

FINANCE BILL, 2012

HIGHLIGHTS



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FINANCE BILL, 2012**SOME IMPORTANT AMENDMENTS****I. INCOME-TAX RATES**

Rates for Individuals including Women (below age of 60 years at any time during the year), HUF, AOP, BOI:

Total Income		F.Y. 2011-12	Total Income (Men/Women)	F.Y. 2012-13
Men	Women			
Upto Rs.1,80,000	Upto Rs.1,90,000	Nil	Upto Rs.2,00,000	Nil
Rs.180001- RS.5,00,000	Rs.1,90,001- RS.5,00,000	10%	Rs.2,00,001- Rs.5,00,000	10%
Rs.5,00,001- Rs.8,00,000	Rs.5,00,001- Rs.8,00,000	20%	Rs.5,00,001- Rs.10,00,000	20%
Above Rs.8,00,000	Above Rs.8,00,000	30%	Above Rs.10,00,000	30%

Rates for Senior citizen (Age 60 and above at any time during the year):

Basic exemption continues to be Rs.2,50,000/-

Accordingly, tax on a Senior Citizen earning Rs.10,00,000 p.a. will be Rs.1,25,000/- + Cess

Rates for Very Senior citizen (Aged 80 and above at any time during the year):

Basic exemption continues to be Rs.5,00,000/-

Accordingly, tax on Rs 10,00,000/- will be Rs.1,00,000 + Cess of Rs.3,000/- = Rs.1,03,000 /-

Securities Transaction Tax (STT)

STT W.e.f.1st July, 2012 shall be reduced from 0.125% to 0.1% on delivery-based transactions such as purchase and sale of equity shares listed on a recognized stock exchange in India.

II. INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

Sec. 9(1)(i)- 'Explanation 4' is to be inserted retrospectively from 1st April, 1962 whereby the expression 'through' used in section 9(1) shall mean and include "by means of" "in consequence of" or "by reason of". The same interpretation of 'through' was propagated by the Revenue before the Supreme Court in the recent case of Vodafone. The Revenue argued that if transfer of a capital asset situated in India happens "in consequence of" something which has taken place overseas, then all income derived even indirectly from such transfer, even though abroad, becomes taxable in India. The Supreme Court found no merit in this argument.

However, with the retrospective amendment, the Revenue will be able to tax income from indirect transfer of Indian assets including the transaction in the Vodafone Case.

'Explanation 5' is to be inserted retrospectively from 1st April, 1962 and will provide that the situs of shares or interest in a foreign entity shall be India if the share or interest derives its value, directly or indirectly, substantially from assets located in India. This retrospective amendment has also been inserted as a reaction to the Vodafone judgment. Therefore, India will have the jurisdiction to charge capital gains tax on transfer of shares of a foreign entity if the value of the shares is derived substantially from assets situated in India.

Royalty- Sec. 9(1)(vi) Explanation 4 is being retrospectively inserted, w.e.f 1st June, 1976 to extend the meaning of 'Royalty' to include 'all or any right for use or right to use a computer software' irrespective of the medium through which such right is transferred. Therefore, income from sale of a copyrighted object (such as a CD containing software) and not just on assignment of license in a copyrighted article, would be taxed as royalty.

Therefore, there will be income in the nature of royalty arising in the hands of the persons selling a CD of computer software, persons selling shrink-wrap software, subscription to online database etc.. This retrospective amendment is being made as a response to various cases lost by the Department recently on this point such as Sonata Information Technology Ltd., Dun & Bradstreet Espana S.A. v ITAT etc.

The new 'Explanation 5' will widen the scope of the term '*royalty*' with retrospective effect, to include consideration in respect of any right, property or information regardless of whether or not the taxpayer holds possession or control of such right or uses such right directly or the location of such right is in India.

III. INCOME EXEMPT FROM TOTAL INCOME

Sec. 10(10D)(C) and Sec. 80C- Currently, income under life insurance policy is exempt provided that the annual premium payable is less than 20% of the actual capital sum assured.

With effect from 1st April 2013, the amendment proposes to reduce the condition of premium amount from 20% to 10% of the actual capital sum assured.

A similar amendment has been made in section 80C whereby maximum deduction for premium will be equal to 10% of actual capital sum instead of 20%.

IV. TRUSTS

Sec. 10 (23C), Sec. 13(8) and Sec. 143 (1)(D) : Section 2(15) already provides that if a charitable or religious Trust carries on activity of trade, commerce or business, above a threshold level, the Trust will lose its exemption from Income-tax. Section 10(23C) and Section 13(8) are now proposed to be amended with retrospective effect from 01/0/2009 to clarify that if a trust carries on activity of trade etc. then it would lose its exemption even though the certificates (e.g. u/s 80G) are not formally withdrawn.

V. VENTURE CAPITAL FUND

Currently, the Venture Capital Funds/Venture Capital Companies (VCF/VCC) enjoy a tax pass-through status only with respect to investment in specified sectors such as bio-technology, nano-technology, etc. The Bill proposes to extend the tax pass-through benefit to VCFs irrespective of the investment sector, by aligning the definition of VCU in **Sec. 10(23FB)(c)** of the Income-tax Act with that of SEBI Regulations.

Sec. 115U- Investors are now proposed to be taxed when income accrues or arises or is received by the VCF/VCC, as against the current law, where the taxability would be triggered only when the income was distributed by the VCF/VCC to its investors. This could potentially result in investors being required to pay tax even when the VCC/VCF has not made any distribution.

Additionally, VCFs/VCCs are no more exempt from the provisions of dividend distribution tax and withholding tax.

VI. DEDUCTIONS

Depreciation in plant and machinery in Power Sector - Sec. 32(1)(ia)

The existing provision is proposed to be amended, w.e.f 1st April, 2013 to allow deduction of a further sum of 20% of actual cost of any new machinery or plant (other than ships and aircraft) acquired and installed after 31st March 2005, as further depreciation to an Assessee engaged in the business of generation or generation and distribution of power.

Expenditure on Scientific Research -Sec.35(2AB)(5)

At present a deduction of 200% of the expenditure on scientific research incurred by a Company engaged in the business of bio-technology or in the business of manufacture or production is allowed, provided the expenditure is incurred by 31st March 2012. The last date will now be 31st March 2017.

Deduction w.r.t expenditure on specified business- Sec.35AD(1A)

New sub-clauses (af), (ag) and (ah) are proposed to be inserted which shall extend the purview of Specified business to include activities in the nature of inland container depot, CFS, bee-keeping, bees wax and warehousing facility for storage of sugar.

New subSec. (6A) proposed to be inserted clarifies that even if a two star or more hotel, which was built by the assessee, is given out on a management contract, this shall still be deemed to be a specified business for the purpose of this provision.

New sub-sec. (1A)- It is now proposed to increase the Deduction in respect of expenditure of capital nature incurred by a certain specified business, which commence after 01/04/2012 to 150% from the current 100%. The following are the specified businesses for which the deduction has been increased to 150%:

- a. Setting up and operating a cold chain facility
- b. Warehouse facility for storage of agricultural produce
- c. Building an operating a hospital with at least 100 beds
- d. Developing and building a housing project under a scheme for affordable housing
- e. Production of fertilizer in India

Deduction of expenditure - Sec.35CCC and 35CCD

New Sections proposed to be inserted by the Finance Bill 2012, which propose to allow deduction of one and a half times the expenditure on an agriculture extension project and a skill development project respectively.

Deduction allowed to assessee not deemed to be in default- Sec. 40(a)

Presently, if an assessee fails to deduct tax or pay the deducted tax, then the assessee shall not get a deduction for such payment. If however, the assessee pays such tax in a later year then the assessee shall get a deduction for the payment in such later year.

The proposed amendment is that an Assessee who is not deemed to be in default (u/s 201 as may be amended) shall be allowed a deduction in computing his Profit & Gains for the previous year in which the payee furnishes his return.

Deduction in respect of health insurance premia- Sec. 80D

Presently when an individual makes payment of premium for life insurance for himself, his spouse or children he would get a deduction of a maximum amount of Rs. 15,000/-. The individual gets an additional deduction up to Rs. 15,000 on making payment of premium for life insurance for his parents.

An amendment is being made to the said section whereby the individual would also get a deduction for preventive health check up for himself, his spouse or children subject to maximum deduction of Rs. 5000/-. However, the Rs. 5000/- is not an additional deduction but would be within the Rs. 15000/- aggregate limit that is available for life insurance premium.

A similar amendment is being made whereby an individual would get a deduction for preventive health check up for his parents subject to a maximum deduction of Rs. 5000/- within the overall ceiling of Rs. 15000/-

Furthermore, qualifying age for a senior citizen has been proposed to be reduced to 60 years from 65 years. Aggregate limit in case of a senior citizen is Rs. 20,000/- to avail benefit u/s 80D.

Deduction in respect of medical treatment

Sec. 80DDB - It is proposed to reduce the Age for availing of deduction for medical treatment for specified diseases or ailments on senior citizen under this Sec. from “*sixty-five years*” to “*sixty years*”.

Deduction in respect to donation to certain funds, Charitable trusts. Etc.: Sec. 80G

A new sub-section (5D) is to be introduced whereby deduction will not be allowed for a donation exceeding Rs.10,000/- unless it is paid by any mode other than cash

Donation for scientific research: Sec. 80 GGA

A new sub-section (2A) is to be introduced whereby deduction will not be allowed for a donation exceeding Rs.10,000/- unless it is paid by any mode other than cash.

Deduction on Interest on Savings Account: Sec. 80TTA

A deduction upto Rs.10,000/- in aggregate shall be allowed to an assessee, being an individual or a HUF, in respect of any income by way of interest on deposits (not being time deposits) in a savings account with—

- a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in Sec. 51 of that Act);
- a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
- a post office, as defined in Sec. 2(k) of the Indian Post Office Act, 1898 (6 of 1898).

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

Rajiv Gandhi Equity Savings Scheme

This new scheme is proposed to encourage flow of savings in financial instruments and improve the depth of domestic capital market. It allows for income tax deduction of 50% to new retail investor, who invests up to Rs 50,000/- directly in equities and whose annual income is below Rs 10 lakhs. The scheme will have a lock-in period of three years. The details will be announced in due course.

VII. AUDIT OF ACCOUNTS

(Sec. 44AB) Presently, certain persons carrying on business or profession need to audit their accounts compulsorily if their gross receipt is in excess of the threshold, the threshold limits are proposed to be increased as follows:

- a. Persons carrying on business: from Rs. 60 lakhs to Rs. 1 crore
- b. Persons carrying on profession : from 15 lakhs to 25 lakhs

Computation of profits and gains of business on presumptive basis

Sec. 44AD: Sec. 44AD provides that there shall be presumptive tax at the rate of 8% of the turnover/gross receipts of eligible assessee engaged in eligible business chargeable as tax under the head 'profits and gains of business or profession'

New sub-sec. (6) to be inserted provides that the said Sec. will not be applicable in following cases:

- (i) a person carrying on profession as referred to in Sec. 44AA (1) [i.e. Legal, medical, engineering or architectural profession or accountancy or technical consultancy or interior decoration or other notified professions]
- (ii) a person earning income in the nature of commission or brokerage
- (ii) a person carrying on any agency business.

VIII. CAPITAL GAINS TAX

Definition of 'Capital Asset': Sec. 2(14)

'Capital asset' at present has been defined by the said section as property of any kind held by an assessee. A proviso is to be inserted retrospectively from 1st April, 1962, which clarifies that a 'property' "includes any rights in or in relation to an Indian Company, including rights of management or control or any other rights whatsoever".

This proposed retrospective amendment has been made as a reaction to the Vodafone case as the current definition does not include property indirectly held. Furthermore, it would have to be understood what is meant by rights of management or control and whether is it a reference to voting rights agreement, right to appoint director etc.

Definition of ‘transfer’

Sec. 2(47): Definition of ‘transfer’, which currently includes sale, exchange or relinquishment of assets or rights therein etc. has been proposed to be extended retrospectively from 1st April, 1962 by insertion of ‘Explanation 2’. The explanation provides that ‘transfer’ includes creation of or disposing of any right in an asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (entered in or outside India) or otherwise. Further the Explanation provides that there will be a ‘transfer’ notwithstanding that the interest created is contingent or dependent on transfer of shares in a Company. Therefore, option agreements, contingent contracts etc could amount to transfer of shares.

The extended meaning of transfer may include creation of beneficial interest in an asset and therefore, there may be tax payable on having beneficial ownership.

Mode of computing Cost of acquisition

Sec. 49(1)(iii)(e): Sec. 49(1) provides for cost of acquisition in certain cases, including cost of acquisition of an asset in the hands of the LLP, where a LLP had succeeded a Company on conversion, as the cost in the hands of the Company originally as increased by cost of improvement. However, the said section does not provide for cost of acquisition in the hands of the Company, where a Company has succeeded a partnership firm or a sole proprietary concern.

The proposed amendment as a clarification, coming into effect from 1st April, 1999, provides that the cost of acquisition in the hands of the Company, where a Company had succeeded a partnership firm or a sole proprietary concern, would be the cost that was originally in the hands of the partnership firm or a sole proprietary concern as increased by any cost of improvement.

Deemed sales consideration where consideration not ascertainable on transfer of a capital asset: Sec. 50D

Presently on transfer on a capital asset if the consideration is not ascertainable there would be no levy of capital gains tax. This was held recently by AAR in the case of Re Dana Corporation following the principle laid down by Supreme Court in the case of BC Srinivasa Shetty. Re Dana Corporation involved a business reorganization in which several assets were transferred with the

liabilities for no consideration and the consideration for assets could not be ascertained. The AAR held that there would be no capital gains as there was no consideration ascertainable.

Sec. 50D has been proposed to be inserted, w.e.f. 1st April, 2013, which provides that where the consideration on transfer of a capital asset is not ascertainable or cannot be determined, the FMV of the said asset on the date of transfer shall be deemed to be the sale consideration.

Capital gain on sale of land used for agricultural purposes:Sec. 54B(1)

At present when an assessee invests the capital gains on sale of land, which was being used for agricultural purposes by him or by his parent, to purchase land for agricultural purposes there is no capital gains tax on the original gain.

By a proposed amendment to Sec. 54B(1), w.e.f 1st April, 2013, even a HUF would get the exemption from capital gains on sale of land which was being used for agricultural purposes.

Capital gains on sale of residential property not to be charged in certain cases

A new **Sec. 54GB** is proposed to be inserted w.e.f 1st April, 2013, which provides for an exemption from capital gains tax when an assessee being an individual or HUF incurs capital gain on sale of a residential property (a house or a plot of land) and, before the due date of filing his return, utilises the **net consideration** to subscribe to shares of a **eligible company** and the said company utilises the said amount of net consideration, within one year from the date of subscription, to purchase a new asset being plant and machinery (with certain exceptions).

The said eligible company shall deposit such amount in a specified account before the due date of filing of return of the individual or HUF who incurred the said gain.

The following conditions shall be fulfilled for the company to qualify as an **eligible company**:

- a. The Company is an Indian Company
- b. The Company is engaged in the business of manufacture
- c. The assessee has more than 50% of share capital or voting rights in the Company after the subscription under this Sec.
- d. The Company qualifies as a Small or Medium enterprise as defined by Micro, Small and Medium Enterprise Act, 2006.

New asset excludes:

- a. A second hand plant or machinery
- b. Any Plant or Machinery installed in any office or residential premises including guest house
- c. Any office appliance including computers or computer software
- d. Any vehicle
- e. Any plant or machinery the whole cost of which is deductible by way of depreciation or otherwise

This Sec. shall apply only for transfer of residential property up to 31st March, 2017

Short term Capital Gains Tax in certain cases: Sec. 111A

Rate of short Term capital Gains Tax is proposed to be increased to 15% from 10%

IX. AMALGAMATION/DEMERGER

Sec. 2(19)AA(iv): To qualify as demerger one of the conditions is that the resulting company, as consideration for demerger, issues its shares to the shareholder of the demerged company in proportionate basis. An amendment is to be made w.e.f 1st April, 2013, which provides that where the resulting company itself is the shareholder of the demerged company, there is no need to issue shares. Therefore, it shall not be necessary for the resulting company to issue shares to itself.

Transactions not regarded as transfer: Sec. 47(vii)(a)

Under the current provision, in order for a merger to qualify as a tax free merger, it is required that shares have to be issued by the resulting entity to the shareholders of the merging entity. A proposed amendment to the current Sec. 47(vii) states that if the amalgamated company is itself the shareholder of the amalgamating company, then there is no requirement for the amalgamated company to issue shares to itself.

X. INCOME FROM OTHER SOURCES :Sec. 56(2)

Sec. 56(2)(vii): The current provisions provide that where an individual or a HUF receives a sum or asset, without consideration, the value of which exceeds Rs.50,000/- then such sum shall be treated as income from other sources and taxable in the hands of the donee.

However, there is an exception where the sum or asset is gifted by a relative of the individual or HUF, as defined by the said section. The meaning of 'relative' has been extended by a proposed amendment whereby individual member of the HUF will be included within the ambit of relative of the receiving HUF. Therefore, if a member gives a gift to the HUF there shall be no tax on such gift under the head income from other sources.

However, if the HUF makes a gift to the individual the same shall not be tax exempt as an HUF will not be treated as a relative of its individual members.

Share premium in excess of FMV of share treated as Income from other sources:

Sec. 56(2)(viib):A key tax proposal relating to curbing tax avoidance has been made in relation to issue of shares in excess of the fair value by closely held companies. Share premium received by private company or unlisted Company over the "fair market value" on subscription of shares is proposed to be taxable as income from other sources in the hands of the issuer company.

However, there is an exception for consideration for issue of shares received by a venture capital undertaking from a venture capital company or fund.

XI. CASH CREDIT

Sec.68 Presently the section provides that where the assessee does not provide/or provides unsatisfactory explanation to any sum credited in the books of the assessee for any previous year, then the sum so credited may be charged to income tax as income of the previous year.

Now, the following two provisos are proposed to be inserted:

- (i) Where the assessee is a Pvt. Ltd. Co. and the sum credited consists of share application money, share premium, share capital etc., any explanation provided by the assessee shall be deemed to be unsatisfactory unless
 - (a) The person in whose name the credit appears offers explanation of the nature and source of the sum,
 - (b) The AO finds such explanation satisfactory.
- (ii) This shall not apply to Venture Capital Funds.

XII. DOUBLE TAX AVOIDANCE AGREEMENTS (DTAA)

DTAA Overridden By GAAR: Sec. 90

Sec. 90(2A): Sec. 90(2) provides that where both, the provisions of Income-tax Act, 1961 and DTAA, are applicable to an assessee, the assessee may choose the provisions which are more beneficial to him. This clearly meant that if an assessee chose, the provisions of DTAA could prevail over the provisions of the tax act.

However, a new sub-Sec. (2A) is proposed to be inserted whereby GAAR provisions contained in chapter X-A of the Act will be applicable regardless of the fact that such provisions are not beneficial to the assessee. Therefore, the GAAR provisions would prevail over the provisions of the DTAA.

Such provisions would in a large way impact the non-residents enjoying the treaty benefits, specifically from countries such as Mauritius, Singapore, Cyprus etc and may subsequently affect FDI into India.

Certificate of residence to get benefit under the treaty

Sec. 90(4): The proposed new sub-Sec. (4), w.e.f. 1st April, 2013 provides that a non resident will be entitled to claim relief under the provisions of DTAA only if a certificate of residency is obtained by the assessee from the Government of the country of residence.

These provisions will complicate the procedure and are unnecessary as in any case a certificate of residency would not be taken to be the conclusive proof of residence to avoid GAAR provisions, in order to enjoy the benefit of the treaty.

Similar amendments as above are also to be made to Sec. 90(A)(2A) and Sec. 90A(4) which give power to specified association to enter into DTAA's.

XIII. TRANSFER PRICING

Sec. 92 : An amendment is proposed to the transfer pricing provisions which would extend the purview of the provisions to include within its scope not only international transactions but certain specified domestic transactions. The proposed amendment is to take effect from 1st day of April, 2013

International Transactions:Sec. 92B

The Finance Bill by way of proposed amendment has clarified that the definition of International Transaction w.e.f 1st April, 2002 shall include the following:

- purchase, sale, transfer, lease or use of tangible property and **intangible property**
- capital financing, borrowing, lending or guarantee
- provision of services
- transaction with an associated enterprise for business restructuring or reorganization

It is further clarified that the definition of international transaction would include a transaction of intangibles in various categories. Some of the categories included, 'relate to marketing', technology, art, engineering, goodwill, etc.

Sec. 92BA:This proposed Sec. includes "specified domestic transactions" between related parties when the aggregate of such transactions in the previous year exceeds a sum of five crore rupees. The following are the transactions sought to be included within this Sec.:

- payment of expenditure to an associated party as referred to in Sec. 40A(2)(b)
- any transaction referred to in Sec. 80A;
- transfer of goods or services in Sec. 80-IA(b) (deductions for industrial undertaking or enterprises engaged in infrastructure development, etc.)
- any business transacted between the assessee and other person as referred to in Sec. 80-IA(10)
- transaction, referred to in Chapter VI-A or Sec. 10AA (SEZ)

Computation of Arm's length price: Sec. 92C

The present Sec. as it stands provides that if there is a variation of more than 5% between the price of the international transaction and the determined arm's length price then in such case the actual price is deemed to be the arm's length price. However w.e.f. 1st April, 2013 this has been proposed to be amended to provide a maximum tolerable variation of 3% for determining the arm's length price.

Section 92C(2B) & 92C(2C): Further with a proposed amendment the Sec. has brought within the scope of the Transfer Pricing Officers powers, the power to determine the arm's

length price in an international transaction since 1st June, 2002 during proceedings before him even if such transaction was not referred to him by the AO. However, the Transfer Pricing Officer may only initiate proceedings to determine the arm's length price if a report was not filed in respect of the transaction as required under Sec. 92E.

This section does not empower an AO to assess or reassess proceedings completed before 1st day of July, 2012

Penalties: Sec.s 271AA & 271G imposing penalties have been proposed to be amended to include "specified domestic transactions" within their scope.

XIV. ADVANCE PRICING AGREEMENTS (APA)

Sec. 92CC & 92CD: Advance Pricing Agreement legislation is presently used in developed countries such as United Kingdom and the United States and is now through the Finance Bill of 2012 proposed to be introduced as a part of Indian tax legislation w.e.f 1st July 2012. The provisions relating to APAs have been introduced to provide certainty in the determination of arm's length price thereby reducing transfer pricing litigation.

An APA is an agreement between a person and the Central Board of Direct Taxes (CBDT). This Agreement is to determine in advance, in relation to an international transaction, any of the following:

- The arm's length price
- Manner in which the arm's length price is to be determined

An APA would be limited to a maximum of 5 consecutive financial years.

The APA is binding on the following:

- The person in respect of whose transaction the APA has been entered into
- the Commissioner, and the income-tax authorities

The Board can prescribe a scheme specifying the procedure to be followed for entering into an advance pricing agreement.

The introduction of APAs has been a positive step, however as there is no procedure or rules prescribed, it is yet to be determined how effective such measures shall be in attaining its object.

It is interesting to note that even though the transfer pricing regulations have been extended to include within its scope certain domestic transactions, the APAs are only applicable to international transactions.

XV. GENERAL ANTI AVOIDANCE RULES(GAAR)

The Finance Bill 2012 proposes to introduce a Chapter X-A to the Current Income-tax Act, 1961 on General Anti-avoidance Rules (GAAR)

GAAR seeks to provide wide discretionary powers to the revenue authorities in taxing 'impermissible avoidance arrangements' including the power to disregard entities in a structure, reallocate income and expenditure between parties to the arrangement, alter the tax residence of such entities and the legal *situs* of assets involved, treat debt as equity and vice versa, etc. By doing so, the revenue authorities may deny tax benefits even if conferred under a tax treaty.

An 'impermissible avoidance arrangement' is defined as an arrangement where the main purpose (or one of the main purpose) is to obtain a tax benefit and which contains any of the following elements:

- a. Non-arm's length transactions:
- b. Misuse or abuse of the Act: However, the Budget does not provide any clarity on what will constitute a misuse or abuse.
- c. Non - bona fide purpose:
- d. Lack of commercial substance: For eg. Arrangements that include round trip financing involving transfer of funds between parties without any substantial commercial purpose. Arrangements are also deemed to lack commercial substance if the location of assets, place of transaction or the residence of parties does not have any substantial commercial purpose.

Furthermore, it has been provided by the provisions of GAAR that the reason that a structure provides an exit route would not be considered in determining commercial substance. This is in contrast to what was held in Vodafone Judgment.

The AO has been given the power to make a reference to the CIT (ref.Sec.144 BA) for invoking GAAR and make determination of a transaction as an impermissible avoidance arrangement. If

objections of taxpayer received and not construed as tenable, the CIT shall refer the matter to an Approving Panel post hearing the taxpayer in a time bound manner (six months as stipulated).

XVI. MINIMUM ALTERNATIVE TAX (MAT)

Sec. 115JB: This Sec. provides that if the income tax payable on the total income of a Company is less than 18.5% of its book profit then, the book profit shall be deemed to be the total income of the Company and income tax @ 18.5% shall be payable on the same.

An amendment has been introduced whereby every assessee Company shall prepare its profit and loss accounts in accordance with Part II of Schedule IV to the Companies Act, 1956 and not Part II and III of Schedule IV as was previously provided.

The amendment also states that any insurance or a banking company or any company engaged in the generation or supply of electricity (Sec. 211 Company), shall prepare its profit and loss accounts in accordance with the provisions of the Act governing such a Company.

Further, the insertion of Explanation 1 (j) provides that where the amount standing in the revaluation reserve on the sale of the revalued asset, has not been credited to the Profit and loss account, such amount shall be added to the net profit for the purposes of computation of book profit.

Previously, if the assessee revalued the asset and sold the asset, the difference between the original cost and revaluation amount was not added to the book profits. Therefore, the assessee could revalue the asset and sell it at the revalued price thereby incurring no gain in book profits and avoiding MAT thereon. However, after the amendment MAT will be payable on the increase in value caused by revaluation on the transfer of asset.

XVII. ALTERNATE MINIMUM TAX (AMT):

Secs.115JC, 115JD,115JE: The title of chapter XII-BA has been changed to 'Special provisions relating to Persons other than Company' from 'Special provisions relating to certain LLPs'

Presently AMT provisions apply where the regular income-tax payable for a previous year by a LLP is less than 18.5% of adjusted profits for such previous year, the adjusted total income shall be deemed to be the total income of the LLP and it shall be liable to pay income-tax on such total income at the rate of 18.5%.

Currently these provisions apply only to Limited Liability Partnerships. Now with a proposed amendment, w.e.f from 1st April 2013, the scope of AMT will be extended and these provisions shall apply to all persons other than Companies (for e.g partnership firms, LLPs, AOP, individuals, HUFs, trusts etc.).

Sec.115JEE: The Sec. provides that Chapter XII-BA (Special provisions relating to Persons other than Company) shall apply to only persons who have claimed deduction under chapter VI-A (other than u/s 80P) or Sec. 10AA(SEZ).

Furthermore, the Sec. provides that provisions of the said chapter shall **not** apply to an individual or a HUF or AOP or body of individuals, whether incorporated or not, or an artificial judicial person, if the adjusted total income of such persons does not exceed twenty lakh rupees. However, the provisions still apply to LLPs with income less than 20 Lakhs.

XVIII. DIVIDEND DISTRIBUTION TAX

(Sec. 115 O) Dividend distributed by a Domestic Company is exempt from income-tax in the hands of all shareholders and the Company is liable to pay DDT @ 15 percent on such dividends.

As per the current provisions of the Income-tax Act, for computation of DDT, the amount of dividend declared by the Domestic Company will be reduced by the amount of dividend, if any, received by it during the financial year if -

- such dividend is received from its subsidiary
- the subsidiary has paid DDT on such dividend; and
- the Domestic Company is not a subsidiary of any other Company

With effect from 1 July 2012 the above conditions will be substituted by the following:

- the dividend is received from its subsidiary;
- the subsidiary has paid DDT **which is payable** under Sec. 115-O of the Act.

In accordance with the amendment, the condition of Domestic Company not being a subsidiary of another Company is withdrawn. Therefore, Dividends received by a Company, on which DDT is already paid can be passed on even in a multi-tier corporate structure.

XIX. TONNAGE TAX

The Finance Bill, 2012 seeks to amend **Sec. 115VG** of the Income-tax Act relating to computation of tonnage income.

The existing Table in sub-Sec. (3) of the aforesaid Sec. provides for the amount of daily tonnage income of a qualifying ship.

It is proposed to substitute the Table in order to increase the amount of daily tonnage income of a qualifying ship w.e.f 1st April 2013.

The change in the table being:

Qualifying Ship having net tonnage	Existing amount of daily tonnage income	Proposed amount of daily tonnage income
Upto 1,000	Rs.46 for each 100 tons	Rs.70 for each 100 tons
1001-10,000	Rs.460+Rs.35 for each 100 tons exceeding 1000 tons	Rs.700+Rs.53 for each 100 tons exceeding 1000 tons
10,001-25,000	Rs.3610+Rs.28 for each 100 tons exceeding 10,000 tons	Rs.5,470+Rs. 42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	Rs.7810+Rs.19 for each 100 tons exceeding 25,000 tons	Rs.11,770+Rs.29 for each 100 tons exceeding 25,000 tons

XX. TAX DEDUCTIBLE AT SOURCE (TDS)

Tax Rate And TDS On Payment Of Interest On ECB

Sec. 115A(1)(a)(iaa) and Sec. 194LC: By insertion of this sub-clause, the payment of interest as specified in new Sec. 194LC has been made taxable at the rate of 5% with effect from 1st July, 2012.

The new Sec. 194LC provides that on payment by **specified companies** to non-resident of interest on External Commercial Borrowing (ECB), tax shall be deducted at source at the rate of 5%.

Specified company includes Indian Companies engaged in:

- (i) generation or distribution or transmission of power; or
- (ii) operation of aircraft; or
- (iii) manufacture or production of fertilizers; or
- (iv) construction of road including toll road or bridge; or
- (v) construction of port including inland port; or
- (vi) construction of ships in a shipyard; or
- (vii) construction of dam; or
- (viii) developing and building a housing project

Earlier the rate of tax on such interest payment was 20%. However, this relief has been provided for a limited period of three years, where monies are borrowed between 1st July, 2012 and 1st July, 2015.

Tax rate on income of non-resident sportsman and entertainer and TDS thereon

Sec. 115BBA and Sec. 194E:

This Sec. provides for the rate of income tax payable on income received by any non- resident sportsman or sports association, not being a citizen of India, by way of participation in any game or sport in India, advertisement etc. The Finance Bill, 2012 has with effect from 1st July, 2012 proposed to include within the scope of this Sec., income received by an entertainer, not being a citizen of India and being a non-resident, from his performance in India.

Rate of Tax (w.e.f 1st July, 2012)

- On non-resident sportspersons or sports associations has been increased from 10% to 20%.
- On non-resident entertainers fixed at 20%

Consequently Sec. 194E has been proposed to be amended to provide for deduction of tax @ 20%, at the time of making such payment.

Sec. 115BBD: This Sec. provides the rate of income tax payable on the dividend income received by an Indian Company from a specified foreign company in the previous year relating to Assessment Year 2012-2013 i.e. financial year 2011-2012. The Finance Bill, 2012 has

proposed to amend this Sec. w.e.f.1st April, 2013 to provide that the year in consideration shall now be Financial Year 2012-2013 and such income shall be assessed in Assessment Year 2013-2014.

Income from cash credits, unexplained investments, unexplained money, unexplained expenditure etc.

Sec. 115BBE: The Finance Bill, 2012 has proposed to introduce a new Sec. w.e.f.1st April, 2013 being Sec. 115BBE, which provides for the manner of taxation of the income of an assessee which relates to Sec.s 68, 69, 69A, 69B, 69C and 69D. These sections relate to cash credits, unexplained investments, unexplained money, unexplained expenditure etc.

This Sec. provides that if the total income of an assessee includes income relating to the abovementioned sections then, income tax shall be charged @ 30%. However, any income other than the income mentioned above shall be taxed in accordance with the other provisions of the Act.

TDS on interest paid on securities

Sec. 193: This Sec. provides for deduction of tax on interest paid on securities. The proposed amendment shall replace clause (v) of the proviso to the section stating that no tax shall be deducted on any interest payable to an individual or HUF, who is resident, on any debenture issued by a public listed Company, provided such amount paid in the financial year does not exceed Rs. 5,000/- instead of Rs. 2,500/- and such amount shall be paid by an account payee cheque. This amendment shall come into effect from 1st July, 2012.

TDS on fees for professional and technical services

Sec. 194J: This Sec. provides for deduction of tax on any amount paid to any person by way of professional fees, fees for technical services, royalty etc. A new sub-Sec. (ba) is proposed to be inserted to extend the scope of the said section to include, payment of remuneration, fees or commission, by whatever name called, other than income paid as salary to a Director of a Company. This amendment shall come into effect from 1st July, 2012.

TDS on payment of compensation for compulsory acquisition of immovable property

Sec. 194LA: This Sec. provides for deduction of tax at source on payment of compensation by any person to a resident on account of compulsory acquisition of any immovable property. However, there is an exception from deduction of tax at source where compensation paid is less than Rs. 1 Lakh.

By way of a proposed amendment the threshold for TDS shall be increased to payment of compensation up to Rs. 2 Lakhs from Rs. 1 Lakh. This amendment shall come into effect from 1st July, 2012.

Sec. 194LAA: The Finance Bill, 2012 proposes to insert a new Sec. being Sec. 194LAA which provides that tax shall be deducted @ 1% at source on the consideration paid by any person on purchase of immovable property. Therefore, on sale of immovable property, other than on compulsory acquisition, tax shall be deducted at source on amount of sale consideration.

Furthermore, the tax shall be deducted on higher of actual consideration and stamp duty ready reckoner value. Also, this Sec. provides that the sale agreement in respect of the sale shall not be registered unless the transferee furnishes proof of deduction of income tax in accordance with the provisions of this section and payment of such sum to the credit of the Central Government.

Fortunately, section 203A shall not apply to this provision and there will be no requirement for the buyer to get a TAN number or file TDS return accordingly.

TDS on payment of other sums

Sec. 195: This Sec. provides for deduction of tax on any interest or other sums paid to a non-resident. An amendment in sub-Sec. (1) proposes to exclude interest referred to in Sec. 194LB or 194LC from the ambit of this section. This amendment shall come into effect from 1st July, 2012.

A new 'Explanation 2' coming into effect retrospectively from 1st April, 1962 has been proposed to be inserted whereby obligation to deduct tax at source under the said Sec. applies and extends to all persons, resident or non-resident, whether or not the non-resident person has:

- a. a residence or place of business or business connection in India or
- b. any other presence in any manner whatsoever in India.

Therefore, by this retrospective amendment it is clarified that every person has a liability to deduct tax at source even if the person has no presence in India. This amendment is also contrary to the recent judgment of Supreme Court in the case of Vodafone.

A new sub-Sec. (7) has also been proposed to be inserted whereby the Board may notify in the Official Gazette, a class of persons or cases, where any person who is responsible for making payment to a non-resident, shall make an application to the Assessing Officer to determine the appropriate amount of such sum which shall be chargeable to tax, **whether or not such payment to be made is chargeable under the provisions of the Act.** This amendment shall come into effect from 1st July, 2012.

No deduction at source in certain cases

Sec. 197A: This Sec. provides for certain cases in which the deduction of tax at source is not required. Sub-Sec. (1C) provides that if a person of the age of Sixty Five years, has furnished a declaration in writing to say that the tax on his total income is nil then, no deduction of tax shall be required to be made on the income receivable by him u/s 193, 194, 194A, 194EE or 194K. An amendment has been proposed to be made to this sub-Sec. thereby reducing the prescribed age from Sixty Five to Sixty years. This amendment shall come into effect from 1st July, 2012.

Failure to deduct tax at source

Sec. 201: This Sec. provides for the consequences for failure to deduct tax at source or to pay the same. A new proviso has been inserted before the proviso to sub-Sec. (1) to say that any person who is responsible of deducting tax at source on the payment made to a resident and who fails to do so, shall not be penalised if the resident to whom such payment was made has furnished his return of income, taken into account such payment, paid the tax due on the same and has furnished a certificate from an accountant in this behalf.

XXI. ASSESSMENT

Return of Income

Sec. 139: This Sec. relates to persons required to furnish a return of income and those exempted. The Finance Bill, 2012 has proposed to insert a new proviso that a person who is a resident and is not required to furnish a return of income and who has any asset (including any

financial interest in any entity) located outside India or is a signing authority in any account located outside India shall furnish a return of its income or loss in the previous year.

Self-assessment tax

Sec. 140A: This Sec. provides that an assessee shall be liable to pay the amount of tax payable on the basis of any return required to be furnished. However, such tax shall be computed after taking into account the amounts mentioned in Sec. 140A(1)(i) to (v). The Finance Bill, 2012 has proposed an amendment to Sec. 140A(1)(v) to include any amount of Alternate Minimum Tax paid u/s 115JD. Corresponding amendments have also been proposed to be made in Sec.s 140A(1A)(i)(e) and in clause (iv) in the Explanation to Sec. 140A(1B). This amendment shall come into effect from 1st April, 2013.

Assessment

Sec. 143(1D): Sec. 143 provides the manner of assessment and processing of the return of income of an assessee. The proposed insertion which will be effective from 1st July, 2012, provides that the processing of a return shall not be necessary if the assessee has been served a notice of explaining any loss, exemption, deduction, allowance or relief claimed in the return of income.

Application of GAAR

Sec. 144BA: This new Sec. has been proposed to be introduced w.e.f. 1st April, 2013 to provide that at any stage of assessment or reassessment, if the Assessing Officer is of the opinion that any particular arrangement is for the avoidance of tax and could fall within the ambit of Chapter X-A (GAAR), he may refer such a case to the Commissioner of Income tax.

Dispute resolution panel

Sec. 144C: This Sec. provides for the manner of referring an order of an AO to the Dispute Resolution Panel. The Finance Bill, 2012 has made a proposed amendment to sub-Sec.s (4) and (13) to include Sec. 153B along with Sec. 153 (search and seizure). This amendment shall come into effect from 1st October, 2009.

An Explanation is being added to sub-Sec. (8) to say that the power of the Dispute Resolution Panel to enhance the variations in a draft order shall extend to any matter arising out of the

assessment proceedings, whether or not such matter had been raised by the eligible assessee. This amendment shall come into effect from 1st April, 2009.

New sub-Sec. (14A) is proposed to be inserted to provide that the provisions of this Sec. shall not apply to any order of assessment or reassessment passed under Sec. 144BA(12). This amendment shall come into effect from 1st April, 2013.

Reopening of assessment to last 16 years w.r.t foreign assets

Sec. 147: This Sec. provides for the manner in which any income which has escaped assessment can be brought to assessment upon the same coming to the notice of the AO. A new proviso has been proposed to be inserted which will be effective from 1st July, 2012 to provide that the limitation period of four years for the end of the relevant assessment year, shall be extended to 16 years if any income in relation to any asset (including financial interest in any entity) **located outside India**, chargeable to tax, has escaped assessment for any assessment year.

It is further explained that the provisions of this Sec. as proposed to be amended shall also apply to any assessment year beginning on or before 1st April, 2012.

A similar amendment has also been made to Wealth tax assessment procedure.

Notice for reopening of assessment:

Sec. 149: Consequently Sec. 149 has been amended, so that notice for reopening of assessment may be issued as far back as sixteen years from the end of the relevant assessment year. Notice of reopening of assessment u/s 148 may be served on an agent of a non-resident u/s 163 as far back as six years from the end of the relevant assessment year.

Assessment or reassessment in search cases:

Sec. 153A: This Sec. provides for assessment and reassessment of cases where a search is initiated or books of accounts or any assets are requisitioned. A new proviso has been proposed to be introduced whereby the Central Government may notify the class or classes of cases where the Assessing Officer shall not be required to issue notice under this section. New Sec. 153C also empowers the Central Govt. to specify classes when such money and documents belongs to any other person.

XXII. PENALTIES

Sec. 271AAB: Presently Sec. 271AAA of the Income-tax Act provides for Penalty when a search has been initiated and undisclosed income is found. Undisclosed income Includes money, bullion, jewellery or other valuable articles or any entry in books of accounts or other documents or transactions found in the course of a search. The penalty that can be levied at the rate of 10% of the undisclosed income in addition to any taxes payable. However, if the assessee admits to and provides the manner in which the income was derived, then no penalty is to be levied if the tax on the amount along with interest is paid.

The proposed insertion of Sec. 271AAB has been made to strengthen the penal provisions. The new section will be applicable only to searches initiated after 1st July, 2012. The new section provides for the following increased rates

Penalty @ 10% of the undisclosed income

If the Assessee

- admits to the undisclosed income
- specifies & substantiates the manner in which it is derived
- pays tax & interest
- declares such undisclosed income in the return for the specified previous year

Penalty @ 20% of the undisclosed income

If the Assessee

- does not admit to the undisclosed income
- declares such undisclosed income in the return for the specified previous year
- pays tax & interest

Penalty @ 30% - 90% of the undisclosed income

In all other cases

Procedure

The same procedure for implementation of penalty as well as the bar of limitation shall be applicable as far as possible.

XXIII. WEALTH TAX

Sec. 2 of Wealth Tax Act, 1957: The amended reassessment proceedings of Income-tax shall be applicable for assessment of Wealth Tax as well.

An amendment has been proposed to be made to Sec.2 of the Wealth-tax Act, whereby exemption has been provided for residential house allotted by a company to an employee/officer/ whole time director of the Company, if the gross annual salary of such individual is less than Rs. 10,00,000 per annum as opposed to the current limit Rs. 5,00,000 per annum.

Wealth tax rate continues to be imposed @ 1 percent on the value of specified assets held by the taxpayer on the valuation date being 31st March every year over the basic exemption of Rs.30,00,000/- per year.

XXIV. SERVICE TAX

New Approach:

The approach of Service Tax has been proposed to be completely reversed from taxing only the services that were specifically stated as taxable services to a blanket provision which taxes all services other than those exempted. Furthermore, it also declares certain hybrid activities as services, which could not be ascertained to be services earlier and had resulted in years of inconclusive litigation.

Therefore, all services will be chargeable to Service Tax unless specifically exempted by inclusion in the 'negative list' containing 17 heads of services.

Sec. 66B, Finance Act, 1994: Section 66B states that there shall be levied a tax at the rate of twelve percent on the value of **all** services, other than those services specified in the negative list.

The service tax will be levied at an increased rate of 12% instead of 10%. This might be beneficial, as a gradual increase in tax, keeping in mind that if GST comes into force in August, 2012 the proposed rate of service tax is 16%.

Sec. 143(C)(44): As per this section "service" has been defined to mean any activity carried out by a person for another for consideration, and includes a declared service.

“Declared services” have been inserted into the act to remove any ambiguity as to an element of service being involved in such activities.

The Declared Services are as follows:

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof,
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- (h) service portion in the execution of a works contract;
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

Negative List

Sec. 66D: This new section provides a list of ‘negative list’ containing 17 heads of services. Therefore, all services will be chargeable to Service Tax unless specifically exempted by inclusion in this list.

The negative list includes the following (subject to certain conditions as applicable to each of the categories):

- (a) services by **Government or a local authority**
- (b) services by the **Reserve Bank of India**;
- (c) services by a **foreign diplomatic mission** located in India;
- (d) services relating to **agriculture**
- (e) **trading of goods**;
- (f) any process amounting to **manufacture or production of goods**;

- (g) selling of space or time slots for **advertisements** other than advertisements broadcast by radio or television;
- (h) service by way of access to a **road or a bridge** on payment of toll charges;
- (i) **betting, gambling or lottery**;
- (j) admission to **entertainment events** or access to amusement facilities;
- (k) transmission or **distribution of electricity** by an electricity transmission or distribution utility;
- (l) services related to **education**
- (m) services by way of **renting of residential dwelling** house for use as residence;
- (n) services related to **extending loans** etc. and sale or purchase of **foreign currency**
- (o) service of **transportation of passengers**
- (p) services by way of **transportation of goods**
- (q) **funeral, burial, crematorium** or mortuary services

Service tax & Central Excise Duty

An attempt has been made to harmonize Service tax & Central Excise duty. It is done with the ultimate aim of having a simple, progressive & equitable system which can be achieved by introduction of Goods & Services Tax(GST). The GST Bill is currently being studied by a parliamentary standing committee.

Measures include:

1. common simplified registration form
2. common return for Central Excise and Service Tax (EST1)

Other Important Changes

Introduction of Revision Application Authority and Settlement Commission in Service Tax to help resolve disputes.

DISCLAIMER:

The material contained herein is not exhaustive, and contains certain generalizations. The relevant Provisions must be viewed in greater detail to determine applicability.