.03.2014.

## **M. WEALTH TAX**

### **M.1 Definition of urban land**

Section 2(ea) of the Wealth Tax Act, 1957 defines “Assets” which specifically includes urban land. The Bill proposes similar changes in the definition of “Capital Asset” defined under Section 2(14) of the Act and “urban land” defined under clause (b) of explanation 1 to Section 2(ea) of the Wealth Tax Act, 1957.

### **M.2 Wealth Tax Returns without accompanying documents**

The Bill proposes to insert section 14A and section 14B to facilitate the filing of annexure less electronic return. The Bill proposes to insert new Section which empowers the Board to make rules to exempt certain class or classes of person from furnishing documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents along with the wealth tax return, which are otherwise required to be furnished under any other provisions of Wealth Tax Act (except electronically under the newly inserted section 14B). The said classes of persons may only be required to furnish the above mentioned documents to the Assessing Officer on demand.

The Bill also proposes to insert section 14B, which empowers the board to make rules regarding-

- (a) The class or classes of persons who shall be required to furnish their return in electronic form.
- (b) The form and the manner in which annexure less return shall be furnished.
- (c) The records which are required to be produced before Assessing Officer on demand.
- (d) The computer resource (software) or the electronic record to which the electronic return may be submitted.

Consequential changes are proposed in Section 46.

## N. SERVICE TAX

### N.1 Rate of Service Tax

The rate of service tax is not changed and remains same at 12%.

### N.2 Legislative Changes

Amendment in Finance Act, 1994

(i) Section 65B

a. The State Council for Vocational training is added in clause 11 of section 65B, to cover this in the negative list of service in section 66D.

b. The definition of process amounting to 'manufacture or production' in section 65B(40) is being expanded to include the process under the Medicinal and Toilet preparations(Excise Duties) Act, 1955

(ii) Section 66B

The explanation to this section for clarification on levy of service tax under section 66 is omitted. This explanation was inserted vide notification no. 19/2012 dated 05.06.2012. This being a substantial change in law, it cannot be brought into effect by a notification. To remedy this error, section 66BA is inserted to regularize the provisions for charging of the service tax under section 66B.

(iii) Amendment in section 66D - Negative list of service

In clause (d) related to service of process carried out at agriculture farm [in sub-clause (i)] the word 'Seed' is omitted from this activity. The meaning that was assigned before the amendment was that testing of seed was not a service. It limited the impact of the negative list to testing of seeds only. This amendment will now allow the benefit to all other testing in relation to agriculture produce.

(iv) Amendment in section 73 -Recovery of Service Tax, sub-section 2 inserted

In case of the charge of fraud, collusion, willful suppression of facts etc. has not been established against the Assessee chargeable to Service tax to whom the notice was issued, the service tax shall be determined and payable by such assessee for the period of the eighteen months as if the notice was issued for offenses for which said limitation applies.

(v) Amendment in clause (a) of section 77

The penalty for failure to take registration is limited to maximum ₹ 10,000 as against the existing provision of ₹ 10,000 or ₹ 200 per day during which failure continues, whichever is higher.

- (vi) New section 78A inserted to incorporate the provisions of levy of penalty for contravention of;
- a. Evasion of service tax
  - b. Issuance of invoice, bill or as the case may be a challan without provision of taxable service in violation of rules, availment of credit and its utilization.

This penalty is to be levied on Director or Manager or Secretary or other officer of the Company who was responsible for issuing such invoice or evading tax. The amount of penalty could go up to the extent of ₹ 1 lac.

- (vii) Amendment in section 89 to prescribes the revised punishments for the offence of collecting service tax but failing to deposit to the credit of government beyond the 6 month as provided in Clause (d) of sub-section (1) of section 89, shall be punishable with imprisonment for a term which may extend to 7 years as against the existing provision of term of 3 years.

- (viii) New section 90 inserted to incorporate the provisions of cognizance of offense under clause (ii) of sub-section 1 of section 89

These changes in the Finance Act, 1994 will come into force when the Bill is enacted.

### N.3 Changes in Abatements

Name of Service	Existing Rate	Revised Rate
Construction of complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority		
(i) For residential unit having carpet area upto 2000 sq. ft. or were the amount charged is less than ₹ 1 crore.	75%	75%
(ii) For other than (i) above	75%	70%
This is applicable from 01.03.2013		



**N.4 Amendment in Exemption Notification for exemption/withdrawal of various services**

The following amendment are made in Mega Exemption Notification 25/2012 dated 20.06.2012 –

- (i) The exemption in respect of services provided by education institutions in respect of
  - a. Auxiliary education service or
  - b. Renting of immovable propertyare withdrawn (amendment in entry 9 of said notification)
- (ii) The services provided by way of temporary transfer of permitting to use of copy right of cinematograph films for exhibition in a cinema hall or cinema theatre is exempted (amendment in entry 15 of said notification)
- (iii) Exemption under entry no. 19 will now be available only to non –AC or non-central air heated restaurants; dual requirement that it should have a license to service alcohol is done away with.
- (iv) Exemption withdrawn in respect of services provided by way of transportation by rail or vessel from one place in India to another place of following goods.
  - a. petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); [entry 20(a)]
  - b. postal mail or mail bags; [entry 20(d)]
  - c. household effects; [entry 20(e)]
- (v) the services provided by Goods Transport Agency by way of transportation of
  - a. Agriculture product [Entry no 21(a)]
  - b. Foodstuff including flours, ea, coffee, jiggery, sugar, milk products, salt and edible oil excluding alcoholic beverages[Entry no 21(d)]
  - c. Chemical fertilizers and oilcakes[Entry no 21(e)]
  - d. Newspaper or magazines registered with the Registrar of Newspapers [Entry no 21(f)]
  - e. Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishaps [Entry no 21(g)]or
  - f. Defense or military equipments [Entry no 21(h)]



will be exempted (amendment in entry 21 of said notification) to harmonize the similar exemption provided in entry 20. This was contradicted till this notification was amended.

- (vi) The exemption withdrawn in respect of Services provided by way of vehicle parking to general public. However, leasing of space to an entity for providing such parking facility continues to be exempted; [entry 24 of said notification omitted]
- (vii) The exemption in respect of Services provided to the Government, or local authority or a Governmental authority by way of repair or maintenance of Air Craft is withdrawn [entry no. 25 omitted]
- (viii) The definition of 'charitable activities' is being changed by deleting the portion listed in sub-clause (v) of clause (k). Thus benefit to charities providing services for advancement of "any other object of general public utility" upto ₹ 25 Lakh will not be available. However the threshold exemption will continue to be available upto ₹ 10 Lakh. These are now taxable entities like any other.

#### **N.5 Service Tax Voluntary Compliance Encouragement Scheme, 2013**

A new scheme is proposed to be introduced to encourage voluntary compliance with the following main features:

- (i) The scheme can be availed of by non-filers or stop-filers or persons who have not made a truthful declaration in their return. However it will not be applicable to persons against whom any inquiry or investigation is pending by the issue of search warrant or summon or by way of audit;
- (ii) The defaulter will be required to make a truthful declaration of all his pending tax dues (from 01.10.2007 to 31.12.2012) and pay at least half of that before 31.12.2013; remaining half to be paid by:
  - a. 31.06.2014 without interest; or
  - b. by 31.12.2014 with interest from 01.07.2014 onwards;
- (iii) On compliance with all the requirements the person will have immunity from interest (as specified), penalties and other proceedings;
- (iv) The scheme will come into force when the Finance Bill is enacted. It is clarified that the tax-payers will need to settle their dues for the period after 31.12.2012 under the present law.

#### **N.6 Advance Ruling Authority**

The benefit of advance ruling authority is being extended to resident public limited company (4/2013 dated 01.03.2013)

## O. EXCISE

### O.1 Legislative

- Under section 9 the Central Excise Act prescribed penalty for offences listed in it. The limit of such offences was determined by the duty amount. Under clause (i) of sub section (1) of section 9 the limit was ₹ 30 lacs. It is now proposed to raise this to ₹ 50 lacs
- To ensure uniformity in the indirect tax laws the Excise Act is also proposed to be amended with respect to the bailable offences. Section 9A now proposes that all offences under section 9 except those which are in section 9A(1A) would be non-cognizable. Earlier provision was to make all offences under section as non-cognizable. However, the new 9A(1A) provides that where duty amount exceeds ₹50lacs and if the offence is punishable under section 9(1)(b) or 9(1)(b) then those shall be non-cognizable and non-bailable.
- Section 11 deals with recovery. Inadvertently it mentioned that the duty can be recovered by deduction from the payment due to the defaulter. The words "or may recover" now proposed will add to the avenue for recovering the duty. It covered all possibilities of recovery except the one where the government could demand duty payment from debtors or from any person who is custodian of money of the defaulter. The amendment to this section is to ensure that this is remedied. The debtor or the holder of the money on behalf of the defaulter would now be directed to deposit that sum towards the payment of duty, if the amount is less than or equal to the duty then whole of such amount and if it is more than the duty then the amount equal to duty. If such person, even after the direction under this section defaults in payment, he too will be liable for all consequences as a defaulter.
- Provisional attachments will now have effect only for notices issued under section 11D(2) which relates to duty collected but not paid to the government.
- Section 20 and 21 are consequential amendment. Now that the offences have been classified in two categories, the amendments made in these sections take that forward.
- In case of advance ruling, application was permitted only where there was an existing business. Now with growing integration of India with the

world, the amendment to section 23A(a) proposes to extend the advance ruling facility to all those who propose to undertake manufacturing. This has been achieved by amending the definition of activity in the section.

- In section 23C, which prescribes the manner of application, clause (e) of sub section (2) did not make mention of service of cenvat on service tax. The amendment to this clause will now make it possible to make an application for advance ruling on question of admissibility of credit of service tax paid or deemed to have been paid on input service, in addition to credit of excise duty paid or deemed to have been paid on inputs.
- Second proviso to section 35C(2A) was operating to vacate a stay after 180 days if the appeal is not disposed off within that limit. To increase the flexibility and possibly to cope up with the pile up, third proviso is proposed to be added which will allow further extension of stay for 185 days making a total 365 days. If the appeal is not disposed off by that time the stay gets vacated.
- Where the duty or the amount of fine or penalty or duty or difference in duty was not exceeding ₹ 10 lacs the president or any member of tribunal could dispose off the appeal singly. That limit is now proposed to be raised to ₹ 50 lacs in section 35D.
- Section 37C permits only Registered AD for summons notices etc. With the amendment courier, speed post with proof of delivery is also proposed to be allowed.

## O.2 Rate of Excise Duty

Basic rate of excise duty of 12% unchanged.

## O.3 Increase/Reduction in Tariff:

Item - Description	Rates
<b>Automobiles</b>	Excise duty on Sports Utility Vehicles (SUVs) and engine capacity of more than 1500cc is being increased from 27% to 30%.
	Excise duty on truck chassis (8706 00 42) is being reduced from 14% to 13%.
	SUVs registered solely for use as taxis will not suffer additional excise duty consequent to the increase in excise duty on SUVs from 27% to 30%. Taxi refund in respect of SUVs is being adjusted accordingly.

Item - Description	Rates
<b>Metals</b>	Excise duty of 4% is being levied on silver manufactured from zinc/lead smelting.
	Compounded levy on stainless steel "Patta Patti" is being increased from ₹ 30,000 per machine per month to ₹ 40,000 per machine per month.
	It is being clarified that the item "trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of handicrafts or utensils" presently leviable to excise duty at ₹ 3,500 per MT includes copper and copper alloys including brass.
<b>Electronics / Hardware</b>	Excise duty on mobile phones of retail sale price exceeding ₹ 2,000/- is being increased from 1% to 6%.
<b>Cigarettes, Cigars and Cigarillos</b>	Excise duty on cigarettes is being increased by about 18% on all cigarettes except cigarettes of length not exceeding 65 mm. Cigars and cigarillos duty is also being similarly raised.
<b>Marble Tiles and Slabs</b>	Excise duty on marble tiles and slabs is being increased from ₹ 30 per sq. mtr to ₹ 60 per sq. mtr.

#### O.4 Items Exempted:

Item - Description	Changes
<b>Agriculture / Agro Processing / Plantation Sector</b>	Full exemption from excise duty is being provided on tapioca sago (sabudana) and tapioca starch manufactured and consumed captively in the manufacture of tapioca sago.
	Full exemption from excise duty is being provided on henna powder or paste, not mixed with any other ingredient.
<b>Aircrafts &amp; Ships</b>	Full exemption from excise duty is being provided on ships and other vessels. Consequently, there will be no CVD on these ships and vessels when imported.
<b>Textiles</b>	Full exemption from excise duty is being provided on hand made carpets and carpets and other textile floor coverings of coir or jute, whether or not handmade.
	'Zero excise duty route', as existed prior to Budget 2011-12, is being restored in respect of branded readymade garments and made ups. In the case of cotton there will be zero duty at the fibre stage and, <b>in the case of spun yarn of man made fibres, there will be a duty of 12% at the fibre stage. The 'Zero excise duty route' will be in addition to the CENVAT route now available.</b>

<b>Item - Description</b>	<b>Changes</b>
<b>Specified Parts of hybrid and electric vehicles</b>	The concessional excise duty of 6% granted is being extended by two more years upto 31.03.2015
<b>Intermediate Goods manufactured and consumed captively by exempted units under Area Based Exemption Scheme</b>	Full exemption from excise duty is being provided to intermediate goods manufactured and consumed captively by exempted units under Area Based Exemption Scheme in Himachal Pradesh and Uttarakhand.

## P. CUSTOMS

### P.1 Legislative Amendments

- Amendment to section 11 is proposed to protect the legality of the copyrights, designs and geographical indications such that it gives government power to prohibit import where violation of the rights is envisaged.
- Considering that the administration of the law needs to be streamlined the amendment to section 27 and 28 propose that any duty which is less than ₹ 100/- or any refund which is less than ₹ 100 will not be paid or notice will not be given, respectively.
- Provisional attachment for duty recoverable under section 28 was not prescribed. This has now been remedied.
- In case of advance ruling, application was permitted only where there was an existing business. Now with growing integration of India, the amendment to section 28E proposes to extend the advance ruling facility to all those who will conduct business of import or export. This has been achieved by amending the definition of activity in the section.
- There is a prohibition under Customs Act to land or bring to a port any conveyance carrying goods and or passenger where no customs station is present. To facilitate larger consignments to land nearer to the project site, it is now proposed that Board can grant prior permission for permit such landing.
- As the government moves towards integration of electronic governance it needs more and more compatibility with the external environment. Towards this end section 30 and 41 are proposed to be amended so that import manifest and export manifest will now be electronically files in all cases. If the electronic filing is not possible for any reason then commissioner of customs will be able to grant filing in other manner.
- The payment of duty could be made within 5 working days from the arrival of shipment. The amendment to section 47 now proposes to reduce this to 2 days.

- Importer could store goods pending clearance, for which there was no time limit. With the proposed amendment in section 49(2), the limit of 30 days has been imposed with a possible extension of another 30 days by permission of commissioner of customs. The facility under this section is different from chapter IX where the facility of warehousing is used by the importer. Therefore the provision of that chapter will not be applicable.
- Section 60 deals with the clearance of imported goods for exports without payment of duty. One of the conditions of eligibility was that the import should be evidenced by shipping bill. Section 69(1)(a) did not recognize label or declaration as a substitute to the shipping bill. Section 82 on the other hand considered these to be valid and equal to shipping bill. To remedy this anomaly the amendment now proposes to add the words labels or declaration to this clause.
- Section 104 provides that all offences under this act are bailable notwithstanding Code of Criminal procedure and regulation in it. To increase the penalty of the offences under this act, the proposed amendment now defines 4 offences which are non-bailable;
  - a. Evasion or attempt to evade duty exceeding ₹ 50 lacs
  - b. prohibited goods as defined under Section 11
  - c. import or export of goods in violation of this Act whose market value exceeds ₹ 1 crores
  - d. fraudulent availment or an attempt to avail fraudulently duty drawback in excess of ₹ 1 Crore
- Second proviso to section 129B(2A) was operating to vacate a stay after 180 days if the appeal is not disposed off within that limit. To increase the flexibility and possibly to cope with the pile up, third proviso is proposed to be added which will allow further extension of stay for 185 days making a total 365 days. If the appeal is not disposed off by that time the stay gets vacated.
- Where the duty or the amount of fine or penalty or duty or difference in duty was not exceeding ₹ 10 lacs the president or any member of tribunal could dispose off the appeal singly. That limit is now proposed to be raised to ₹ 50 lacs.
- Section 135 gives the offences which are punishable. After the amendment of section 104 is carried out the amount in section 135 and section 104 will need to be realigned. With that in mind the proposal is to make the amounts equal to those in section 104.



- Section 142 deals with recovery and the methods of recovery. It covered all possibilities of recovery except the one where the government could demand duty payment from debtors or from any person who is custodian of money of the defaulter. The amendment to this section is to ensure that this is remedied. The debtor or the holder of the money on behalf of the defaulter would now be directed to deposit that sum towards the payment of duty, if the amount is less than or equal to the duty then whole of such amount and if it is more than the duty then the amount equal to duty. If such person, even after the direction under this section defaults in payment, he too will be liable for all consequences as defaulter under this Chapter XVII.
- The deferment of import duty where goods are imported under advance license with export obligation is now proposed to be done away with. Section 143A is proposed to be omitted.
- Duty was not charged where the sample was taken by the government to test and ascertain the valuation for duty purposes. The section mentioned that if the duty was ₹ 5 or more it need not be charged. This is now deleted to make it more sensible.

## P.2 Increase in Custom Tariff and Withdrawal of Exemption

Item Description	Rates
<b>Automobiles</b>	
Old Motor car	From 100% to 125%.
New passenger cars and other motor vehicles (high end cars) with CIF value more than US \$ 40,000 and/or engine capacity exceeding 3000cc for petrol run vehicles and exceeding 2500cc for diesel run vehicles	From 75% to 100%.
New Motor Cycle With Engine Capacity Of 800cc Or More	From 60% to 75%.
<b>Yachts and other vessels</b>	
<b>Steam Coal</b>	BCD - From Nil to 2% and CVD - From 1% to 2%.
<b>Aircrafts</b>	Exemption from Education Cess & Secondary and Higher E. C. is being withdrawn on Aeroplanes, helicopters and their parts
<b>Textiles - Raw Silk</b>	From 5% to 15%.
<b>Electrical machinery and equip - Set Top Boxes For TV</b>	From 5% to 10%.



**P.3 Reduction in Rate of Customs Tariff**

Item Description	Rates
De-hulled Oat Grain	From 30% to 15%.
Hazel Nuts	From 30% to 10%.
Bituminous Coal	BCD - From 5% to 2% and CVD - From 6% to 2%.
<b>Plant and Machinery</b>	
20 Specified Machinery For use in Leather And Footwear Industry	From 7.5% to 5%
Textile Machinery & Parts	From 7.5% to 5%
On Stainless Steel Wire Cloth Stripe And	From 10% to 5%
Wash Coat For Use In The Manufacture Of Catalytic Convertors And Their Parts	From 7.5% to 5%
Pre-Forms Of Precious And Semi-Precious Stones	From 10% to 2%.
De-Oiled Rice Bran Oil Cake	Export Duty of 10% - Withdrawn

**P.4 Items Fully Exempted From Custom Tariff**

- Full exemption from export duty is being provided to flat rolled product of iron or non-alloy steel, plated or coated with zinc, retrospectively w.e.f. 01.03.2011.
- Full exemption from basic customs duty is being provided to Lithium ion automotive battery for manufacture of lithium ion battery packs for supply to the manufacturers of hybrid and electric vehicles.
- Full exemption from basic customs duty and additional customs duty is being provided to trophy imported by National Sports Federation recognized by the department of sports and youth affairs or any sports body registered under Societies Registration Act, in connection with any international tournament held in India.

**P.5 Changes in Baggage Rules**

Duty free allowance in respect of Jewellery for an Indian passenger who has been residing abroad for over one year or a person who is transferring his residence to India	From ₹ 10,000 to ₹ 50,000 in case of a gentleman passenger and from ₹ 20,000 to ₹ 1,00,000 in case of a lady passenger.
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## Q. OTHER IMPORTANT PROPOSALS

### Q.1 Goods and Services Tax

- A sum of ₹ 9,000 crore towards the first installment of the balance of CST compensation provided in the budget.
- Work on draft GST Constitutional amendment bill and GST law expected to be taken forward

### Q.2 Foreign Investment

- The Finance Minister has tried to remove the ambiguity by laying down a broad principle that where an investor has a stake of 10 percent or less in a company, the investment will be considered as Foreign Institutional Investment [FII] and if the stake of the investor is more than 10 per cent, the investment will be treated as Foreign Direct Investment [FDI].
- FIIs will be permitted to participate in the exchange traded currency derivative segment to the extent of their Indian rupee exposure in India.
- FIIs will also be permitted to use their investment in corporate bonds and Government securities as collateral to meet their margin requirements.
- SEBI will simplify the procedures and prescribe uniform registration and KYC norms for entry for Foreign Portfolio Investors.

Further details will be made available in the Foreign Trade Policy to be announced in April 2013.



# *An Overview of* **THE FINANCE BILL 2013**

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The provisions contained in the Finance Bill, 2013 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.