PART -B

FINANCE BILL, 2012- DIRECT TAXES

A Detailed comparison of old provisions with new provisions and complete text of newly inserted provisions as proposed by Finance Bill, 2012 along with Notes to Clauses, Memorandum and brief of amendment as per the sequence of Memorandum explaining the Finance Bill, 2012.

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'Voice of CA'

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

1. Amendment to the heading of Chapter XII-BA

Old Provisions

"In heading, SPECIAL PROVISION RELATING TO CERTAIN LIMITED LIABILITY PARTNERSHIPS."

New Provisions **[w.e.f 1st April 2013]**

"In heading, SPECIAL PROVISION RELATING TO CERTAIN ***PERSON OTHER THAN A COMPANY."***

2. Section 115JC-Special provisions for payment of tax by certain limited liability partnerships shall be substituted.

Old Provisions

"(1) *Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum……..*

(2) Adjusted total ……..

(3) Every limited liability partnership……..

New Provisions **[w.e.f 1st April 2013]**

"(1) Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—

(i) deductions claimed, if any, under any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; and

(ii) deduction claimed, if any, under section 10AA.

(3) Every person to whom this section applies shall obtain a report, in such form as may be prescribed, from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and

furnish such report on or before the due date of furnishing of return of income under sub-section (1) of section 139."

Notes to clause

It is proposed to provide that where the regular income-tax payable for a previous year by any person, other than a company, is less than the AMT payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income @ 18.5%. For the purpose of the aforesaid provision, the adjusted total income shall be the total income before giving effect to the Chapter XII-BA as increased by deductions claimed under any section (other than section 80P) included in Chapter VI-A under the heading *"C.—Deductions in respect of certain incomes"* and deduction claimed under section 10AA. This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

3. Amendment to Section 115JD-Tax credit for Alternate Minimum Tax.

Old Provisions

"(1) *The credit for tax paid by a limited liability partnership under section 115JC shall be allowed to it in accordance with the provisions of this section."*

New Provisions **[w.e.f 1st April 2013]**

"(1) The credit for tax paid ***by a person under section 115JC*** *shall be allowed to him in accordance with the provisions of this section."*

Notes to clause

It is proposed to substitute "a person under section 115JC shall be allowed to him" in place of "a limited liability partnership under section 115JC shall be allowed to it" used in the aforesaid section so as to provide that the credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provision of said section. This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

4. Amendment to Section 115JE- Application of other provisions of this Act..

Old Provisions

"Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a limited liability partnership referred to in this Chapter."

New Provisions **[w.e.f 1st April 2013]**

"Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to ***a person*** *referred to in this Chapter."*

Notes to clause

It is proposed to substitute "a person" in place of "a limited liability partnership" used in the aforesaid section so as to provide that save as provided in Chapter XII-BA, all other provisions of the Income-tax Act shall apply to a person referred to in the said Chapter.

5. New Section 115JEE, Application of this chapter to certain persons shall be inserted.

[w.e.f 1st April 2013]

(1) The provisions of this Chapter shall apply to a person who has claimed any deduction under—

(a) any section (other than section 80P) included in Chapter VI-A under the heading "C. Deductions in respect of certain incomes"; or

(b) section 10AA.

(2) The provisions of this Chapter shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, if the adjusted total income of such person does not exceed twenty lakh rupees.

Notes to clause

- Sub-section (1) of the proposed new section 115JEE provides that the provisions of Chapter XII-BA shall apply to a person who has claimed any deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C.— Deductions in respect of certain incomes"; or section 10AA.
- Sub-section (2) of the aforesaid new section provides that the provisions of Chapter XII-BA shall not apply to an individual or a HUF or an AOP or a BOI, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, if the adjusted total income of such person does not exceed twenty lakh rupees.

6. Amendment in Section 115JF-Interpretation in this Chapter.

Old Provisions

"In this Chapter—

(a) "accountant" shall have the same meaning….

(b) "alternate minimum tax" means……

(c) "limited liability partnership" shall have …..

(d) "regular income-tax" means the income-tax payable for a previous year by a limited liability partnership on its total income in accordance with the provisions of this Act other than the provisions of this Chapter."

New Provisions ***[w.e.f 1st April 2013]***

In this Chapter—

(a) "accountant" shall have the same meaning….

(b) "alternate minimum tax" means……

~~*(c) "limited liability partnership" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009);*~~

(d) "regular income-tax" means the income-tax payable for a previous year ***by a person on his*** *total income in accordance with the provisions of this Act other than the provisions of this Chapter."*

Notes to clause

It is proposed to omit clause (c) relating to the definition of "limited liability partnership". It is further proposed to substitute "a person on his total income" in place of "a limited liability partnership on its total income" used in clause (d) thereof.

Other consequential amendments

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

7. Amendment to Section 140A -Self-assessment

It is proposed to insert "or section 115JD" after "section115JAA" in clause (v) of sub-section (1); sub-clause (e) of clause (i) of sub-section (1A) and clause (iv) of the Explanation to sub-section (1B) of the aforesaid section so as **to provide that credit available to be set off in accordance with the provisions of section 115JD will also be taken into account u/s 140A for the purposes of computing tax payable, and interest chargeable u/s 234A and 234B, before furnishing the return of income.** These amendments will apply in relation to the assessment year 2013-2014 and subsequent assessment years. [Notes to clause]

8. Amendment to Section 234A.

- **Clause (vi) of sub-section (1) of Section 234A.**
  It is proposed to insert "or section 115JD", after "section115JAA" in clause (vi) of sub-section (1) of the aforesaid section so as to provide for reduction of tax credit allowed to be set off u/s 115JD from the tax on total income. This amendment will apply in relation to assessment year 2013-2014 and subsequent assessment years. [Notes to clause]

- **Clause (v) of Explanation 1 of sub-section (1) of section 234B**
  It is proposed to insert "or section 115JD", after "section115JAA" in clause (v) of Explanation 1 to sub-section (1) of the aforesaid section so as to provide for reduction of tax credit allowed to be set off under section 115JD from the assessed tax. This amendment will apply in relation to assessment year 2013-2014 and subsequent assessment years. [Notes to clause]

9. Amendment to Section 234C(1)

- Clause (v) of Explanation of sub-section (1) of section 234C

It is proposed to insert "or section 115JD", after "section115JAA" in clause (v) of the Explanation to sub-section (1) of the aforesaid section so as to provide for reduction of tax credit allowed to be set-off under section 115JD from the tax due on the returned income. This amendment will apply in relation to assessment year 2013-2014 and subsequent assessment years. [Notes to clause]

Brief of Amendment

- The new provisions of Section 115JC apply to all persons other than the company, if:
  - the taxpayer has claimed profit linked deduction (excluding deduction claimed by Co-operative society u/s 80P) contained in Chapter VI-A under the heading 'C' Deduction in respect of certain income, **or**
  - the taxpayer has claimed deduction in respect of its SEZ units u/s 10AA.

- The credit of AMT paid u/s 115JC shall be allowed as per the provisions of section 115JD.

- All the provisions of this Act shall apply to a Person who's liable to pay AMT.

- **Provisions of AMT shall not apply to an individual or a HUF or AOP or BOI (whether incorporated or not) or an artificial juridical person referred to in section 2(31)(vii) if the adjusted total income of such person does not exceed 20 lakh rupees**.

- Presently, there is no enabling provision u/s 234A, wherein before charging of interest, the credit of AMT paid u/s 115JD would be admissible. By virtue of amendments in present clause, credit of AMT paid u/s 115JD, would also be permissible as prepaid tax before computing the interest u/s 234A.

- Long Term Capital Gain with STT which is exempt under Section 10(38) will continue to be exempt under AMT provisions.

Issues required consideration

- *The proposed provisions of AMT would also be applicable to all taxpayers (other than companies) claiming profit-linked deductions, subject to certain exempted taxpayers. But the said provisions are not providing the clarity regarding the issue of set-off of AMT credit in following cases:*
- *Where an assessee paid AMT as per the proposed provisions and subsequently closed/discontinue the said business.*
- *Adjustment of AMT credit in the year in which the assessee's adjusted total income falls below rupees twenty lakhs.*

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

Section 194LAA **[Newly Inserted w.e.f. 1st October, 2012]**

(1) "Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where consideration paid or payable for the transfer of an immovable property is less than fifty lakh rupees in case such immovable property is situated in a specified area, or is less than twenty lakh rupees in case such immovable property is situated in any area other than the specified area.

(3) Where the consideration paid or payable for the transfer of an immovable property is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of transfer of such immovable property, the value so adopted or assessed or assessable shall, for the purposes of sub-section (1) or sub-section (2), be deemed to be the consideration paid or payable for the transfer of such immovable property.

(4) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) or sub-section (1A) of section 17 of the Indian Registration Act, 1908, purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any immovable property and in respect of which tax is required to be deducted under sub-section (1), no registering officer shall register any such document, unless the transferee furnishes the proof of deduction of income-tax in accordance with the provisions of this section and payment of sum so deducted to the credit of the Central Government in the prescribed form.

(5) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.—For the purposes of this section,—

(a) "agricultural land" means agricultural land in India, not being land situated in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building;

(c) "specified area" shall mean an area comprising—

(i) Greater Mumbai urban agglomeration
(ii) Delhi urban agglomeration
(iii) Kolkata urban agglomeration
(iv) Chennai urban agglomeration
(v) Hyderabad urban agglomeration
(vi) Bangaluru urban agglomeration
(vii) Ahmedabad urban agglomeration
(viii) District of Faridabad
(ix) District of Gurgaon
(x) District of Gautam Budh Nagar
(xi) District of Ghaziabad
(xii) District of Gandhinagar
(xiii) City of Secunderabad

(d) the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census."

Notes to clause

It is proposed to insert a new section 194LAA to provide that any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land) shall deduct an amount equal to one per cent of such sum as income-tax at the time of credit of such sum to the account of transferor or at the time of payment of such sum in cash or by issue of cheque or by draft or by any other mode, whichever is earlier.

It is also proposed to provide that the provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section. It is also proposed to provide an Explanation defining the expressions "agricultural land", "immovable property" and "specified area".

Memorandum Explaining Finance Bill 2012

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

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

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

or

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

It is further proposed to provide that

- Where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the

purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

- A registering officer appointed under the Indian Registration Act, 1908 (Registrar) shall not register the transfer of any immovable property where taxes are required to be deducted under this provision unless the transferee furnishes proof of deduction and payment of TDS.
- A simple one page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement as this would be mostly a one time transaction. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

Brief of Amendment

TDS @1% on transfer of immovable property being land (other than agricultural land) or any building or part of a building exceeding 50 lacs in specified urban area and 20 lacs in other areas by the transferee on the consideration or value assessable under state stamp duty whichever is higher. No need to obtain TAN by transferee. New single page challans having details including PAN of transferor and transferee. No registration without submission of payment proof of TDS before the registering authority.

Specified areas – Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bengaluru, Ahmedabad, Faridabad, Gurgaon, Gautam Budh Nagar, Ghaziabad, Gandhinagar, and Secunderabad.

This clause is not applicable for compulsory acquisition cases (section 194LA).

Issues required consideration

*The proposed provisions do not clarify the implementation of the proposed section under the following situations **where the assessee***

- *made payment other than in cash i.e. in kind.*
- *sale through agreement to sell, GPA Sale, Power of Attorney etc.*
- *sale or purchase from the Government authorities.*
- *Section 206A*
- *purchase a property as a joint owner.*
- *down payment or part payment made before 1st October, 2012.*
- *claim an exemption u/s 54, 54F and 54EC of Income Tax Act, 1961.*

Cases where the seller does not have a PAN, the provisions as contained in Section 206AA will be attracted & tax rate of 20% of the consideration paid or payable.

Clause 71

TDS on remuneration to a director

Section 194J (1)(ba) **[Newly Inserted w.e.f. 1st July, 2012]**

"any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or

Notes to clause:

The existing provisions in sub-section (1) of the aforesaid section 194J provide that a person, not being a individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, fees for technical services royalty or sums referred to in clause (va) of section 28 shall deduct an amount equal to 10% of such sum as income tax. It is proposed to amend the aforesaid sub-section (1) to insert a new clause (ba) so as to provide that the person referred to in sub-section (1) of the aforesaid section who is responsible for paying to a director of a company any sum by way of any remuneration or fees or commission, by whatever name called (other than those on which tax is deductible under section 192), shall deduct an amount equal to 10% in accordance with the provisions of the aforesaid section.

Memorandum Enplaning Finance Bill 2012

Under the existing provisions of the Income-tax Act, a company, being an employer, is required to deduct tax at the time of payment of salary to its employees including Managing director/whole time director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary.
It is proposed to amend section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration.

Brief of Amendment

The amendment is proposed to provide for deduction of tax at source @ 10% by a company in respect of remuneration or fees or commission by whatever name called, paid to a director which is not in the nature of salary and it will be considered as fees for professional or technical services.

Issues required consideration

The limit prescribed u/s 194J of Income Tax Act of rupees thirty thousand available for all the specified payments made but the same is not applicable in the case of Director's remuneration.

Clause 79

TCS on sale of certain minerals

a) Serial Number (vii) in Table of sub-section (1) of section 206C,

[Newly inserted w.e.f. 1st July, 2012]

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(vii)	*Minerals, being coal or lignite or iron ore*	*one per cent*

Notes to Clause

The existing provisions of section 206C (1) provide that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods.

Memorandum Explaining Finance Bill 2012

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

(a) Coal;
(b) Lignite; and
(c) Iron ore.

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

Brief of Amendment

TCS @ 1% on Sale of Coal, Lignite & Iron ore. This amendment will not apply if the buyer declares that the same will be utilised for manufacturing, producing or processing of other articles.

Clause 79

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

Section 206C(1D) **[Newly inserted w.e.f. 1st July, 2012]**

"Every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to one per cent of sale consideration as income-tax, if the sale consideration exceeds two hundred thousand rupees"

Notes to Clause

Every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to one per cent of sale consideration as income-tax, if the sale consideration exceeds two hundred thousand rupees. It is also proposed to amend sub-sections (2), (3) and (9) of the aforesaid section which are consequential in nature.

Memorandum Explaining Finance Bill 2012

In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, it is proposed to provide that the seller of bullion and jewellery shall collect tax @ 1% of sale consideration from every buyer of bullion and jewellery **if sale consideration exceeds 2 lakh rupees and the sale is in cash**.

This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

Other Relevant Amendments

I. Section 206C(2)

Old Provision

"The power to recover tax by collection under sub-section (1) or sub-section (1C) shall be without prejudice to any other mode of recovery."

New Provision **[Amended w.e.f. 1st July, 2012]**

"The power to recover tax by collection under sub-section (1) or sub-section (1C) ***or sub-section (1D)*** *shall be without prejudice to any other mode of recovery."*

II. Section 206C(3)

Old Provision

"Any person collecting any amount under sub-section (1) or sub-section (1C) shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs"

New Provision [**Amended w.e.f. 1st July, 2012]**

"Any person collecting any amount under sub-section (1) or sub-section (1C) ***or sub-section (1D)*** *shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs."*

III. Proviso to Section 206C(6A) **[Newly inserted w.e.f. 1st July, 2012]**

"Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

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

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

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed"

IV. **Proviso to Section 206C(7)** **[Newly inserted w.e.f. 1st July, 2012]**

"Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee."

V. Amendment to Section 206C(9)

Old Provision

"Where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C), the Assessing Officer shall, on an application made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C)"

New Provision [**Amended w.e.f. 1st July, 2012]**

"Where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C) ***or sub-section (1D****), the Assessing Officer shall, on an application made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C)* ***or sub-section (1D)"***

VI. Amendment to clause (a) of Explanation to section 206

(a) Old Provision

"buyer" means a person …… does not include,—

(i) a public sector company, the Central Government,…….. or

(ii) a buyer in the retail sale of such goods purchased by him for personal consumption."

New Proviso **[Amended w.e.f. 1st July, 2012]**

(a) "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288.

(aa) "buyer" with respect to—

1. sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(A) a public sector company, the Central Government, a State Government, and anembassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;

2. sub-section (1D) means a person who obtains in any sale, goods of the nature specified in the said sub-section;

(ab) "jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2.';

b. Clause (c) of explanation to section 206C

Old Provision

"seller" means the Central Government, a State Government or any local authority or corporation or authority established……. Table in sub-section (1) are sold.

New Provision **[Amended w.e.f. 1st July, 2012]**

"seller" means the Central Government, a State Government or any local authority or corporation or authority established……. Table in sub-section (1)) ***or sub-section (1D)*** *are sold."*

Notes to clause

It is also proposed to insert a new proviso to sub-section (6A) of the aforesaid section so as to provide that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee–

(i) has furnished his return of income u/s 139;

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

(iii) has paid the tax due on the income declared by him in such return of income, and also furnishes a certificate to this effect from an accountant in such form as may be prescribed.

It is also proposed to insert a new proviso to sub-section (7) of the aforesaid section so as to provide that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

It is also proposed to amend the Explanation to the aforesaid section so as to provide the meaning of "buyer" with respect to sub-section (1) and sub-section (1D) of the said section and meaning of jewellery.

It is also proposed to insert a new clause in the aforesaid Explanation so as to define the expression "accountant". It is also proposed to insert sub-section (1D) in clause (c) of the aforesaid Explanation.

Brief of Amendment

It is proposed that:-

- TCS @ 1% on cash sale of bullion and jewellery if sale consideration exceeds 2 lakh rupees.

- The Collector of TCS not to be treated as assessee in Default except incase of Sale of Bullion or Jewellery above Rs. 2,00,000/- in cash, provided the buyer or licensor or licensee has furnished his return u/s 139 and has taken into account such amount for computing income in such Return of Income and has paid the Tax Due on the income declared by him in such return of income and furnishes a certificate to this effect, duly certified by a CA, in the prescribed form (this form is yet to be notified).
- Interest for not collecting the TCS would be payable from the date on which such tax was collectible till the date of furnishing of return of income by such buyer or licensee or lessee.
- *Also by not treating the collector of TCS as assessee in default the Revenue intends to accept placidly the ratio of Supreme Court in Hindustan Coco-Cola Beverage Pvt. Ltd. in 293 ITR 226.*

Clause 55

Daily tonnage income of shipping company

Amendment to Section 115VG-Computation of tonnage income.

Old Provisions

"For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

TABLE

Qualifying ship having net tonnage	*Amount of daily tonnage income*
(1)	*(2)*
up to 1,000	*Rs. 46 for each 100 tons*
exceeding 1,000 but not more than 10,000	*Rs. 460 plus Rs. 35 for each 100 tons exceeding 1,000 tons*
exceeding 10,000 but not more than 25,000	*Rs. 3,610 plus Rs. 28 for each 100 tons exceeding 10,000 tons*
exceeding 25,000	*Rs. 7,810 plus Rs. 19 for each 100 tons exceeding 25,000 tons.*

New Provisions **[Amended w.e.f 1st April 2013]**

"For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

TABLE

Qualifying ship having net tonnage	*Amount of daily tonnage income*
(1)	*(2)*
up to 1,000	***Rs. 70 for each 100 tons***
exceeding 1,000 but not more than 10,000	***Rs. 700 plus Rs. 53 for each 100 tons exceeding 1,000 tons***
exceeding 10,000 but not more than 25,000	***Rs. 5470 plus Rs. 42 for each 100 tons exceeding 10,000 tons***
exceeding 25,000	***Rs. 11770 plus Rs. 29 for each 100 tons exceeding 25,000 tons.***

Notes to Clause

The existing Table in sub-section (3) of the aforesaid section provides for the amount of daily tonnage income of a qualifying ship. It is proposed to substitute the aforesaid Table so as to increase the amount of daily tonnage income of a qualifying ship.

Memorandum Explaining Finance Bill 2012

The Tonnage Tax Scheme introduced vide Finance Act 2005 provides for taxation of income of a shipping company on presumptive basis. Under this scheme, the operating profit of a shipping company is determined on the basis of tonnage capacity of its ships. The rates of daily tonnage income specified under this scheme remained unchanged since the introduction of this scheme. It is, therefore, proposed to amend section 115VG to revise the rate of daily tonnage income under this scheme.

Brief of Amendment

Daily tonnage income of a qualifying ship is proposed to be increased (refer table given above).

Clause 22

Measures to Prevent Generation and Circulation of Unaccounted Money

Cash credits under section 68 of the Act

Old Provisions

"*Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

New Provisos to section 68 shall be inserted. **[w.e.f. 1st April, 2013]**

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

***Provided* that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—**

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

Notes to clauses

It is proposed to insert two new provisos to the aforesaid section.

- The first proviso seeks to provide that
  where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of **share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless**-
  (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
  (b) such explanation in the opinion of AO aforesaid has been found to be satisfactory.

- The second proviso seeks to provide that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Section 68 of the Act provides that if any sum is found credited in the books of an assessee and such assessee either (i) does not offer any explanation about nature and source of money; or (ii) the explanation offered by the assessee is found to be not satisfactory by the AO, then, such amount can be taxed as income of the assessee. The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as share capital, share premium etc. Judicial pronouncements, while recognizing that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company. The Courts have drawn a distinction and emphasized that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large. In the case of closely held companies, investments are made by known persons. Therefore, a higher onus is required to be placed on such companies

besides the general onus to establish identity and credit worthiness of creditor and genuineness of transaction. This additional onus, needs to be placed on such companies to also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum shall be treated as income of the company and added to its income. It is, therefore, proposed to amend section 68 of the Act to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder.

However, even in the case of closely held companies, it is proposed that this additional onus of satisfactorily explaining the source in the hands of the shareholder, would not apply if the shareholder is a well regulated entity, i.e. a Venture Capital Fund, Venture Capital Company registered with the Securities Exchange Board of India (SEBI).
This amendment will apply in relation to the assessment year 2013-14 and subsequent years.

Brief of Amendment

The Theory of Shifting Onus presently requires the assessee, in receipt of share capital/share application, share premium etc, to prove the identity, creditworthiness and genuineness of the Share Subscriber. There is presently, no requirement to prove the Source of the amount in the hands of Share Applicant, ie Source of fund is not required to be proved. [refer Gauhati HC in Nemi Chand Kothari 264 ITR 254 (2003), Orissa HC in Sarogi Credits, Delhi HC in Dwarkadhish Investments Ltd. 330 ITR 298 (2011)].

By virtue of new amendment, the onus u/s 68 shall not be discharged unless the share applicant also furnishes the source of the amount out of which it/he has contributed in the share capital of the assessee company AND the AO is satisfied about the said source of the share subscriber.

Clause 45

Taxation of cash credits, unexplained money, investments etc.

New Section 115BBE shall be inserted **[w.e.f 1st April 2013]**

"(1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

> ***(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent.; and***
>
> ***(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).***

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1)."

Notes to clause

Sub-section (1) of the proposed new section 115BBE provides that where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of- (a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent.; and (b) the amount of income-tax with which the assessee would have been chargeable had his total income being reduced by the amount of income referred to in clause (a) of the said sub-section.

Sub-section (2) of the aforesaid new section provides that notwithstanding anything contained in the Act, no deduction in respect of any expenditure or allowance shall be allowed to assessee under any provisions of this Act in computing his income referred to in clause (a) of sub-section (1).

Memorandum Explaining Finance Bill 2012

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

has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

Brief of Amendment

Under existing provision of Income Tax Act, the assessee being individual or HUF are not liable to tax up to basic exemption limit but as per proposed provision by inserting new section 115BBE in finance bill 2012, the Assessing officer can ask from assessee that you explain sources of source of amount credited in books of account and individual or HUF are liable to tax even if amount are not exceeds basic exemption limit provided in income Tax Act. The addition are taxed at the rate of 30% (plus surcharge & cess, if applicable) instead of being taxed under normal tax rate slabs.

Matter to be considered:-

- Where an assessee is not liable to file the income tax return and due to any reason, any explanation is asked in respect of any item falling under section 68, 69, 69A, 69B, 69C & 69D and assessee is not able to explain the same then the AO may assess such income under the above sections & consequently charged tax @ flat rate of 30% even though otherwise his total income is below taxable limit.

Clause 56

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

After third proviso a new proviso to Section 139 shall be inserted [w.e.f 1st April 2012]

"Provided also that a person, being a resident, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed."

Notes to clause

A proviso shall be inserted after the third proviso so as to provide that a person, being a resident, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed. The existing provisions of clause (a) of Explanation 2 to sub-section (1) of the aforesaid section 139 provides the due date for filing return of income, in the case of company other than a company referred to in clause (aa); or a person "other than a company" whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force; or a working partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law for time being in force shall be the 30th day of September of the assessment
year. Clause (aa) of the aforesaid Explanation provides that in the case of assessee which is a company, which is required to furnish a report from an accountant by persons entering into international transaction under section 92E, the due date for filing return of income shall be the 30th day of November of the assessment year. It is proposed to amend the aforesaid clauses (a) and (aa) so as to extend the due date for filing return of income in case of all the persons who are required to furnish a report referred to section 92E. ***These amendments will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent assessment years.***

Memorandum Explaining Finance Bill 2012

Filing of return of income

It is proposed to amend Section 139 of the Act, *to provide that in case of all assesses who are required to obtain and file Transfer Pricing report as per Section 92E of the Act, the due date would be 30th November of the assessment year*. This amendment will apply in relation to the assessment year 2012-13 and subsequent assessment years.

Brief of Amendment

A person, being a resident, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed. This amendment will make liable to the assessee to file return of income even for the assessment year 2012-13 also.

Reassessment of income in relation to any asset located outside India

Clause 61

(a) New Proviso to Section 147-Income escaping assessment [w.e.f 1st July 2012]

"Provided further that nothing contained in the first proviso shall apply in a case where 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:"

(b) New Clauses (ba) and (d) inserted to the Explanation 2 to Section 147

Old Provisions

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

New Provisions

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) ***"where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E."***

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed ; or

(*ii*) such income has been assessed at too low a rate ; or

(*iii*) such income has been made the subject of excessive relief under this Act ; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

(d) *"where a person is found to have any asset (including financial interest in any entity) located outside India."*

(c) <u>Explanation 4 to Section 147 shall be inserted</u>

"For the removal of doubts, it is hereby clarified that the provisions of this section, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

<u>Clause 62</u>

<u>Amendment to Section 149- Time limit for issue of Notice.</u>

<u>Old Provisions</u>

"(1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if four years,……..

<u>Sub-section (3) of section 149</u>- If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year."

<u>New Provisions</u> **<u>[Amended w.e.f 1st July 2012]</u>**

"(1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) **or clause (c)**;

(b) if four years, ……..

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment."

*<u>Sub-section (3) of section 149</u>- If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of **six years from the end of the relevant assessment year.***

Explanation shall be inserted, namely:—

"Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

Notes to clause

Clause 61

The first proviso to the aforesaid section provides that if an assessment has been made for the relevant assessment year under sub-section (3) of section 143 or this section, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless the income has escaped assessment due to the failure on the part of the assessee to file a return under section 139 or 142(1) or 148 or to disclose fully and truly all material facts necessary for his assessment.

Explanation 2 to the aforesaid section clarifies the cases which shall also be deemed to be the cases where income chargeable to tax has escaped assessment.

It is proposed to insert a proviso to the aforesaid section so as to provide that nothing contained in the first proviso shall apply in a case where 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 proposed to insert a new sub-clause (ba) to the aforesaid Explanation, so as to include therein the case where the assessee has failed to furnish a report in respect of any international transaction which he was required u/s 92E for the purposes of deemed cases where income chargeable to tax has escaped assessment under the aforesaid section. so as to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India. The provisions of section 147 are procedural in nature. However, it is clarified by inserting a new Explanation 4 to the aforesaid section that the above amendments shall also be applicable to the proceedings initiated under this section for any assessment year beginning on or before 1st April, 2012. These amendments will take effect from 1st July, 2012.

Clause 62

1. It is proposed to insert a new clause (c) to the aforesaid sub-section so as to provide that if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.
2. It is proposed to amend the aforesaid sub-section to provide that the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year. The provisions of section 149 are procedural in nature.
3. However, it is clarified by inserting a new Explanation to the aforesaid section that the provisions of sub-sections (1) and (3) of this section as amended by the Finance Act 2012, shall also be applicable to the proceedings initiated under this section for any assessment year beginning on or before 1st April, 2012. These amendments will take effect from 1st day of July, 2012.

Memorandum Explaining Finance Bill 2012

I. Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is 6 years. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions. It is proposed to amend the provisions of section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

II. Reassessment in transfer pricing cases

Section 147 of the Act, provides for reopening of the cases of the previous years, if any income chargeable to tax has escaped assessment. Explanation to this section provides certain circumstances where it will be deemed that income has escaped assessments. *Amendments are also proposed to be made in section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.*

If an international transaction is not reported by the assessee, such transaction never gets benchmarked against arm's length principle. It is, therefore, imperative that non-reporting of international transactions should lead to a presumption of escapement of income. *It is, therefore, proposed to amend Section 147 of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not including such transaction in the report mentioned in section 92E then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under section 147 of the Act*. This amendment will take effect from 1st July, 2012. Corresponding amendments are also proposed to be made to the provisions of section 17 of the Wealth-tax Act. These amendments will take effect from the 1st day of July, 2012.

Brief of Amendment

Amendment to provide for reopening of assessments incase of residents having assets (including financial interest in any entity) located abroad, disregarding the fact that the details may have been disclosed by such assessee earlier in his/its return of income fully and truly or any assessment u/s 143(3) may have taken place, provided the AO has reasons to believe.

Issues required consideration

Following practical difficulties are arising due to the said proposed provisions:

- *Under the Income Tax Act, a person is required to maintain the books of accounts for a period of six year. But now the proposed provisions provide an extension of 16 years to the time limit for issue of notice for reopening an assessment u/s 147, in respect of an*

assessee whose income in relation to an asset located outside India has escaped assessment. In these cases the assessee will going the face undue hardship as no records are available to prove the genuineness of the income.

- *Initiation of reassessment proceedings for a period prior to 6 years, in case where the assessee is having assets located out side India but there is no income arising out of such asset during past years.*

- *The assessee opted for the presumptive tax provisions under Income Tax Act are not required to maintain any books of accounts. Thus the proposed deeming provision of section 147 would lead to raise new legal controversies.*

Penalty on undisclosed income found during the course of search

Clause 89
Amendment to Section 246A(1)

(i) Sub-section (1) of section 246A

Old Provision
"Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—
***********"*

New Provision **[Amended w.e.f. 1st July, 2012]**
"Any assessee or any deductor aggrieved *by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—*
**********\"*

(ii) Clause (a) of sub-section (1) of section 246A

Old Provision
"an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed."

New Provision
"an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of ***section 143 or sub-section (1) of section 200A, where the assessee or the deductor objects*** **[w.e.f. 1st July, 2012]** *to the making of adjustments, or any order of assessment under sub-section (3) of section 143* ***[except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA]*** *or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed* **[w.e.f. 1st April, 2013]."**

(iii) Clause (b) of sub-section (1) of section 246A

Old Provision

"an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or section 150."

New Provision **[Amended w.e.f. 1st April, 2013]**

"an order of assessment, reassessment or recomputation under section 147 ***[except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA]*** *or section 150."*

(iv) Clause (ba) of sub-section (1) of section 246A

Old Provision

"an order of assessment or reassessment under section 153A."

New Provision

"an order of assessment or reassessment ***under- section 153A[except an order passed in pursuance of directions of the Dispute Resolution Panel*** **[w.e.f. 1st October 2009],** ***or an order referred to in sub-section (12) of section 144BA*** **[w.e.f. 1st April, 2013]."**

(v) **New Clause (bb) of sub-section (1) of section 246A shall be inserted.**

[w.e.f. 1st July, 2012]

an order of assessment or reassessment under sub-section (3) of section 92CD;";

(vi) Clause (c) of sub-section (1) of section 246A

Old Provision

"an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;"

New provision **[Amended w.e.f. 1st April, 2013]**

"an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections ***except where it is in respect of an order referred to in sub-section (12) of section 144BA****."*

(vii) Sub-clause (B) of clause (j) of sub-section (1) of section 246A

Old Provision

an order imposing a penalty under—

(A) section 221; or

(B) section 271, section 271A, section 271AAA, section 271F, section 271FB, section 272AA or section 272BB;

(C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

New Provision **[Amended w.e.f. 1st July, 2012]**

an order imposing a penalty under—

(A) section 221; or

*(B) section 271, section 271A, section 271AAA, **section 271AAB,** section 271F, section 271FB, section 272AA or section 272BB;*

(C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

Notes to clause

The existing provisions of the aforesaid section 246A provide for appeal by an assessee to the Commissioner (Appeals) against an order under sections 143(3), 147, 150, etc It is proposed to include the reference of "deductor" after the word "assessee" in sub-section (1) and in clause (a) of the said sub-section so as to enable him to file an appeal under the aforesaid section. It is further proposed to amend clause (a) of sub-section (1) so as to provide that the deductor may appeal to the Commissioner (Appeals) against an intimation issued under sub-section (1) of section 200A. These amendments will take effect from 1st July, 2012. It is proposed to amend clauses (a), (b), (ba) and (c) of sub-section (1) of the aforesaid section 246A to provide that an order of assessment or reassessment passed with approval of Commissioner under sub-section (12) of newly inserted section 144BA or any order under section 154 or section 155 passed in relation to such an order shall not be appealable before Commissioner (Appeals). These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years. The existing provisions contained in clause (ba) of sub-section (1) of the aforesaid section 246A provide that any assessee aggrieved by an order of the assessment or reassessment under section 153A may appeal to the Commissioner. It is proposed to amend the aforesaid clause (ba) so as to provide that any assessee aggrieved by an order of the assessment or reassessment under section 153A [except an order passed in pursuance of the directions of the Dispute Resolution Panel] may appeal to the Commissioner. This amendment will take effect retrospectively from 1st October, 2009. It is also proposed to insert a new clause (bb) in sub-section (1) of the aforesaid section 246A to provide that any assessee aggrieved by an order of assessment under sub-section (3) of section 92CD

may appeal to the Commissioner (Appeals). The proposed amendment is of consequential nature. The existing provisions contained in sub-section (1) of the aforesaid section 246A provide that an appeal shall lie to the Commissioner (Appeals) against the orders specified in said sub-section (1). It is proposed to amend sub-clause (B) of clause (j) of aforesaidsub-section (1) so as to provide that an appeal against the order of penalty passed under section 271AAB shall also lie before the Commissioner (Appeals). This amendment will take effect from 1st July, 2012.

Clause 95
Amendment in section271AAA(1)

Old Provision
"The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year."

New Provision **[Amended w.e.f. 1st July, 2012]**
"The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of June, 2007 ***but before the 1st day of July, 2012****, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year."*

Notes to clause

Amendment to sub-section (1) of the aforesaid section so as to provide that the provisions of the said section shall be applicable in respect of cases where a search has been initiated under section 132 on or after the 1st day of June, 2007 but before 1st day of July, 2012. This amendment will take effect retrospectively from 1st April,2012.

Clause 96
New Section 271AAB shall be inserted **[Amended w.e.f. 1st July, 2012]**

(1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of ten per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent. of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(c) a sum which shall not be less than thirty per cent. but which shall not exceed ninety percent. of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

(2) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation.— For the purposes of this section,—

(a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

(b) "specified previous year" means the previous year—

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(ii) in which search was conducted;

(c) "undisclosed income" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted

Notes to clause

It is proposed to provide in the aforesaid new section 271AAB that in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee - (i) in the course of the search, in a statement under sub-section (4) of section 132 admits the undisclosed income and specifies the manner in which such income has been derived; (ii) substantiates the manner in which the undisclosed income was derived; and (iii) on or before the specified date,–(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein. It is further proposed to provide that the assessee shall pay by way of penalty, in addition to tax, if any payable by him, a sum computed at the rate of twenty per cent. of the undisclosed income of the specified previous year, if such assessee - (i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; (ii) on or before the specified date,–(A) declares such income in the return of income furnished for the specified previous year; and (B) pays the tax, together with interest, if any, in respect of the undisclosed income. It is also proposed to provide that the assessee shall pay by way of penalty, in addition to tax, if any payable by him, a sum which shall not be less than thirty per cent. but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by clauses (a) and (b). It is also proposed to provide that no penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1). It is also proposed to provide that the provisions of section 274 and section 275 shall, as far as may be, apply in relation to the penalty leviable under the proposed new section. It is also proposed to define the expressions "undisclosed income", "specified previous year" and "specified date" for the purposes of the said section. These amendments will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

Penalty on undisclosed income found during the course of search

Under the existing provisions of section 271AAA of the Income-tax Act, no penalty is levied if the assessee admits the undisclosed income in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income.

As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet due) found during the course of search attracts a tax at the rate of 30% and no penalty is leviable.

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

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

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

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

Brief of Amendment

Clause 89

Earlier there was no penalty imposed on the assessee if the assessee admits & specifies the manner in which undisclosed income was derived. Now a new section is inserted which recommends a penalty of 10% to 20% even if undisclosed income is admitted by the assessee.

Order of assessment or reassessment passed with approval of Commissioner under sub-section (12) of newly inserted section 144BA or any order under section 154/155 passed in relation to such an order shall not be appealable before Commissioner (Appeals) w.e.f. 01.04.2013

An order of assessment under sub-section (3) of section 92CD made appealable. Deductor also allowed to file appeal w.e.f. 01.07.2012 Retrospective amendment w.e.f. 01.10.2009 - an order pass in pursuance of the direction of the dispute Resolution Panel is directly appealable to the ITAT. The existing provisions of section 246A provides for orders appealable before CIT(A).

Sub section (1) of section 246A till now only permitted an assessee aggrieved to prefer and appeal before CIT(A). An amendment vide clause (i) of clause 89 of Finance Bill, 2012 has enlarged the scope of appeals before CIT(A) in so far as now any assessee or any deductor aggrieved against the order (s) as provided therein may now appeal CIT(A). We understand that there being a specific provision u/s 248 in respect of tax deduction on account of payment to non residence u/s 195, the inclusion of expression `any deductor' refers to deductors making payment of TDS under various section of chapter XVII-B other than section 195.

Similar amendment permitting filing of appeal in respect of orders u/s 200A(1) relating to processing of TDS statements have also been made appealable before CIT(A).

Since a new section 144BA relating to reference of certain transactions to CIT in certain cases have been inserted, the appeals against the orders passed in pursuance of directions u/s 144BA(12) shall not be permissible before CIT(A) (the same is appealable before ITAT).

Clause 95

Since new section 271AAB is sought to be inserted by clause 96, providing for a new regime of penalty in case of searches conducted on or after 01.07.2012, the provisions of section 271AAA would be redundant.

Clause 96

Penalty on undisclosed income found during the course of search. (w.e.f. 01/07/2012)

Under the existing provisions of section 271AAA of the Income-tax Act, no penalty is levied if the assessee admits the undisclosed income for specified year in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income. ***As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet filed) found during the course of search attracts a tax at the rate of 30% and no penalty is leviable.*** In order to strengthen the penal provisions, it is proposed to provide that the provisions of section 271AAA will not be applicable for searches conducted on or after 1st July, 2012. It is also proposed to insert a new provision in the Act (section 271AAB) for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The **Brief of Amendment** of newly inserted section with that of old provision is as under:

Particulars	**Provisions of Penalty under Section 271AAA**	**Provisions of penalty under Section 271AAB**
Period to which provisions shall apply.	Where search has been initiated between 01/07/2007 to 30/06/2012	where search has been initiated on or after the 1st day of July, 2012
Rate of penalty	10% of the undisclosed income of the specified previous year.	Differential rates under different circumstances i.e. 10%, 20%, & 30 % to 90% of the undisclosed income of the specified previous year.

Circumstances under which penalty leviable.	In all circumstances **except** • Where assessee in its statement recorded u/s 132(4) admits undisclosed income • Specifies and substantiates the manner in which such income has been derived • pays the tax, together with interest, if any, in respect of the undisclosed income. **Therefore penalty is NIL**	Different circumstances are as under : **a. Penalty @ 10%** • Where assessee in its statement recorded u/s 132(4) admits undisclosed income • Specifies and substantiates the manner in which such income has been derived • pays the tax, together with interest and **furnishes the return of income** for the specified previous declaring such undisclosed income therein; • **on or before the specified date i.e. due date of return of income (139(1) or 153A as the case may be)**
		b. Penalty @ 20% • Where assessee in its statement recorded u/s 132(4) does not admits undisclosed income • on or before the specified date i.e. **(139(1) or 153A as the case may be)** ➢ declares such income in the return of income furnished for the specified previous year; and ➢ pays the tax, together with interest, if any, in respect of the undisclosed income.
		c. Penalty @ 30% to 90% In cases not covered by the provisions of clauses (a) and (b) above.
Applicability of Penalty u/s 271(1)(c).	Not applicable in respect of the undisclosed income referred to in sub-section (1).	No Change, same as earlier
Applicability of provisions of S. 274 and 275	Sections 274 & 275 shall, so far as may be, apply in relation to the penalty referred to in this section.	No Change same as earlier.

Issues required consideration

As per the proposed provisions of sub-section (3) of Section 271AAB, the prosecution provisions of sections 274 and 275 shall also be applicable to the assessee in addition to the penalty of 10% and 20% even after disclosing the undisclosed income, making payment of taxes together with interest in respect of such undisclosed income and furnishing return of income. These provisions will not encourage the disclosure of unaccounted money.

Expediting prosecution proceedings under the Act

Clause 101 – Amendment in section 276C

(i) Sub-section (1) of Section 276C

a. Clause (i) of sub-section (1) of section 276C

Old Provision

"in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in a case where the amount sought to be evaded exceeds **twenty-five hundred thousand rupees**, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."*

b. Clause (ii) of sub-section (1) of section 276C

Old Provision

"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to **two years** and with fine."*

(ii) Sub-section (2) of section 276C

Old Provision

"If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to **two years** and shall, in the discretion of the court, also be liable to fine."*

Clause 102
Amendment in section 276CC

(i) Clause (i) of section 276CC

Old Provision

"in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds **twenty-five hundred thousand rupees**, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."*

(ii) Clause (ii) of section 276CC

Old Provision

"in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in any other case, with imprisonment for a term which shall not be less than three months but which may extend to **two years** and with fine."*

Clause 103

Amendment in Section 277

a) Clause (i) of section 277

Old Provision

"in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds **twenty-five hundred thousand rupees**, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."*

b) **Clause (ii) of section 277**

Old Provision

"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to **two years** and with fine."*

Clause 104

Amendment in Section 277A

Old Provision

"If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

*"If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to **two years** and with fine."*

Clause 105

Amendment in section 278

(i) **Clause (i) of section 278**

Old Provision

"in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous

imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

"in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds ***twenty-five hundred thousand rupees****, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."*

(ii) Clause (ii) of section 278

Old Provision

"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

New Provision **[Amended w.e.f. 1st July, 2012]**

"in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to ***two years*** *and with fine."*

Clause 106

Amendment after section 280

i. A new Section 280A shall be inserted. **[w.e.f. 1st July, 2012]**

(1) The Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrates of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.

Explanation.— In this sub-section, "High Court" means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

ii. A new Section 280B shall be inserted. **[w.e.f. 1st July, 2012]**

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973,–

(a) the offences punishable under this Chapter shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed:

Provided that a court competent to try offences under section 292,—

(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;

(ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed for trial."

iii. A new Section 280C shall be inserted. **[w.e.f. 1st July, 2012]**

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court, shall try, an offence under this Chapter punishable with imprisonment not exceeding two years or with fine or with both, as a summons case, and the provisions of the Code of Criminal Procedure, 1973 as applicable in the case of trial of summons case, shall apply accordingly."

iv. A new Section 280D shall be inserted. **[w.e.f. 1st July, 2012]**

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Notes to clauses

Clause 101 of the Bill seeks to amend section 276C of the Income-tax Act relating to wilful attempt to evade tax, etc. The existing provisions of sub-section (1) of the aforesaid section 276C provide that if a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of the Act, be punishable in case where the amount sought to be evaded exceeds one hundred thousand rupees with rigorous imprisonment

for a term which shall not be less than six months but which may extend to seven years and with fine; and in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine. It is proposed to amend the aforesaid sub-section so as to increase the limit of amount sought to be evaded from one hundred thousand rupees to twenty-five hundred thousand rupees and to reduce the maximum imprisonment from three years to two years. The existing provisions of sub-section (2) of the aforesaid section provides that if a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under the Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of the Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in discretion of the court, also with fine. It is proposed to amend the aforesaid sub-section so as to reduce the maximum imprisonment from three years to two years. These amendments will take effect from 1st July, 2012.

Clause 102 of the Bill seeks to amend section 276CC of the Income-tax Act relating to failure to furnish return of income. The existing provisions of the aforesaid section 276CC provide that if a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A, he shall be punishable in case where the amount of tax which would have been evaded if the failure had not been discovered exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine; and in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.
It is proposed to amend the aforesaid section so as to increase the limit of amount of tax which would have been evaded if the failure had not been discovered, from one hundred thousand rupees to twenty-five hundred thousand rupees and to reduce the maximum imprisonment from three years to two years. These amendments will take effect from 1st July, 2012.

Clause 103 of the Bill seeks to amend section 277 of the Income-tax Act relating to false statement in verification, etc. The existing provisions of the aforesaid section 277 provide that if a person makes a statement in any verification under the Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable in a case where the amount of tax which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine; and in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine. It is proposed to amend the aforesaid section so as to increase the limit of amount of tax which would have been evaded from one hundred thousand rupees to twenty-five hundred thousand rupees and to reduce the maximum imprisonment from three years to two years. These amendments will take effect from 1st July, 2012.

Clause 104 of the Bill seeks to amend section 277A of the Income-tax Act relating to falsification of books of account or document, etc. The existing provisions of the aforesaid

section 277A provide that if any person (the first person) wilfully and with intent to enable any other person (the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false, and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceeding against the first person or the second person, under the Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine. It is proposed to amend the aforesaid section so as to reduce the maximum imprisonment from three years to two years. This amendment will take effect from 1st July, 2012.

Clause 105 of the Bill seeks to amend section 278 of the Income-tax Act relating to abetment of false return, etc. The existing provisions of the aforesaid section 278 provide that if any person abets or induces in any manner another person to make and deliver an account or make a statement or declaration relating to any income or any fringe benefit chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable in a case where the amount of tax, penalty or interest which would have been evaded if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine; and in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine. It is proposed to amend the aforesaid section so as to increase the limit of amount of tax, penalty or interest which would have been evaded from one hundred thousand rupees to twenty-five hundred thousand rupees and to reduce the maximum imprisonment from three years to two years. These amendments will take effect from 1st July, 2012.

Clause 106 of the Bill seeks to insert new sections 280A, 280B, 280C and section 280D in the Income-tax Act relating to Special Courts, offences triable by Special Court, trial of offences as summons case and application of the Code of Criminal Procedure, 1973 to proceedings before Special Court. The proposed new section 280A provides that the Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under Chapter-XXII, by notification, designate one or more courts of Magistrates of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification. It further explains that "High Court" means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such designation. It also provides that while trying an offence under the Income-tax Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. The proposed new section 280B provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, (a) the offences punishable under Chapter-XXII shall be triable only by the Special Court if so designated for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed. However, a court competent to try offences under section 292, (i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation; (ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal; or (b) a Special

Court may, upon a complaint made by an authority authorised in this behalf under the Income-tax Act take cognizance of the offence for which the accused is committed for trial. The proposed new section 280C provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court, shall try, an offence under Chapter-XXII punishable with imprisonment not exceeding two years or with fine or with both, as a summons case, and the provisions of the Code of Criminal Procedure, 1973 as applicable in the case of trial of summons case, shall apply accordingly. The proposed new section 280D provides that the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. It further provides that a person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an advocate for not less than seven years requiring special knowledge of law. It also provides that every person appointed as a Public Prosecutor or a Special Public Prosecutor shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly. These amendments will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

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

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

(i) Providing for constitution of Special Courts for trial of offences.
(ii) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.
(iii) Providing for appointment of public prosecutors.

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

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

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

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

Brief of Amendment

Clause 101 to 105

- Expediting prosecution proceedings under the Act

- Under these sections, the monitory limits determining the period of imprisonment (in case the prosecution get sanctions and confirmed) was Rs.1 Lac. The said limit has now been revised w.e.f. 01/07/2012 to Rs.25 Lacs.

- It is also being provided that the maximum term of imprisonment which was earlier 3 years in each of these sections, be reduced to 2 years.

Clause 106

- These new sections (4 in nos.) have been inserted so as to provide for a speedy, quicker, prosecution mechanism through constitution of special courts of law, conducting of summons trials and also for appointment of public prosecutors.

Clause 21

Share premium in excess of the fair market value to be treated as income & scope enlarge for HUF

A. Amendment to Section 56(2)

Old Provisions

Section 56(2)(vii)(e)

"(e) "relative" shall have the meaning assigned to it in the Explanation to clause (vi) of sub-section (2) of this section."

New Provisions **[w.e.f. 1st October, 2009]**

"(*e*) "relative" means,—

(i) in case of an individual—

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

(ii) in case of a Hindu undivided family, any member thereof."

Notes to clauses

It is proposed to substitute the aforesaid clause (e) so as to provide that the definition of "relative" shall also include any sum or property received by a Hindu undivided family from its members apart from the persons referred to in the Explanation to clause (vi) of sub-section (2) of the said section. This amendment will take effect **retrospectively** from 1st October, 2009.

Brief of Amendment

Hitherto there was a confusion as to who are the relatives of an individual or HUF. There had been certain judicial pronouncements including of Ahmadabad ITAT Bench wherein it has been held that the list contained in the said clause is duly applicable to the members of HUF also. Through this amendment it has been specifically provided as to who are the relatives of individual and who are the relatives of an HUF. Any sum or property received without consideration or for inadequate consideration by HUF from its members would be excluded from taxation.

Issues required consideration

If a person transfers a property without adequate consideration to a non-relative then the same is tax u/s 56(2) under the head of income from other sources in the hands of transferee and in this case the clubbing provisions are also attracted and consequently same is also club in the hands of transferor. This will lead to double taxation under the Income Tax Act.

B. <u>A new clause (viib) in sub-section 2 of section 56 shall be inserted w.e.f. 1st April, 2013, accordingly, apply in relation to the A.Y. 2013-14 and subsequent A.Ys.</u>

"(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value—

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

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

(c) ***"venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation 1 to clause (23FB) of section 10."***

Notes to clauses

<u>Share Premium</u>

(i) It is proposed to insert a new clause (viib) in the aforesaid sub-section so as to provide that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head "Income from other sources".

(ii) However, the said new clause shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund. It is further proposed that the company receiving the consideration for issue of shares shall be provided an opportunity to substantiate its claim regarding the fair market value of the shares. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Brief of Amendment

- <u>Share premium over & above fair market value be covered</u>.

where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as

exceeds the fair market value of the shares shall be chargeable to income-tax under the head "Income from other sources".

- Not apply where the consideration for issue of shares is received by a venture capital undertaking from a VCC or VCF.

Issues required consideration

- *As per the existing provisions if the AO has not satisfied with the explanation give by the assessee company regarding the share premium then he shall assess the same u/s 68 of the Income Tax Act. But the proposed amendment in section 56(2)(viib) would also covered it and required to tax as per the proposed provisions. This will lead to double taxation on the same amount. The clarification is to be required to issue in this regard.*
- *The proposed amendment will lead to increase the compliance burden on the part of private companies by shifting the onus of proving the source of income of the shareholder.*

Memorandum to Finance Bill, 2012

a. Scope enlarge for HUF

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

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

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

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

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

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

Tax Incentives and Reliefs

A. Tax incentive for funding of certain Infrastructure Sectors

I. Amendment to Section 115A-Tax on dividends, royalty and technical service fees in the case of foreign companies

OLD PROVISIONS

(1) Where the total income of—

(a)a non-resident……..…

(i)……..…

(ii)……..…or

(iia)interest received from an infrastructure debt fund referred to in clause (47) of section 10; or

(iii)income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India,

the income-tax payable shall be aggregate of—

(A) the amount of income-tax calculated on the amount of income by way of dividends [other than dividends referred to in section 115-O], if any, included in the total income, at the rate of twenty per cent ;

(B) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (ii), if any, included in the total income, at the rate of twenty per cent ;

[(BA)the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (iia) or if any, included in the total income, at the rate of five per cent;]

(C) the amount of income-tax calculated on the income in respect of units referred to in sub-clause (iii), if any, included in the total income, at the rate of twenty per cent ; and

(D) the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the amount of income referred to in sub-clause (i), sub-clause (ii) [, sub-clause (iia)] and sub-clause (iii) ;

New Provisions **[w.e.f 1st July 2012]**

"(1) Where the total income of—

(a)a non-resident (not being a company) or of a foreign company, includes any income by way of—

(i) dividends [other than dividends referred to in section 115-O] ; or

(ii) interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency [not being interest of the nature referred to in clause (iia) ***or sub-clause (iiaa)"];*** *or*

(iia)interest received from an infrastructure debt fund referred to in clause (47) of section 10; or

(iiaa) interest of the nature and extent referred to in section 194LC; or"

(iii) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India, the income-tax payable shall be aggregate of—

(A) *the amount of income-tax calculated on the amount of income by way of dividends [other than dividends referred to in section 115-O], if any, included in the total income, at the rate of twenty per cent ;*

(B) *the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (ii), if any, included in the total income, at the rate of twenty per cent ;*

(BA) *the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (iia)* ***or sub-clause (iiaa)",*** *if any, included in the total income, at the rate of five per cent;]*

(C) *the amount of income-tax calculated on the income in respect of units referred to in sub-clause (iii), if any, included in the total income, at the rate of twenty per cent ; and*

(D) *the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the amount of income referred to in sub-clause (i), sub-clause (ii) [, sub-clause (iia)* ***or sub-clause (iiaa)"****] and sub-clause (iii) ;*

Notes to Clause

The existing provisions of sub-section (1) of the aforesaid section 115A provides the rates at which income-tax shall be payable, where a total income of non-resident (not being a company) or a foreign company, includes any income by way of dividends (other than dividends referred to in section 115-O); or interest received from Government or an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency; or interest received from an infrastructure debt fund referred to in clause (47) of section 10; or income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 of the Unit Trust of India.

It is proposed to amend clause (a) of the aforesaid sub-section to insert a new sub-clause (iiaa) so as to provide the rates at which income-tax shall be payable, where the total income of a non-resident (not being a company) or a foreign company includes income received from the interest of the nature and extent referred to in section 194LC. Such income from interest shall be taxable at the rate of five per cent. It is further proposed to make consequential amendments in aforesaid clause to make reference of the said sub-clause (iiaa).

II. New Section 194LC Shall be Inserted **[w.e.f. 1st July, 2012]**

(1) Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company,—

(i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India under a loan agreement approved by the Central Government in this behalf; and

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment.

Explanation.—For the purpose of this section—

(a) "foreign currency" shall have the meaning assigned to it in clause (m) of section 2 of the Foreign Exchange Management Act, 1999;

(b) "specified company" means an Indian company engaged in the business of—

- ***(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 as referred to in sub-clause (vii) of clause (c) of sub-section (8) of section 35AD.***

Notes to clause

The proposed new section 194LC provides that where any income by way of interest is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment shall deduct income-tax thereon @ 5% at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

It further provides that the interest shall be income by way of interest payable by the specified company in respect of any monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015; in foreign currency, from a source outside India under a loan agreement approved by the Central Government in this behalf; to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment. It also defines the expressions "foreign currency" and "specified company" for the purpose of the aforesaid section. This amendment will take effect from 1st July, 2012

Memorandum Explaining Finance Bill 2012

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

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

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

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

Brief of Amendment

- If specified company raises a loan in foreign currency from abroad, which is approved by central Government, the interest paid by specified company to non-resident is chargeable to five percent on interest paid and accordingly new section 194LC inserted which provides TDS is deducted at five percent plus surcharge and cess on such amount paid.

- The interest payable to a non resident by an Indian company engaged in certain specified business relating to generation or distribution of power, operation of aircraft, manufacture or production of fertilizer, construction of road, toll road, bridge, port, inland port, shipyard, ship or dam shall be subjected to withholding tax @ 5% at the time of payment or accrual whichever is earlier.

Clause 44

Lower rate of tax on dividends received from foreign companies

Amendment in Section 115BBD

Old Provisions

"Where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on the 1st day of April, 2012 includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income-tax payable shall be the aggregate of ------"

New Provision **[Amended w.e.f 1st April 2013]**

*"Where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on the **1st day of April, 2013** includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income-tax payable shall be the aggregate of ------"*

Notes to clause

The existing provisions of aforesaid section 115BBD provide that where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on the 1st day of April, 2012, includes any income by way of dividends declared, distributed or paid by a subsidiary foreign company, the income-tax payable shall be the aggregate of the amount of income-tax calculated on the income by way of such dividends at the

rate of fifteen per cent. and the amount of income-tax with which the assessee would have been chargeable had its total income been reduced by the amount of aforesaid income by way of dividends. It is further provided that no deductions in respect of any expenditure or allowance shall be allowed for computing its income by way of dividend.
It is proposed to extend the applicability of taxation provisions in respect of foreign dividends to the income by way of dividends received during the financial year 2012-2013 also.

Memorandum Explaining Finance Bill 2012

Section 115BBD of Income Tax Act (the Act) provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% if such dividend is included in the total income for the Financial Year 2011-12 i.e. Assessment Year 2012-13.
The above provision was introduced as an incentive for attracting repatriation of income earned by residents from investments made abroad with certain conditions to check the misuse of the incentive. In order to continue these provisions for one more year, it is proposed to amend section 115BBD to extend the applicability of this section in respect of income by way of certain foreign dividends received in Financial Year 2012-13 also, subject to the same conditions.

Brief of Amendment

Government has extended one more financial year (i.e 2012-2013) for receiving divided from a specified foreign company for investments made outside India for repatriation of income.
(As per the existing provisions the income-tax payable shall be the aggregate of the amount of income-tax calculated on the income by way of such dividends at the rate of 15%)

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

a. Amendment to Section10(23FB)

Old Provision

"any income of a venture capital company or venture capital fund [32][from investment] in a venture capital undertaking.

Explanation [1].—For the purposes of this clause,—

(a)……..…

(b)……..…. and

(c) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

(i) business of—

(A) nanotechnology;

(B) information technology relating to hardware and software development;

(C) seed research and development;

(D) bio-technology;

(E) research and development of new chemical entities in the pharmaceutical sector;

(F) production of bio-fuels;

(G) building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand; or

(H) developing or operating and maintaining or deve-loping, operating and maintaining any infrastructure facility as defined in theExplanation to clause (i) of sub-section (4) of section 80-IA; or

(ii) dairy or poultry industry."

New Provision **[Amended w.e.f. 1st April, 2013]**

"any income of a venture capital company or venture capital fund [from investment] in a venture capital undertaking.

Explanation [1].—For the purposes of this clause,—

(a)……..…

(b)……..…. and

(c) "venture capital undertaking" means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992."

b. Amendment to Section 115U-Tax on income in certain cases

Old Provisions

"*(1) Notwithstanding anything contained in any other provisions of this Act, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.*

(2) The person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the income paid during the previous year and such other relevant details as may be prescribed.

(3) The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.

(4) The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund under this Chapter.

Explanation.—For the purposes of this Chapter, "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (23FB) of section 10."

New Provisions **[Amended w.e.f 1st April 2013]**

(1) Notwithstanding anything contained in any other provisions of this Act, ***any income accruing or arising to or received*** *by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the* ***income accruing or arising to or received*** *by such person had he made investments directly in the venture capital undertaking.*

(2) The person responsible for crediting or making *payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall furnish, within such time as may be prescribed,* ***"to the person who is liable to tax in respect of such income"*** *and to the prescribed income-tax authority , a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the* ***income paid or credited*** *during the previous year and such other relevant details as may be prescribed.*

(3) The ***income paid or credited*** *by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands* ***of the person referred to in sub-section (1) as it had been received by, or had accrued or arising*** *to, the venture capital company or the venture capital fund, as the case may be, during the previous year.*

(4) ***The income accruing or arising to or received by the venture capital company or venture capital fund, during a previous year, from investments made in venture capital undertaking if not paid or credited to the person referred to in sub-section (1), shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year."***

Explanation 1 *—For the purposes of this Chapter, "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (23FB) of section 10.*

"Explanation 2.—For the removal of doubts, it is hereby declared that any income which has been included in total income of the person referred to in sub-section (1) in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the venture capital company or the venture capital fund."

Notes to clause

The existing provisions of sub-section (1) of the aforesaid section 115U provide that any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking. It is proposed to amend the aforesaid sub-section (1) to substitute the words "income received" with the words "income accruing or arising to or received" so as to provide that any income accruing or arising to or received by a person out of investment made in a venture capital company or a venture capital fund shall be taxed as if it were income accrued, arisen to or received by such person from investment directly in the venture capital undertaking. The existing provisions of sub-section (2) of the aforesaid section provide that the person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the income paid during the previous year and such other relevant details as may be prescribed. It is proposed to amend the aforesaid sub-section (2) so as to provide that the person responsible for crediting or making payment of the income on behalf of a venture capital company or venture capital fund and the venture capital company or venture capital fund shall furnish a statement in the prescribed form, giving details of the nature of the income paid or credited during the period, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority. The existing provisions of sub-section (3) of the aforesaid section provide that the income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year. It is proposed to amend the aforesaid sub-section (3) so as to provide that the income paid or credited by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person referred to in sub-section (1) as it had been received by, or had accrued or arisen to, the venture capital company or the venture capital fund, as the case may be, during the previous year. The existing provisions of sub-section (4) of the aforesaid section provide that the provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund under the Chapter "Special Provisions Relating to Tax on Income Received from venture capital companies and venture capital funds".

It is proposed to substitute the aforesaid sub-section so as provide that the income accruing or arising to or received by the venture capital company or venture capital fund, during a previous year, from investments made in venture capital undertaking if not paid or credited to the person referred to in sub-section (1) shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would

have been entitled to receive the income had it been paid in the previous year. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years. It is also proposed to insert a new *Explanation* so as to clarify that any income which has been included in total income of the person referred to in sub-section (1) in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the venture capital fund or venture capital company. This amendment will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

Provisions of Section 10(23FB) and Section 115U of the Act were intended to ensure a tax pass through status to Securities and Exchange Board of India (SEBI) registered Venture Capital Fund (VCF) or Venture Capital Company (VCC). Section 10(23FB) granted exemption in respect of income of such VCF/VCC. The benefit was available if investment by such VCC/VCF was in unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU). Section 115U ensures that income, in the hand of the investor through VCF/VCC is taxed in like manner and to the same extent as if the investment was directly made by investor in the VCU. Further, TDS provisions are not applicable to any payment made by the VCF to its investor and payment by VCC to the investor is exempted from Dividend Distribution Tax (DDT). Section 10(23FB) further provides that income of a SEBI regulated VCF or VCC, derived from investment in a domestic company i.e. Venture Capital Undertaking (VCU), is exempt from taxation, provided the VCU is engaged in only nine specified businesses. The working of VCF, VCC or VCU are regulated by SEBI and RBI. In order to avoid multiplicity of conditions in different regulations for the same entities, the sectoral restriction on business of VCU is required to be removed from Income Tax Act and such VCU is to be allowed to be governed by conditions imposed by SEBI and RBI. The provisions of section 115U currently allow an opportunity of indefinite deferral of taxation in the hands of investor. With a view to rationalize the above position and to align it with the true intent of a pass-through status, ***it is proposed to amend section 10(23FB) and section 115U to provide that***.-

i. *The venture Capital undertaking shall have same meaning as provided in relevant SEBI regulations and there would be no sectoral restriction.*
ii. *Income accruing to VCF/ VCC shall be taxable in the hands of investor on accrual basis with no deferral.*
iii. *The exemption from applicability of TDS provisions on income credited or paid by VCF/ VCC to investors shall be withdrawn.*

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

Brief of Amendment

The provision of section 115U have been amended so as to make a reference to the expression income accruing or arising to or received by a venture capital fund.

Substitute the words "income received" with the words "income accruing or arising to or received" so as to provide *that any income accruing or arising to or received by a person out of investment made in a venture capital company or a venture capital fund shall be taxed as if it were income accrued, arisen to or received by such person from investment directly in the venture capital undertaking*.

- Person responsible for crediting or making payment of the income on behalf of a venture capital company or venture capital fund and the venture capital company or venture capital fund shall furnish a statement in the prescribed form, giving details of the nature of the income paid or credited during the period, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority.
- Income paid or credited by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person referred to in sub-section (1) as it had been received by,or had accrued or arisen to, the venture capital company or the venture capital fund, as the case may be, during the previous year.
- Income accruing or arising to or received by the venture capital company or venture capital fund, during a previous year, from investments made in venture capital undertaking if not paid or credited to the person referred to in sub-section (1) shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.
- A new *Explanation shall be inserted* to clarify that any income which has been included in total income of the person referred to in sub-section (1) in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the venture capital fund or venture capital company.

Clause 53

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

Amendment to Section 115-O

Old Provisions

"Sub-section (1)…….
Sub-section (1A)
The amount referred to in sub-section (1) shall be reduced by,—

(i) the amount of dividend, if any, received by the domestic company during the financial year, if—
(a) such dividend is received from its subsidiary;
(b) the subsidiary has paid tax under this section on such dividend; and
(c) the domestic company is not a subsidiary of any other company :

Provided that the same amount of dividend shall not be taken into account for reduction more than once."

New Provisins **[Amended w.e.f 1st April 2012]**

"Sub-section (1)…….
Sub-section (1A)
The amount referred to in sub-section (1) shall be reduced by,—

(i) the amount of dividend, if any, received by the domestic company during the financial year, if—
(a) such dividend is received from its subsidiary; and
(b) the subsidiary has paid the tax which is payable under this section on such dividend
(c) ~~the domestic company is not a subsidiary of any other company~~.

Provided that the same amount of dividend shall not be taken into account for reduction more than once."

Notes to clause :

It is proposed to amend clause (i) of aforesaid sub-section (1A) so as to provide that in case domestic company receives during the year any dividend from any of its subsidiary and the subsidiary has paid dividend distribution tax, which is payable, on such dividend, then the said amount, if it is distributed as dividend by the domestic company being the holding company in the same year, shall not be subject to dividend distribution tax under the aforesaid section.

Memorandum Explaining Finance Bill 2012,

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

is to be reduced by an amount of dividend received from its subsidiary after payment of DDT if the company is not a subsidiary of any other company. This removes the cascading effect of DDT only in a two-tier corporate structure. With a view to remove the cascading effect of DDT in multi-tier corporate structure, it is proposed to amend Section 115-O of the Act. This amendment will take effect from 1st July, 2012.

Brief of Amendment

In order to reduce the cascading effect on dividend distribution tax in respect of dividends received by a domestic company, the existing stipulation u/s 115O(1A) have been clearly spelled out so as to remove the ambiguity, if any. It is also proposed to omit sub-clause (c), so as to remove the condition that such domestic company is not a subsidiary of any other company.

Clause 5

Exemption in respect of income received by certain foreign companies

Section10 (48) **[Newly Inserted w.e.f. 1st April, 2012]**

"any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India:

Provided that—

(i) receipt of such income in India by the foreign company is pursuant to an agreement or anarrangement entered into by the Central Government or approved by the Central Government;

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.".

Notes to Clause

It is proposed to insert a new clause (48) in the aforesaid section so as to provide that any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to fulfillment of certain conditions specified in the said clause will also not be included in total income. This amendment will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Section 10 of the Income-tax Act provides for certain incomes which are not included in the total income of a person subject to the conditions specified in the relevant clauses of the section. In the national interest, a mechanism has been devised to make payment to certain foreign companies in India in Indian currency for import of crude oil. The current provisions of the Income-tax Act would render such payment taxable in India because payment is being received by these foreign companies in India in Indian currency. This would not be justified when such payment is based on national interest and particularly when no other activity is being carried out in India by these foreign companies except receipt of payment in Indian currency. It is therefore proposed to insert a new clause (48) in section 10 of the Income-tax Act *to provide for exemption in respect of any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to the following conditions*:

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

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

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

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

Brief of Amendment

Any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India:

Provided that—

(i) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.

Any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to fulfilment of certain conditions specified in the said clause will also not be included in total income.

[Applicable from 1st April, 2012 i.e. for A.Y. 2012-13 (Retrospectively)]

Extending benefit of initial depreciation to the power sector

Amendment to Section 32

Old Provisions

"In the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii)."

New Provisions **[Newly inserted w.e.f. 1st April, 2013]**

"In the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing ***or in the business of generation or generation and distribution of power.*** *a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii)."*

Notes to clauses

It is proposed to amend aforesaid clause so as to allow deduction of a further sum equal to twenty per cent. of actual cost of any new machinery or plant (other than ships and aircraft) acquired and installed after 31st day of March, 2012, as further depreciation to an assessee engaged in the business of generation or generation and distribution of power. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Section 32(1)(iia) provides for allowance of initial depreciation (in addition to normal depreciation) at the rate of 20% of the actual cost on new machinery or plant (other than ships and aircraft) to the assessee engaged in the business of manufacture or production of any article or thing in the year of acquisition and instalment. Under the existing provisions, the benefit of initial depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of generation or generation and distribution of power. In order to encourage new investment by the assessees engaged in the business of generation or generation and distribution of power, it is proposed to amend this section to provide that an assessee engaged in the business of generation or generation and distribution of power shall also be allowed initial depreciation at the rate of 20% of actual cost of new machinery or plant (other than ships and aircraft) acquired and installed in a previous year. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

This amendment removes an obvious miss and in tune with the policy to provide boost to the infrastructure sector. Additional depreciation allowance extended to power sector.

Clause 8

Weighted deduction for scientific research and development

Amendment to Section 35(2AB)(5)-Expenditure on scientific research.

Old Provisions

"(1)……
(2) ……..
(3)……..…
(4) ……..
(5) No deduction shall be allowed in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, 31 [2012].
(6)……..."

New Provisions **[Amended w.e.f. 1st April, 2013]**

"(1)……
(2) ……..
(3)……..…
(4) ……..
(5) No deduction shall be allowed in respect of the expenditure referred to in clause (1) which is incurred after ***31st day of March, 31 2017.***
(6) ……..…."

Notes to clauses

Clause 8 of the Bill seeks to amend section 35 of the Income-tax Act relating to expenditure on scientific research. The existing provisions contained in sub-section (2AB) of the aforesaid section 35 provide that where a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of Eleventh Schedule, incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to two times of the expenditure so incurred. However, no deduction is allowable under the said sub-section in respect of such expenditure incurred after 31st March, 2012. It is proposed to amend clause (5) of the aforesaid sub-section (2AB) so as to allow deduction in respect of expenditure incurred up to 31st March, 2017. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years up to assessment year 2017-2018.

Memorandum to Finance Bill, 2012

Under the existing provisions of Section 35(2AB) of the Income-tax Act, a company is allowed weighted deduction at the rate of 200% of expenditure (not being in the nature of cost of any land or building) incurred on approved in-house research and development facilities. These provisions are not applicable in respect of any expenditure incurred by a company after 31st March, 2012. In order to incentivise the corporate sector to continue to spend on in-house research, it is proposed to amend this section to extend the benefit of the weighted deduction for

a further period of five years i.e. up to 31st March, 2017. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years up to assessment year 2017-18.

Brief of Amendment

The objective of the amendment is to boost research and development activities in the country. Amend this section to extend the benefit of the weighted deduction for a further period of five years i.e. up to 31st March, 2017

Clause10

Weighted deduction for expenditure incurred on agricultural extension project

New Section 35CCC shall be inserted.

[w.e.f. 1st April, 2013]

"(1) Where an assessee incurs any expenditure on agricultural extension project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year."

Memorandum to Finance Bill, 2012

Agricultural extension services play a critical role in enhancing the productivity in the agricultural sector. In order to incentivize the business entities to provide better and effective agriculture extensive services, it is proposed to insert a new provision in the Income-tax Act to allow weighted deduction of 150% of the expenditure incurred on agricultural extension project. The agricultural extension project eligible for this weighted deduction shall be notified by the Board in accordance with the prescribed guidelines. This amendment will take effect from 1st

April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

- Deduction equal to 150% of the expenditure on *agriculture extension project notified by the board* shall be allowed to the assessee. No other deduction for the above said expenditure in the same or any other assessment year.

Weighted deduction for expenditure for skill development

New Section 35CCD shall be inserted. **[w.e.f. 1st April, 2013]**

"(1) Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project notified by the Board in this behalf in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year."

Memorandum to Finance Bill, 2012

The Department of Industrial Policy & Promotion (DIPP) has notified the National Manufacturing Policy (NMP) vide Press Note dated 4th November, 2011. The notified NMP inter alia propose to provide following direct tax incentive for skill development in manufacturing sector: "To encourage the private sector to set up their own institutions, the government will provide weighted standard deduction of 150% of the expenditure (other than land or building) incurred on Public Private Partnership (PPP) project for skill development in the ITIs in manufacturing sector in separate facilities in coordination with NSDC."

Brief of Amendment

- Deduction equal to 150% of the expenditure on any *skill development project notified by the board* shall be allowed to the assessee. No other deduction for the above said expenditure in the same or any other assessment year. The expenditure shall not include expenditure on cost of land & building.

Turnover or gross receipts for audit of accounts and presumptive taxation

1. Amendment to Section 44AB-Audit of accounts of certain persons carrying on business or profession.

Old Provisions

"(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds [sixty lakh rupees] in any previous year or

(b) carrying on profession shall, if his gross receipts in profession exceed [fifteen lakh rupees] in any [previous year; or

In clause (ii) of Explanation

"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the [30th day of September] of the assessment year."

New Provisions **[Amended w.e.f. 1st April, 2013]**

*(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds [**one crore rupees**] in any previous year or*

*(b) carrying on profession shall, if his gross receipts in profession exceed [**twenty-five lakh rupees**] in any [previous year; or*

In clause (ii) of Explanation

*"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means **the due date for furnishing the return of income under sub-section (1) of section 139]**] of the assessment year.*

2. Amendment to Section 44AD-Special provision for computing profits and gains of business on presumptive basis

(a) New Sub-section (6) of Section 44AD shall be inserted. [w.e.f. 1st April, 2011]

"The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business."

(b) Amendment to explanation to section 44AD

Old Provisions

"Explanation.—For the purposes of this section,—

(b) "eligible business" means,—

any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and whose total turnover or gross receipts in the previous year does not exceed an amount of [sixty lakh rupees]."

New Provisions **[w.e.f. 1st April, 2013]**

"Explanation.—For the purposes of this section,—

(b) "eligible business" means,—

any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and whose total turnover or gross receipts in the previous year does not exceed an amount of ***[one crore rupees]."***

Memorandum to Finance Bill, 2012

I. In order to reduce the compliance burden on small businesses and on professionals, it is proposed to increase the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting accounts audited.

II. It is also proposed that for the purposes of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from sixty lakh rupees to one crore rupees. These amendments will take effect from 1st April, 2013 and will, accordingly, apply to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

- In order to reduce the compliance burden on small business and on professionals, it is proposed to increase the threshold limit of total sales turnover or gross receipts, specified u/s 44AB for getting accounts audited, from Rs 60 Lakhs to Rs 1 Crore in the case of persons carrying on business and from Rs 15 Lakhs to Rs 25 Lakhs in case of persons carrying on profession.
  The limit as proposed in this Finance Bill is same as proposed in Direct Tax Code.

- Presumptive taxation of 8% *not to apply to professionals, persons earning commission or brokerage income, persons carrying on agency business* w.e.f assessment year 2011-12 & enhanced limit uptoRs. 1crore w.e.f 1.4.2013 i.e Assessment year 2013-14.

Issues required consideration

In case, where the assessee earning income in the nature of commission or brokerage or carrying on any agency business and opted for presumptive taxation u/s 44AD for the A.Y. 2011-12. He is not required to maintain any books of account in respect of the said business. But with this retrospective amendment the benefit is withdrawn and no further clarification is provided in this regard. It will increase the hardship on the part of assessee.

Deduction in respect of capital expenditure on specified business

A. New Section 35AD(1A) shall be inserted **[w.e.f. 1st April, 2013]**

"Where the specified business is of the nature referred to in sub-clause (i) or sub-clause (ii) or sub-clause (v) or sub-clause (vii) or sub-clause (viii) of clause (c) of sub-section (8) and has commenced its operations on or after the 1st day of April, 2012, the deduction under sub-section (1) shall be allowed of an amount equal to one and one-half times of the expenditure referred to therein."

B. Section 35AD(5) **[Amended w.e.f. 1st April, 2013]**

New Provisions

(a) In clause (ae), the word "and" shall be omitted.

(b) The following clauses (af), (ag) and (ah) shall be inserted after clause (ae) of sub-section (5) of section 35AD.

(af) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

(ag) on or after the 1st day of April, 2012, where the specified business is in the nature of bee-keeping and production of honey and beeswax;

(ah) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating a warehousing facility for storage of sugar; and

(c) In clause (b), for the words, brackets and letters "clause (a), clause (aa), clause (ab) and clause (ac)", the words "any of the above clauses" shall be substituted

C. New Section 35AD (6A) shall be inserted **[w.e.f. 1st April, 2011]**

"Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business referred to in sub-clause (iv) of clause (c) of sub-section (8)."

D. Section 35AD (8)

Old Provisions

(8) For the purposes of this section,—

(a) ……..…..

(b) ……..…..

(c) "specified business" means any one or more of the following business, namely :—

(i) to ((viii).

New Provisions

(8) For the purposes of this section,—

(a) ……..…..

(b) ……..…..…

(c) "specified business" means any one or more of the following business, namely :—

(i) to (viii)

In sub-section (8), in clause (c), after sub-clause (viii), the following sub-clauses shall be inserted with effect from the 1st day of April, 2013, namely:—

[Newly inserted w.e.f. 1st April, 2013]

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

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

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

Memorandum Explaining Finance Bill 2012

I. Under the existing provisions of section 35AD of the Income-tax Act, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of the whole of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred. Currently, the following "specified businesses" are eligible for availing the investment-linked deduction under section 35AD(8)(c). ***It is proposed to include three new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD, namely***:-

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

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

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

The date of commencement of operations for availing investment linked deduction in respect of the three new specified businesses shall be on or after 1st April, 2012. These amendments will apply in relation to the assessment year 2013-14 and subsequent assessment years.

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

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

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

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

(iv) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and

(v) production of fertilizer in India.

This amendment will apply in relation to the assessment year 2013-14 and subsequent assessment years.

III. A suitable clarification is provided so that a hotel owner continues to be eligible for the investment linked deduction u/s 35AD if he, while continuing to own the hotel, transfers the operation of such hotel to another person. Accordingly, a new sub-section (1A) is shall be proposed to inserted to provide that where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel. This amendment will apply in relation to the assessment year 2011-12 and subsequent assessment years.

Brief of Amendment

Three new businesses are being added to the list of specified business–

(a) Setting up and operating an inland container depot or a container freight station
(b) Bee-keeping and production of honey and beeswax
(c) Setting up and operating a warehousing facility for storage of sugar.

Date of commencement of operations and business of aforesaid three businesses should be on or after 01.04.2012.

Section 35AD (6)

Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel.

Clause 80

Exemption for Senior Citizens from payment of advance tax

Old Provision

"Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income"

New Provision

(1) *Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following*

that financial year, such income being hereafter in this Chapter referred to as "current income"

[Newly Inserted w.e.f. 1st April, 2012]

(2) The provisions of sub-section (1) shall not apply to an individual resident in India, who—

(a) does not have any income chargeable under the head "Profits and gains of business or profession"; and

(b) is of the age of sixty years or more at any time during the previous year

Notes to clause

The existing provisions contained in the aforesaid section 207 provide that the tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessees which would be chargeable to tax for the assessment year immediately following that financial year. It is proposed to amend the aforesaid section so as to insert a new sub-section (2) to provide that the provisions of the aforesaid section shall not apply to an individual resident in India who does not have any income chargeable under the head "Profits and gains of business or profession" and is of the age of sixty years or more at any time during the previous year. This amendment will take effect retrospectively from 1st April, 2012.

Memorandum Enplaning Finance Bill 2012

Under the existing provisions of Income-tax Act, every assessee is required to pay advance tax if the tax liability for the previous year exceeds ten thousand rupees. In case of senior citizens who have passive income of the nature of interest, rent, etc., the requirement of payment of advance tax results in raising compliance burden. In order to reduce the compliance burden of such senior citizens, it is proposed that a resident senior citizen, not having any income chargeable under the head "Profits and gains of business or profession", shall not be liable to pay advance tax and such senior citizen shall be allowed to discharge his tax liability (other than TDS) by payment of self assessment tax. This amendment will take effect from the 1st April, 2012. Accordingly, the aforesaid senior citizen would not be required to pay advance tax for the financial year 2012-13 and subsequent financial years.

Brief of Amendment

By virtue of insertion of sub section 2 it has been provided that a senior citizen (being of the age of 60 year or more at any time during the previous year) and not having income chargeable under the head PGBP shall not be liable to pay advance tax with retrospectively from 01.o4.2012 i.e Assessment year 2012-13.

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

Section 54GB- Capital gain on transfer of residential property not to be charged in certain cases. **[Newly inserted w.e.f. 1st April, 2013]**

"(1) Where,—

(i) the capital gain arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as theassessee); and

(ii) the assessee, before the due date of furnishing of return of income under sub-section (1) of section 139, utilises the net consideration for subscription in the equity shares of an eligible company (herein referred to as the company); and

(iii) the company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(a) if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or

(b) if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year.

(2) The amount of the net consideration, which has been received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company, before the said due date in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.

(3) For the purposes of sub-section (1), the amount, if any, already utilised by the company for the purchase of the new asset together with the amount deposited under sub-section (2) shall be deemed to be the cost of the new asset:

Provided that if the amount so deposited is not utilised, wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

(a) the amount of capital gain arising from the transfer of the residential property not charged under section 45 on the basis of the cost of the new asset as provided in sub-section (1), exceeds—

(b) the amount that would not have been so charged had the amount actually utilised for the purchase of the new asset within the period specified in sub-section (1) been the cost of

the new asset, shall be charged under section 45 as income of the assessee for the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires; and (ii) the company shall be entitled to withdraw such amount in accordance with the scheme.

(4) If the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be deemed to be the income of the assessee chargeable under the head "capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

(5) The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017.

(6) For the purposes of this section,—

(a) "eligible assessee" means an individual or a Hindu undivided family;

(b) "eligible company" means a company which fulfils the following conditions, namely:—

i. it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;

ii. it is engaged in the business of manufacture of an article or a thing;

iii. it is a company in which the assessee has more than fifty per cent. share capital or more than fifty per cent. voting rights after the subscription in shares by the assessee; and

iv. it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

(c) "net consideration" shall have the meaning assigned to it in the Explanation to section 54F;

(d) "new asset" means new plant and machinery but does not include—

(i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;

(ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle; or

(v) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year."

Notes to clauses

A new section 54GB shall be inserted relating to capital gain on transfer of residential property not to be charged in certain cases. The proposed new section 54GB seeks to provide that where the capital gain arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as the assessee) and such assessee before the due date of furnishing of return of income under sub-section (1) of

section 139 utilises the net consideration for subscription in the equity shares of an eligible company (herein referred to as the company) and such company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say, if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 as the income of the previous year or if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year. It is further proposed to provide that the amount of the net consideration, which has been received by the company for issue of share to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the said due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company, before the due date of furnishing, in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made. It is also proposed to provide that for the purposes of sub-section (1), the amount, if any, already utilised by the company for the purchase of the new asset together with the amount deposited under sub-section (2) shall be deemed to be the cost of the new asset. However, if the amount so deposited is not utilised, wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then, the amount by which the amount of capital gain arising from the transfer of the residential property not charged under section 45 on the basis of the cost of the new asset, exceeds the amount that would not have been so charged had the amount actually utilisesd for the purchase of the new asset within the period specified in sub-section (1), been the cost of the new asset, shall be charged under section 45 as income of the assessee of the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires and the company shall be entitled to withdraw such amount in accordance with the scheme. It is also proposed to provide that if the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be deemed to be the income of the assessee chargeable under the head “capital gains” of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be. It is also proposed to provide that the provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017. It is also proposed to define the expressions “eligible assessee”, “eligible company”, “net consideration” and “new asset” for the purpose of this section. These amendments will take effect from the 1st day of April, 2013 and will, accordingly, apply in relation to the assessment years 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

The Government had announced National Manufacturing Policy (NMP) in 2011, one of the goals of which is to incentivize investment in the Small and Medium Enterprises (SME) in the

manufacturing sector. It is proposed to insert a new section 546B so as to provide rollover relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery. This relief would be subject to the conditions that-

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

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

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

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

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

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

Brief of Amendment

Exemption of Long term Capital Gain Tax to an Individual or HUF on transfer of residential property (a house or a plot of land) on or before 31st March, 2017 upon reinvestment of sale consideration before the due date of furnishing the return of income as specified section 139 (1) in the Equity of ELIGIBLE BUSINESS (a new start up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant & machinery as specified in the section in section in which in hold more than 50% share capital or voting rights) and The share cannot be transferred within a period of 5 years . The relief is available for any transfer of property made on or before 31.03.2017.

Issues required consideration

- *It proposed exemption is available for the new SME units only and the same is not available in case of where the assessee made investment in existing SME Company which is not justified. It would discourage the expansion plans of existing SME units.*
- *LLP are not eligible for the proposed exemption even after satisfying the condition of SME enterprises. Thus this will discourage the basic idea of promoting the LLPs as a new form of business in India.*
- *There is no clarification is provided that whether the net consideration after deduction of tax at source @1% is required to be invested or the whole consideration is eligible for exemption.*

Clause 29

Extension of sunset date for tax holiday for power sector

Amendment to Section 80-IA- Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

Old Provisions

A. Section 80-IA(4)(iv)

This section applies to—

"an [undertaking] which,—

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2012;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2012;

***Provided** that the deduction under this section to an [undertaking] under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;*

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

Explanation.—For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004."

New Provisions **[Amended w.e.f. 1st April, 2013]**

This section applies to—

"an [undertaking] which,—

*(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the **31st day of March, 2013**;*

*(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the **31st day of March, 2013**;*

***Provided** that the deduction under this section to an [undertaking] under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;*

*(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the **31st day of March, 2013**.*

Explanation.—For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004."

B. Section 80-IA(8)

Old Provisions

"Where any goods [or services] held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods [or services] held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods [or services] as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods [82][or services] as on that date :

***Provided** that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.*

Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market."

New Provisions **[Amended w.e.f. 1st April, 2013]**

"Where any goods [or services] held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods [or services] held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods [or services] as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods [82][or services] as on that date :

***Provided** that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.*

'Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means—

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.'

C. Section 80-IA(10)

Old Provisions

"Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom."

New Provisions **[Amended w.e.f. 1st April, 2013]**

"Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom."

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F."

Notes to clause

The existing provisions contained in clause (iv) of sub-section (4) of the aforesaid section 80-IA provide that, a deduction shall be allowed to an undertaking which,- (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2012; (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2012; (c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2012. It is proposed to amend the aforesaid clause so as to extend the time limit from 31st March, 2012 to 31st March, 2013. The existing *Explanation* to sub-section (8) of the aforesaid section 80-IA provides for the definition of "market value" in relation to goods or services. It is proposed to substitute the aforesaid *Explanation* so as to include the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is "specified domestic transaction" referred to in section 92BA within the definition of "market value" in relation to any goods or services. The existing provisions of sub-section (10) of the aforesaid section provide that where it appears to the Assessing Officer, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom. It is proposed to insert a new proviso to the aforesaid sub-section so as to provide that

in case the arrangement mentioned in the sub-section involves a specified domestic transaction referred to in section 92BA, and the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction from profits and gains is allowed to an undertaking which,—

(a) is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2012;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2012;

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

It is proposed to amend the above provision to extend the terminal date for a further period of one year, i.e., up to 31st March, 2013. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

1. Terminal date extended for the further period of 1 year i.e. upto 31st March, 2013.

2. The existing *Explanation* to sub-section (8) of section 80-IA provides for the definition of "market value" in relation to goods or services.

3. The same is substituted so as to include the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is "specified domestic transaction" referred to in section 92BA within the definition of "market value" in relation to any goods or services.

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

Clause 25-Amendment to Section 80D- ***Explained in detail on page no 81***

Clause26
Amendment to Section 80DDB
Old Provisions
Explanation-For the purposes of this section

(iv) "senior citizen" means an individual resident in India who is of the age of sixty-five years or more at any time during the relevant previous year.]

New Provisions **[Amended w.e.f. 1st April, 2013]**
Explanation-For the purposes of this section

(iv) "senior citizen" means an individual resident in India who is of the age of ***sixty years*** *or more at any time during the relevant previous year.]*

Clause 76
Amendment in section 197A (1C)

Old Provision
"Notwithstanding anything contained in section 193 or section 194 or section 194A or section 194EE or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194 or section 194A or section 194EE or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil."

New provision **[Amended w.e.f. 1st July, 2012]**
"Notwithstanding anything contained in section 193 or section 194 or section 194A or section 194EE or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident in India, who is of the age of ***sixty years*** *or more at any time during the previous year, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194 or section 194A or section 194EE or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil."*

Notes to clause

Clause 26 of the Bill seeks to amend section 80DDB of the Income-tax Act relating to deduction in respect of medical treatment, etc. The existing provisions of the aforesaid section 80DDB provide for a deduction up to forty thousand rupees for medical treatment of a specified disease or ailment in case of an individual or his dependant. In case where the amount actually paid is in respect of any person who is a senior citizen, the deduction is allowed up to sixty thousand rupees in place of forty thousand rupees. Clause (iv) of the Explanation to the aforesaid section provides that a senior citizen means an individual resident in India who is of the age of sixty five years or more at any time during the relevant previous year. It is proposed to amend the aforesaid Explanation so as to reduce the age from sixty-five years to sixty years for qualifying as a senior citizen. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 76 of the Bill seeks to amend section 197A of the Income-tax Act relating to no deduction to be made in certain cases. The existing provisions in sub-section (1C) of section 197A provide that no deduction of tax shall be made under section 193 or section 194 or section 194A or section 194EE or section 194K in the case of an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year, if such individual furnishes to the person responsible for paying any income of the nature referred to in the aforesaid sections, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. It is proposed to amend the aforesaid sub-section so as to reduce the qualifying age for an individual resident from sixty-five years to sixty years. This amendment will take effect from 1st July, 2012

Memorandum to Finance Bill, 2012

The Finance Act, 2011 amended the effective age of a senior citizen being an Indian resident from sixty-five years of age to sixty years for the purposes of application of various tax slabs and rates of tax under the Income Tax Act, 1961 for income earned during the financial year 2011-12 (assessment year 2012-13). There are certain other provisions of the Act in which the age for qualifying as a senior citizen is now proposed to be similarly amended.

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

(ii) Section 197A(1C) of the Income-tax Act provides that in respect of tax deduction at source under section 193 (interest on securities) or section 194 (dividends) or section 194A (interest other than interest on securities) or section 194EE (payments in respect of deposits under NSS etc.) or section 194K (income in respect of units), no deduction of tax shall be made in the case of a senior citizen, if such individual furnishes a declaration in the prescribed form (Form No. 15H) to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. In all of the above-mentioned provisions, i.e., under sections 80D, 80DDB and 197A the effective age for a "senior citizen" who can avail of the benefit is mentioned as sixty-five years or more at any time during the relevant previous year. In order to make the effective age of senior citizens uniform across all the provisions of the Income Tax Act, it is proposed to reduce the age for availing of the benefits by

a senior citizen under the sections 80D, 80DDB and 197A from sixty-five years to sixty years. The amendments to section 80D and section 80DDB will take effective from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years. The amendment to section 197A will take effect from 1st July, 2012.

Brief of Amendment

The age of Senior Citizen is specified in sections 88D & 80DDB is reduced to 60 years in place of 65 years.
The age of Senior Citizen is specified in section 197A is reduced to 60 years in place of 65 years

Issues required consideration

The assessee who is above the age of 60 years but below the age of 65 years still required the file form 15G upto quarter ending June, 2012 as the amendment u/s 197A is proposed to have an effect from 1st July, 2012.

Clause 25

Deduction for expenditure on preventive health check-up

Amendment to Section 80D

A. Section 80D(1)

Old Provisions

"In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode, other than cash, in the previous year out of his income chargeable to tax."

New Provisions **[Amendment w.e.f. 1st April, 2013]**

*"In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode, **as specified in sub-section (2B)**, in the previous year out of his income chargeable to tax."*

B. Section 80D(2)

Old Provisions

"Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family [or any contribution made to the Central Government Health Scheme] as does not exceed in the aggregate fifteen thousand rupees; and

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee as does not exceed in the aggregate fifteen thousand rupees.

Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee."

New Provisions **[Amendment w.e.f. 1st April, 2013]**

"Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family [or any contribution made to the Central Government Health ***Scheme or any payment made on account of preventive health check-up of the assessee or his family****] as does not exceed in the aggregate fifteen thousand rupees; and*

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee ***or any payment made on account of preventive health check-up of the parent or parents of the assessee*** *as does not exceed in the aggregate fifteen thousand rupees.*

Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee."

C. Section 80D(2A)

New Provisions **[Newly Inserted w.e.f. 1st April, 2013]**

"Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees."

Section 80D(2B)

New Provisions **[Newly Inserted w.e.f. 1st April, 2013]**

"For the purposes of deduction under sub-section (1), payment shall be made by—

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases not falling under clause (i)."

D. Section 80D(4)

Old Provisions

"Where the sum specified in clause (a) or clause (b) of sub-section (2) or in sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and

who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted.

Explanation.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of sixty-five years or more at any time during the relevant previous year."

New Provisions

"Where the sum specified in clause (a) or clause (b) of sub-section (2) or in sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted.

Explanation.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of ***sixty years*** *or more at any time during the relevant previous year."*

Notes to clauses

The existing provisions of section 80D provide for deduction up to fifteen thousand rupees to an assessee, being an individual or a Hindu undivided family, who makes payment of the specified sum by any mode, other than cash, to effect or keep in force an insurance on–

(a) the health of the assessee or on the health of the wife or husband, or dependant children of the assessee where the assessee is an individual;

(b) the health of any member of the family where the assessee is a Hindu undivided family. Further, a deduction up to fifteen thousand rupees is also allowed to keep in force an insurance on the health of parents. It is proposed to amend the aforesaid section so as to allow for a deduction in respect of any payment made by an assessee on account of preventive health check-up of self, spouse, dependent children or parent during the previous year up to a limit of five thousand rupees within the existing limits prescribed in the section. The existing provisions allow a higher deduction up to twenty thousand rupees in the case of senior citizen. It is proposed to amend the Explanation to sub-section (4) of the aforesaid section so as to reduce the age for defining a senior citizen from sixty-five years to sixty years for the purposes of the said deduction. It is also proposed that for the purposes of the aforesaid deduction, payment shall be made by —

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Under the existing provisions contained in section 80D of the Income-tax Act, a deduction is allowed in respect of premium paid towards a health insurance policy for insurance of self, spouse and dependent children or any contribution made to the Central Government Health Scheme, up to a maximum of Rs.15,000 in aggregate. A further deduction of Rs.15,000 is also allowed for buying a health insurance policy in respect of parents. It is proposed to amend this section to also include any payment made by an assessee on account of preventive health check-up of self, spouse, dependent children or parents(s) during the previous year as eligible for deduction within the overall limits prescribed in the section. However, the proposed deduction

on account of expenditure on preventive health check-up (for self, spouse, dependant children and parents) shall not exceed in the aggregate Rs.5,000. It is further proposed to provide that for the purpose of the deduction under section 80D, payment can be made – (i) by any mode, including cash, in respect of any sum paid on account of preventive health check-up and (ii) by any mode other than cash, in all other cases. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

The rebate of Rs. 5000/- for expenditure on preventive health checkup of self, spouse, dependent children or parents. Payment by any other mode other than cash is now eligible for paying health insurance premium. The overall threshold limit remains the same i.e Rs 15000 for others & Rs 20000 for senior citizens.

Clause 30

Deduction in respect of interest on deposits in savings accounts

Amendment to Chapter VI-A - Deduction in respect of interest on deposits in savings account **[Newly Inserted w.e.f. 1st April, 2013]**

In Chapter VI-A of the Income-tax Act, Part CA shall be inserted

"Deductions in respect of other incomes

80TTA.(1) Where the gross total income of an assessee, being an individual or a Hindu undivided family, includes any income by way of interest on deposits (not being time deposits) in a savings account with—

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

(b) 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

(c) a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee a deduction as specified hereunder, namely:—

(i) in a case where the amount of such income does not exceed in the aggregate ten thousand rupees, the whole of such amount; and

(ii) in any other case, ten thousand rupees.

(2) Where the income referred to in this section is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

Explanation.—For the purposes of this section, "time deposits" means the deposits repayable on expiry of fixed periods."

Memorandum to Finance Bill, 2012

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

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

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

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

However, where the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

Deduction of interest on Saving Account with banking companies/Co-operative Societies engaged in banking business includes Co-operative Land Mortgage or development bank/post office to an individual or HUF upto an amount of Rs. 10,000/-.

Issues required consideration

The proposed amendment provides the deduction of rupees ten thousand in the hands of an individual or HUF in respect of the interest earn on saving bank account, post office & co-operative society carrying the banking business. But it does not provide the deduction to the said assessees in case they received interest on time deposits.

Clause 72

Threshold for TDS on compensation or consideration for compulsory acquisition

Amendment to the provision of Section 194LA

Old Provision

"Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees."

New Provision **[Amended w.e.f. 1st July, 2012]**

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed ***two hundred thousand rupees.***

Memorandum Explaining Finance Bill 2012

Under the existing provisions of the section 194LA of the Income-tax Act, a person responsible for paying any compensation or consideration for compulsory acquisition of immovable property (other than agricultural land) is required to deduct tax @ of 10% in case the consideration exceeds 1 lakh rupees. In order to reduce the compliance burden of small assessees, it is proposed to increase the aforesaid threshold limit from one lakh rupees to two lakh rupees. This amendment will take effect from 1st July, 2012.

Brief of Amendment

The limit raised to Rs. 2,00,000/- from Rs. 1,00,000 for non deduction of tax u/s 194LA.

Clause 69

Threshold for TDS on payment of interest on debentures

Amendment to Clause (v) of proviso of section 193

Old Provision

"*any interest payable to an individual, who is resident in India, on debentures issued by a company in which the public are substantially interested, being debentures listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder, if—*

(a) the interest is paid by the company by an account payee cheque; and

(b) the amount of such interest or, as the case may be, the aggregate of the amounts of such interest paid or likely to be paid during the financial year by the company to such individual does not exceed two thousand and five hundred rupees"

New Provision **[Amended w.e.f. 1st July, 2012]**

"any interest payable to an individual or a Hindu undivided family, who is resident in India, on any debenture issued by a company in which the public are substantially interested, if—

(a) the amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to such individual or Hindu undivided family does not exceed five thousand rupees; and

(b) such interest is paid by the company by an account payee cheque."

Memorandum to Finance Bill, 2012

Under the existing provisions of section 193, a person responsible for paying interest to a resident individual on listed debentures of a company, in which the public are substantially interested, is not required to deduct tax on the amount of interest payable if the aggregate amount of interest paid during a financial year does not exceed Rs.2,500/- and the interest is paid by account payee cheque. However, in the case of unlisted debentures of a company, no threshold limit is specified for deduction of tax on payment of interest. In order to reduce the compliance burden on small assessees and companies, it is proposed that no deduction of tax should be made from payment of interest on any debenture, (whether listed or not) issued by a company, in which the public are substantially interested, to a resident individual or Hindu undivided family, if the aggregate amount of interest on such debenture paid during the financial year **does not exceed Rs.5,000** and the payment is made by account payee cheque. This amendment will take effect from 1st July, 2012.

Brief of Amendment

The present limit of Rs. 2500 has been announced to Rs. 5000 and this limit is also applied to the unlisted debentures. Provided the interest should be paid by Account payee cheque. The new provisions are also makes eligible HUF beside individuals.

Rationalization of Tax Deduction at Source and Tax Collection at Source Provisions

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

Tax Collection at Source (TCS) Provisions

Clause 11

Amendment to Section 40- Amounts not deductible.

New Provisions **[Newly inserted w.e.f. 1st April, 2013]**

After the proviso and before the Explanation, **the following proviso shall be inserted-**

"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso."

Notes to clauses

Clause 11 of the Bill seeks to amend section 40 of the Income-tax Act relating to amounts not deductible. It is proposed to insert a new proviso to sub-clause (ia) of clause (a) to the aforesaid section 40 so as to provide that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

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

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

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

of furnishing of return of income by the resident payee. These beneficial provisions are proposed to be applicable only in the case of resident payee. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Deemed date of payment of tax by the resident payee

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

However, section 191 of the Act provides that a person shall be deemed to be assessee in default in respect of non/short deduction of tax only in cases where the payee has also failed to pay the tax directly. Therefore, the deductor cannot be treated as assessee in default in respect of non/short deduction of tax if the payee has discharged his tax liability. The payer is liable to pay interest under section 201(1A) on the amount of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly. As there is no one-to-one correlation between the tax to be deducted by the payer and the tax paid by the payee, there is lack of clarity as to when it can be said that payer has paid the taxes directly. Also, there is no clarity on the issue of the cut-off date, i.e. the date on which it can be said that the payee has discharged his tax liability.

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

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

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

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

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

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

It is also proposed to provide that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee. Amendments on similar lines are also proposed to be made in the provisions of section 206C relating to TCS for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee. These amendments will take effect from 1st July, 2012.

Clause 67

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

a) clause (c) of sub-section (1) of section 154 shall be newly inserted w.e.f. 1st July, 2012.

"Amend any intimation under sub-section (1) of section 200A."

b) sub-section (2) of section 154

Old Provision

Shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

New Provision **[Amended w.e.f. 1st July, 2012]**

Shall make such amendment for rectifying any such mistake which has been brought to its notice ***by the assessee or by the deductor****, and where the authority concerned is Commissioner (Appeals), by the Assessing Officer also.*

c) Sub-section (3) of section 154

Old Provision

An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

New Provision **[Amended w.e.f. 1st July, 2012]**

An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability ***of the assessee or the deductor****, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.*

d) Sub-section (5) of section 154

Old Provision

Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund which may be due to such assessee.

New Provision **[Amended w.e.f. 1st July, 2012]**

Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor, the Assessing Officer shall make any refund which may be due to such assessee or the deductor.

e) Sub-section (6) of section 154

Old Provision

"Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Where any such amendment has the effect of enhancing the assessment or reducing a refund ***already made or otherwise increasing the liability of the assessee or the deductor, the Assessing Officer shall serve on the assessee or the deductor, as the case may be*** *a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly."*

f) Sub-section (8) of section 154

Old Provision

"Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

(a) making the amendment; or

(b) refusing to allow the claim."

New provision **[Amended w.e.f. 1st July, 2012]**

"Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made ***by the assessee or by the Deductor*** *on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—*

(a) making the amendment; or

(b) refusing to allow the claim."

Notes to clauses

It is proposed to insert a new clause (c) in sub-section (1) of the aforesaid section so as to provide that an income-tax authority may amend any intimation issued under sub-section (1) of section 200A. It is further proposed to amend sub-section (2) of the aforesaid section so as to substitute the words "by the assessee" with the words "by the assessee or by the deductor". It is also proposed to amend sub-section (3) of the aforesaid section so as to substitute the words "the assessee", wherever they occur, with the words "the assessee or the deductor".

The existing provisions of sub-section (5) of the aforesaid section provide that subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment,

the Assessing Officer shall make any refund which may be due to such assessee. It is proposed to substitute the aforesaid sub-section so as to provide that where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor, the Assessing Officer shall make any refund which may be due to such assessee or the deductor. It is further proposed to amend sub-section (6) of the aforesaid section so as to provide that where any amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor, the Assessing Officer shall serve on the assessee or the deductor, as the case may be, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly. It is also proposed to amend sub-section (8) of the aforesaid section so as to substitute the words "by the assessee" with the words "by the assessee or the deductor." These amendments will take effect from 1st July, 2012.

Memorandum to Finance Bill, 2012

Intimation after processing of TDS statement

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

i. subject to rectification under section 154;
ii. appealable under section 246A; and
iii. deemed as notice of demand under section 156.

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

i. subject to rectification under section 154;
ii. appealable under section 246A; and
iii. deemed as notice of demand under section 156.

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

Clause 68

Proviso to section 156

Old Provision

Provided that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.

New Provision **[Amended w.e.f. 1st July, 2012]**

Provided that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section

Notes to clauses

The existing provisions contained in the proviso to the aforesaid section provide that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.

It is proposed to substitute the aforesaid proviso to section 156 so as to provide that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.

Clause 77

A. **Sub-section (1) of section 201**

i. Section201(1)

a) Before the Proviso to sub – section (1) of section 201

New provision **[Newly inserted w.e.f. 1st July, 2012]**

"Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—-

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

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

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed."

b) Proviso to sub-section (1) of section 201

Old Provision

Provided that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

New Provision **[Amended w.e.f. 1st July, 2012]**

Provided further *that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.*

ii. After subsection (1A) of Section 201

New provision **[Newly inserted w.e.f. 1st July, 2012]**

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

B. **Sub-section (3) of section 201**

Old Provision

Four years from the end of the financial year in which payment is made or credit is given, in any other case

New Provision **[Amended w.e.f. 1st April, 2010]**

***Six years** from the end of the financial year in which payment is made or credit is given, in any other case*

C. **Explanation after sub-section (4) of section 201**

New provision **[Newly inserted w.e.f. 1st July, 2012]**

Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288

Notes to Clauses

It is proposed to insert a new proviso in sub-section (1) of the aforesaid section 201 so as to provide that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident —

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

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

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed. It is further proposed to insert a new proviso to sub-section (1A) of the aforesaid section so as to provide that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident. This amendment will take effect from 1st July, 2012. The existing provisions of sub-section (3) of the aforesaid section 201

provide that no order shall be made under sub-section (1) of the said section deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of two years from the end of the financial year in a case in which the statement referred to in section 200 has been filed, and in any other case four years from the end of the financial year in which payment is made or credit is given. It is proposed to amend clause (ii) of the aforesaid sub-section so as to extend the period of four years to six years. This amendment will take effect retrospectively from 1st April, 2010. It is also proposed to insert an Explanation after sub-section (4) of the aforesaid section so as to define the expression "accountant". This amendment will take effect from 1st July, 2012.

Memorandum to Finance Bill, 2012

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

Under the existing provisions section 201 of the Income-tax Act, a person can be deemed to be an assessee in default, by an order, in respect of non-deduction/short deduction of tax. Such order can be passed within a period of four years from end of financial year in a case where no statement as referred to in section 200 has been filed. It is proposed to amend provision of section 201, so as to extend the time limit from four years to six years. This amendment will take effect retrospectively from 1st April, 2010.

Clause 78
Clause (iv) of section 204

New Provision **[Newly inserted w.e.f. 1st July, 2012]**

"In the case of credit, or as the case may be, payment of any sum chargeable under the provisions of this Act made by or on behalf of the Central Government or the Government of a State, the drawing and disbursing officer or any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum."

Notes to clauses

It is proposed to amend the aforesaid section 204 to insert a new clause so as to provide that in the case of credit, or as the case may be, payment of any sum chargeable under the provisions of this Act made by or on behalf of the Central Government or the Government of a State, the drawing and disbursing officer or any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum shall be the person responsible for paying within the meaning of definition under this section. This amendment will take effect from 1st July, 2012

Memorandum Explaining Finance Bill 2012

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

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

Government as to who is the person responsible for paying the sum to the payee. In order to provide clarity to the meaning of "person responsible for paying" in case of payment by Central Government or a State Government, it is proposed to provide that in the case of payment by Central Government or a State Government, the Drawing and Disbursing Officer or any other person (by whatever name called) responsible for making payment shall be the "person responsible for paying" within the meaning of section 204. This amendment will take effect from 1st July, 2012. .

Clause 79 – Provisions are explained in detail on page no 10-14.

Clause 86

Amendment after section 234D

Sub-heading and section 234E **[Newly Inserted w.e.f. 1st July, 2012]**

G.—Levy of fee in certain cases

(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.".

Notes to clause

It is proposed to insert a new section 243E so as to provide that— (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues. (2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be. (3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012. This amendment will take effect from 1st July, 2012

Clause 89 – ***Provisions are explained in detail on page no. 27***

Clause 98
Section 271H shall be newly inserted **[w.e.f. 1st July, 2012]**

(1) ***Without prejudice to the provisions of the Act, a person shall be liable to pay penalty, if, he–***

(a) fails to deliver or cause to be delivered a statement within the time prescribed in subsection (3) of section 200 or the proviso to sub-section (3) of section 206C; or

(b) furnishes incorrect information in the statement which is required to be delivered or cause to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in subsection(3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.".

Notes to clauses

It is proposed to insert a new section 271H so as to provide that *without prejudice to the provisions of the Act, a person shall be liable to pay penalty if he fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C; or furnishes incorrect information in the statement which is required to be delivered or cause to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C*. It is further proposed to provide that the penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but

which may extend to one lakh rupees. It is also proposed to provide that notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of one year from the time prescribed for delivering or causing to be delivered such statement. It is also proposed to provide that the provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012. This amendment will take effect from 1st July, 2012

Clause 99
Amendment in section 272A(2)

After proviso to Sub-section (2) of section 272A
New Provision **[Newly Inserted w.e.f. 1st July, 2012]**

Provided further that no penalty shall be levied under this section for the failure referred to in clause (k), if such failure relates to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.

Notes to Clauses

Section 272A of the Income-tax Act, relating to penalty for failure to answer questions, sign statments, furnish information, return or statement, allow inspections, etc. The existing provisions of sub-section (2) of the aforesaid section provide for levy of penalty if any person fails to comply with the requirements referred to in clauses (a) to (l) of the said sub-section. It is proposed to insert a new proviso to sub-section (2) of the aforesaid sub-section so as to provide that no penalty shall be levied under this section for the failure referred to in clause (k) if such failure relates to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source as the case may be, on or after the 1st day of July, 2012. This amendment will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

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

As per the existing provisions of the Income-tax Act, a deductor is required to furnish a periodical TDS statement (quarterly) containing the details of deduction of tax made during the quarter by the prescribed due date. A substantial number of the deductors are not furnishing their TDS statement within the prescribed due date. Delay in furnishing of TDS statement results in delay in granting of credit of TDS to the deductee and consequently results into delay in issue of refunds to the deductee tax payers or raising of infructuous demand against the deductee tax

payers. Further, in large number of cases, the deductors are not furnishing correct information like PAN of the deductee, amount of tax deducted, etc. in the TDS statement. Furnishing of correct information in respect of tax deduction is critical for processing of return of income furnished by the deductee because credit for TDS is granted to the deductee on the basis of information furnished by the deductor.

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

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

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

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

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

In order to discourage the deductors to furnish incorrect information in TDS statement, it is proposed to provide that a penalty ranging from Rs.10,000 to Rs.1,00,000 shall be levied for furnishing incorrect information in the TDS statement. Consequential amendment is proposed in section 273B so that no penalty shall be levied if the deductor proves that there was a reasonable cause for the failure.

Consequential amendment is also proposed in section 272A to provide that no penalty under this section shall be levied for late filing of TDS statement in respect of tax deducted on or after 1st July, 2012. Amendments on the similar lines for levy of fee and penalty for delay in furnishing of TCS statement and furnishing of incorrect information in the TCS statement are also proposed to be made.

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

Clause 100
Amendment in section 273B

Old Provision

"Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA,] section 271B, section 271BA, section 271BB,] section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A)] of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as

the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA,] section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, ***Section 271H*** *clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A)] of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."*

Notes to clauses

The existing provisions of the aforesaid section provide that no penalty shall be imposable on the person or the assessee, for failure referred to in sections mentioned therein if he proves that there was reasonable cause for the said failure. It is proposed to amend the aforesaid section so as to insert there the reference of newly inserted section 271H. The proposed amendment is consequential in nature. This amendment will take effect from 1st July, 2012.

Brief of Amendment

Clause 11

In order to rationalizing the provisions of disallowance on account of non-deduction of tax from the payments made to a resident deductee, it is proposed to amend section 40(a)(ia) to provide that *where a deductor makes payment of the nature specified in the said section to a resident deductee without deduction of tax and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the deductee, then, for the purpose of allowing deduction of such sum, it shall be deemed that the deductor has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident deductee. These beneficial provisions are proposed to be applicable only in the case of resident deductee*. These amendments will take effect from 1st April, 2013.

Issues required consideration

The assessees are facing a genuine hardship in cases where the tax is directly paid by the deductee but the payment is not allowed to them as an expense even there is no loss to the revenue department. The provisions of section 40(a)(ia) has introduced w.e.f. 1st April, 2005 but the proposed amendments u/s 40(a)(ia) and 201 have effect from the assessment year 2013-14 and 1st July, 2012 respectively. Thus the above amendments are not going to end legal disputes pending before the tax authorities.

Clause 67

Under the existing provisions, the intimation u/s 200A (i.e. processing of e-TDS statement) is not

(i) subject to rectification u/s 154,
(ii) appealable under section 246A.
(iii) Deemed to be notice of demand u/s 156.

The bill now proposes to amend provisions of section 154, 246A & 156 of the Act so as to provide the intimation under section 200A can be:-

i) Rectification u/s 154.
ii) Appealable u/s 246A and
iii) Deemed to be notice of demand u/s 156.

Clause 68

Enlarging the scope by insertion of the words deductor and or sub section (1) of section 200A. Meaning thereby intimation u/s 200A (1) will also be deemed to be notice of demand for the purpose of this section.

Clause 77

The Deductor will not to be treated as assessee in Default provided the resident payee has furnished his return u/s 139 and has taken into account such amount for computing income in such Return of Income and has paid the Tax Due on the income declared by him in such return of income and furnishes a certificate to this effect, duly certified by a CA, in the prescribed form. This form is yet to be notified. However, the interest for not deducting tax would be payable from the date on which such tax was collectible till the date of furnishing of return of income by the resident payee. The limit of passing orders under sub section (1) increased from 2 years to 6 years (retrospective amendment w.e.f 1-04-2010).

Clause 78

The drawing and disbursing or any other person by whatever name called, responsible for crediting, or as case may be, paying such sum (in case of payment of any sum chargeable under the provision of this Act made by Central or State Govt.) will be treated as “person responsible for paying.

Clause 79

In order to provide effective deterrence against delay in furnishing of TDS statement, it is proposed to levy a fee of Rs 200 from the due date of furnishing of TDS statements to the date of actual deposit. This is done to avoid any delay of furnishing of TDS return & consequently fasten the process of TDS credit and thereby return processing.

Clause 98

Failure to deliver statement within time prescribed u/s 200 (3) or to the proviso to sub-section (3) of section 206C may liable to penalty which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-. No penalty if payment of tax deducted or collected along with fee or

interest and delivering the statement aforesaid before the expiry of 1 year from the time prescribed for delivering the such statement.

Issues required consideration

The amendment will proposed a penalty range instead of providing some reasonable bases like amount involved in default or period for which default is continued etc. It will lead to raise the new controversy regarding the computation of amount of penalty in different cases as a discretionary power is granted to the tax authorities.

Clause 99

No penalty under clause a of section 272A (2) if the statement relates to the period commencing on or after 01.07.2012 Consequential to amendment of newly inserted section 271H.

Clause 100

No penalty shall be imposed u/s 271H if the person proves that there was reasonable cause for the failure

Rationalisation Of International Taxation Provisions

Clauses 3, 4, 62, 75, 113

Income deemed to accrue or arise in India

Clause 3
Amendment to Section 2(14)
Old Provisions

"capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i)……
(ii)……..
(iii)……..
(iv)……..
(v)……..
(vi)……..

New Provisions **[Explanation to Section 2(14), Newly inserted w.e.f.1st April, 1962]**

"capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i)……
(ii)……..
(iii)……..
(iv)……..
(v)……..
(vi)……..

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever."

Section 2(47)

Explanation 2 to Clause 47 of Section 2, newly inserted w.e.f.1st April, 1962

After Explanation 1 (as numbered now) the following Explanation 2 shall be inserted.

***"For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered* into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India."**

Notes to clauses

Clause 3 of the Bill seeks to amend section 2 of the Income-tax Act relating to definitions.

- It is proposed to insert a new Explanation in clause (14) of the aforesaid section 2 so as to clarify the expression "property".

- It is also proposed to insert a new Explanation in clause (47) of the aforesaid section so as to clarify the expression "transfer". This amendment will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to the assessment year 1962-1963 and subsequent assessment years.

Memorandum Explaining Finance Bill 2012

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

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

Clause 4

a. Section 9(1)(i) **[Explanation 4 & 5 newly inserted, w.e.f. 1st April, 1962]**

New Provisions

After *Explanation* 3, the following *Explanation*s shall be inserted.

'Explanation 4.—For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.'.

b. Section 9(1)(vi)

New Provisions **[Explanation 4, 5 & 6 newly inserted w.e.f. 1st June, 1976]**

After *Explanation* 3, the following *Explanation*s shall be inserted.

'*Explanation* 4.—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

***Explanation* 5.—For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—**

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

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

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

***Explanation* 6.—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret."**

Notes to clauses

Clause 4 of the Bill seeks to amend section 9 of the Income-tax Act relating to income deemed to accrue or arise in India. The existing provisions of clause (i) of sub-section (1) of the aforesaid section 9 provide that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

- It is proposed to insert a new Explanation 4 in the aforesaid clause so as to clarify the expression "through" used in the said sub-section. It is further proposed to insert a new Explanation 5 in the aforesaid clause (i) so as to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. These amendments will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to the assessment year 1962-1963 and subsequent assessment years.
- It is also proposed to insert a new Explanation 4 in clause (vi) of the aforesaid sub-section so as to clarify that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium

through which such right is transferred. It is also proposed to insert a new Explanation 5 in the aforesaid clause so as to clarify that the royalty includes and has always included consideration in respect of any right, property or information, whether or not —(a) the possession or control of such right, property or information is with the payer;(b) such right, property or information is used directly by the payer;(c) the location of such right, property or information is in India. It is also proposed to insert a new Explanation 6 in the aforesaid clause so as to clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret. These amendments will take effect retrospectively from 1st day of June, 1976 and will, accordingly, apply in relation to the assessment year 1977-1978 and subsequent assessment years

Memorandum Explaining Finance Bill 2012

I. It is proposed to amend Section 9 of the Income Tax Act in the following manner:-

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

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

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

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

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

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

a) the possession or control of such right, property or information is with the payer;
b) such right, property or information is used directly by the payer;
c) the location of such right, property or information is in India.

(iii) To amend section 9(1)(vi) to clarify that the term "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret. These amendments will take effect retrospectively from 1st June, 1976 and will accordingly apply in relation to the assessment year 1977-78 and subsequent assessment years.

Clause62 – Provisions are explained in detailed on page no. 23

Clause 75

a) Amendment to the provision of Section 195(1)

Old Provision

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Explanation.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

New Provision **[Amended w.e.f. 1st April, 2012]**

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, ***any interest (not being interest referred to in section 194LB or section 194LC)*** *or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque*

or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force

New Explanation 2 shall be inserted **[w.e.f. 1st April, 1962]**

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

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

(ii) any other presence in any manner whatsoever in India."

b) <u>New Sub-section(7) Section 195 shall be inserted</u> **[w.e.f. 1st July, 2012]**

"Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.".

Notes to clauses

<u>Clause 75</u>*-It is proposed to provide that sub-section (1) of the aforesaid section 195 providing the rate of deduction in respect of interest payment shall not apply to interest referred to in sections 194LB and 194LC for which separate rate of deduction is provided. This amendment will take effect retrospectively from 1st April, 2012. It is further proposed to insert a new Explanation in sub-section (1) of the aforesaid section 195 so as to clarify that the obligation to comply with sub-section (1) and make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident whether or not the non-resident person has a residence or place of business or business connection in India or any other presence in any manner whatsoever in India. This amendment will take effect retrospectively from 1st April, 1962 and will, accordingly, apply in relation to assessment year 1962-1963 and subsequent assessment years.*

It is also proposed to insert a new sub-section (7) in the aforesaid section so as to provide that notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable. This amendment will take effect from 1st July, 2012.

Amend section 195(1) to clarify that obligation to comply with sub-section (1) and to make eduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-
(a) a residence or place of business or business connection in India; or
(b) any other presence in any manner whatsoever in India.
These amendments will take effect retrospectively from 1st April, 1962 and will accordingly apply in relation to the assessment year 1962-63 and subsequent assessment years.

It is also proposed to amend section 195 to provide that the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable. This amendment shall take effect from 1st July, 2012.

Clause113

Validation of demand, etc., under Income tax Act, 1961 in certain cases.
Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any authority, all notices sent or purporting to have been sent, or taxes levied, demanded, assessed, imposed, collected or recovered or purporting to have been levied, demanded, assessed, imposed collected or recovered under the provisions of Income-tax Act, 1961, in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of an agreement, or otherwise, outside India, shall be deemed to have been validly made, and the notice, levy, demand, assessment, imposition, collection or recovery of tax shall be valid and shall be deemed always to have been valid and shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India, and accordingly, any tax levied, demanded, assessed, imposed or deposited before the commencement of this Act and chargeable for a period prior to such commencement but not collected or recovered before such commencement, may be collected or recovered and appropriated in accordance with the provisions of the Income-tax Act, 1961 as amended by this Act, and the rules made thereunder and there shall be no liability or obligation to make any refund whatsoever.

Notes to clauses

Clause 113 of the Bill seeks to provide for validation of demand, etc., under Income-tax Act, 1961 in certain cases in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of transfer of a share or shares of a company registered or incorporated outside India or in consequence of any agreement or otherwise outside

India. This clause will take effect from the date on which this Bill receives the assent of the President.

Memorandum Explaining Finance Bill 2012

It is proposed to provide for validation of demands raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from transfer of a capital asset situate in India, in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of agreement or otherwise outside India. It is proposed to provide through this validation clause that any notice sent or purporting to have been sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause shall be deemed to have been validly made and such notice or levy of tax shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India. The validating clause shall operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority.
This validation shall take effect from coming into force of the Finance Act, 2012.

Brief of Amendment

Clause 3

- To be classified as capital asset under the act the precondition is that it has to be property of any kind held be the assessee. The amendment seems to overcome famous Judgment in so far it alluded to distinction between legal or contractual rights to constitute property. It is being proposed in the amendment that property shall include and shall always deemed to have been included *any rights in or in relation* to an Indian company including rights of management or control or any other rights whatsoever. Noteworthy is the Fact that such deeming will not happen when such rights are held in the company but also when such rights are held in relation to an Indian Company. The implication of the amendment will abound not only for non residents assesses but for resident assessee as well.

- The amendment is done under this section to increase the scope of Meaning of Transfer. It is being done to cover the transfer made by a company outside India.
  - The stated objective of the amendment through insertion of the explanation is to remove the doubt and hence clarificatory in nature.
  - The proposed explanation like the main definition is inclusive and thus wide enough to cover similar kinds and nature.
  - The main section which defines transfer to include certain types of transaction has not been altered.
  - What the explanation does is to widen the scope of transfer to include every mode and the manner of entering of the transaction in which the types of transactions mentioned in the main section will also get covered. The mode and manner of the transfer of the kinds mentioned in the main section is now being sought to be included are (i) directly

or indirectly (ii) absolutely or conditionally (iii) voluntarily or involuntarily (iv) by way of agreement or otherwise (v) it is characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

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

Clause 4

- Section 9(1)(i)-The amendment through explanation 4 aims at a major shift in tax policy moving from the concept of "look at" to "look through" in order to nullify effect of famous judgment of Honbl'e Supreme Court. Explanation 5 somewhat is conceptually lifted from DTC 2010 the introduction of which is still in limbo. Other than the far reaching implication of the intended insertions, what should be highly surprising is the introduction of the significant concepts through explanations, case of tail wagging the dog, leaving these open to fragility of judicial challenge. One may also note that use of through in clause (i) is in relation to all limbs namely (a) business connection in India (b) property in India (c) any asset or source of income in India or (d) transfer of capital situates in India. This artificial construction of the term through to mean and include "by means of" , " in consequence of" or "by reason of" is nothing but coining new taxonomies generally unknown in tax jurisprudence. It must also be underlined in the context of explanation 5 that the quantitative tests to determine "deriving, directly or indirectly its value substantially from the assets situates in India" is not provided unlike what is provided in DTC 2010.

- Section 9(1)(vi) - Three new explanations numbering 4, 5 and 6 are being inserted in this clause.

  Explanation 4, clarify that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

  Explanation 5, clarify that the royalty includes and has always included consideration in respect of any right, property or information, whether or not —(a) the possession or control of such right, property or information is with the payer;(b) such right, property or information is used directly by the payer;(c) the location of such right, property or information is in India.

  Explanation 6, clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

Clause 75

The first amendment aims to remove ambiguity cropped up by way of the ***concurring famous judgment of Honbl'e Supreme Court by incorporating reference Eli Lilly case*** with regard to applicability of section 195 to not residents especially in case their presence in India is altogether missing. Despite this, one must note that in the absence of machinery and procedural mechanism

to effectuate implementation of the section to non –residents, the larger difficulty still looms large

Consequential amendments are proposed in section 149, to extend time limit for issue of notice in case of a person who is treated as agent of a non-resident, the time limit presently prescribed of 2 years be extended to 6 years. It is also clarified that these provisions being of procedural nature shall also be applicable for any A.Y. beginning on or before the 1st April, 2012. These amendments will take effect from 1st July, 2012.

Clause 113

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

Clauses 43, 70

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

Amendment in section 115BBA- Tax on non-resident sportsmen or sports associations, Tax on non-resident sportsmen or sports associations.

Old Provisions

" (1) Where the total income of an assessee,—

(a) ……; or

(b) ……..

the income-tax payable by the assessee shall be the aggregate of—

(i) the amount of income-tax calculated on income referred to in clause (a) or clause (b) at the rate of ten per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred to in clause (a) or clause (b) :

Provided that no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in clause (a) or clause (b).

(2) It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if—

*(a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (a) or clause (b)**)** of sub-section (1); and*

(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income."

New Provisions

"(1) Where the total income of an assessee,—

(a) ……; or

(b) …….

[Newly inserted w.e.f 1st April 2013]

(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India,

the income-tax payable by the assessee shall be the aggregate of—

*(i) the amount of income-tax calculated on income referred to in clause (a) or clause (b) **or clause (c) at the rate of twenty per cent; and***

*(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred to in clause (a) or clause (b) **or clause (c) :***

*Provided that no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in clause (a) or clause (b) **or clause (c) .***

(2) It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if—

*(a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (a) or clause (b) **or clause (c)** of sub-section (1); and*

(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Amendment to Section 194E

Old Provision

"Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

New Provision **[Amended w.e.f. 1st July, 2012]**

*"Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) **or an entertainer** who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of **twenty per cent**."*

Notes to clause

Clause 43 of the Bill seeks to amend section 115BBA of the Income-tax Act relating to tax on non-resident sportsmen or sports associations. The existing provisions of section 115BBA provides for imposition of ten per cent. tax where the total income of an assessee being a sportsman (including an athlete) who is not citizen of India and is a non-resident, includes any income received or receivable by way of participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport or advertisement or contribution of articles relating to any game or sport in India in newspapers, magazines or journals or being a

non-resident sports association or institution includes any amount guaranteed to be paid or payable to such associations or institutions in relation to any games (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India, the income-tax payable by the assessee on such income shall be the aggregate of the amount of income tax calculated on income at the rate of ten per cent. It is proposed to insert a new clause (c) in sub-section (1) of the aforesaid section so as to include any income received or receivable by an entertainer, who is not a citizen of India and is a non-resident, from his performance in India and also to increase the tax on income referred to in this section from ten per cent. To twenty per cent. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 70 of the Bill seeks to amend section 194E of the Income-tax Act relating to payments to non-resident sportsmen or sports associations. The existing provisions in section 194E provide that where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) who is a non-citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent. It is proposed to amend the aforesaid section to make it also applicable to a non-resident entertainer who is a non-citizen and to increase the tax deduction at source on income referred to in the section from ten per cent. to twenty per cent. This amendment will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

Section 115BBA of the Income Tax Act provides a concessionary tax regime in the case of income of sports persons who are non-citizen and non-resident. The provision covers income received by way of participation in any game or sport, advertising or contribution of article in

any newspaper etc. The income of such sportsmen is taxed at the rate of 10% of the gross

Concessionary tax regime as applicable to non citizen and non resident sportsperson available under Section 115BBA of the Income Tax Act has been extended to a non-resident

receipts. The same regime is also available to a non-resident sports association or institution for guarantee money payable to such institution in relation to any game or sport played in India.

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

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

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

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

Brief of Amendment

Concessionary tax regime as applicable to non citizen and non resident sportsperson available under Section 115BBA of the Income Tax Act has been extended to a non-resident entertainer. In a view that similar tax regime i.e. taxation on basis of gross receipts rather than net income would simplify the process of taxation in the case of entertainer. Further the rate of tax applicable u/s 115BBA has been increased from 10% to 20%

Consequential amendment with respect to amendment in S. 115BBA is made in section 194E to provide for withholding of tax at the rate of 20% from income payable to non-resident, non-citizen, entertainer, or sportsmen or sports association or institution

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

Amendment to Section 90

A. New Sub-section (2A) of Section 90 shall be inserted. [w.e.f. 1st April, 2013]
Section 90(2A)

"(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him."

B. New Sub-section (4) of Section 90 shall be inserted. [w.e.f. 1st April, 2013]

"An assessee, not being a resident, to whom an agreement referred to in sub-section (1)applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory."

C. New Explanation 3 to Section 90 shall be inserted [w.e.f. 1st October, 2009]
"Explanation 3.—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force."

Clause 32

A. New Sub-section (2A) of Section 90A shall be inserted. [w.e.f. 1st April, 2013]
"Notwithstanding anything contained in sub-section (2), the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him."

B. New Sub-section (4) of Section 90A shall be inserted. [w.e.f. 1st April, 2013]

"An assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any specified territory outside India, is obtained by him from the Government of that specified territory."

C. <u>New Explanation 3 to Section 90A shall be inserted</u> [w.e.f. 1st June, 2006]

"Explanation 3.—For the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued undersub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force."

Notes to clauses

<u>Clause 31</u> of the Bill seeks to amend section 90 of the Income-tax Act relating to agreement with foreign countries or specified territories. The existing provisions of the aforesaid section 90 confers power upon the Central Government to enter into agreement with the Government of any specified territory outside India in addition to entering into agreement with foreign countries.

It is proposed to insert a new sub-section (2A) in the aforesaid section 90 so as to provide that the provisions of newly inserted Chapter X-A shall apply even if such provisions are not beneficial to the assessee. It is further proposed to insert a new sub-section (4) in the aforesaid section so as to provide that an assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing prescribed particulars, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-2014 and subsequent assessment years. The existing sub-section (3) of the aforesaid section provides that any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf. It is proposed to insert an Explanation after Explanation 2 in the aforesaid section so as to provide that for the removal of doubts, it is hereby declared that where any term is used in any agreement entered into under sub-section (1) and not defined in the agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and such notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.

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

<u>Clause 32</u> of the Bill seeks to amend section 90A of the Income-tax Act relating to adoption by Central Government of agreement between specified associations for double taxation relief. The existing provisions of the aforesaid section 90A provides that any specified association in India may enter into agreement with any specified association in a specified territory outside India and the Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement for grant of double taxation relief, for avoidance of double taxation or exchange of information for the prevention of evasion of avoidance of income-tax or for recovery of income-tax. It further provides that in relation to any assessee to whom the agreement referred to in the said section applies, the provisions of the Income-tax Act shall apply to the extent they are more beneficial to the assessee. It also provides that any term used but not defined in the income-tax Act or the said agreement shall have the same meaning as assigned to it in the notification issued by the Central Government, unless the context otherwise requires and it is not inconsistent with the provisions of the Income-tax Act or the said agreement. It is proposed to insert a new sub-section (2A) in the aforesaid section 90A

so as to provide that the provisions of newly inserted Chapter X-A shall apply even if such provisions are not beneficial to the assessee. It is further proposed to insert a new sub-section (4) in the aforesaid section so as to provide that an assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing prescribed particulars, of his being a resident in any specified territory outside India is obtained by him from the Government of that specified territory. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-2014 and subsequent assessment years. The existing sub-section (3) of the aforesaid section provides that any term used but not defined in the Income-tax Act or in the said agreement shall have the same meaning as assigned to it in the notification issued by the Central Government, unless the context otherwise requires and it is not inconsistent with the provisions of the Income-tax Act or the said agreement. It is proposed to insert an Explanation in the aforesaid section so as to provide that for the removal of doubts, it is hereby declared that any term used in any agreement, where such agreement is entered into under sub-section (1) and not defined under the agreement or the Act, but is assigned a meaning to it in the notification issued under sub-section (3) and the notification issued thereunder being in force, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force. This amendment will take effect retrospectively from 1st June, 2006.

Memorandum to Finance Bill, 2012

Section 90 of the Act, empowers the Central Government to enter into an agreement with foreign countries or specified territories for the purpose of granting reliefs particularly in respect of double taxation. Under this power, the Central Government has entered into various treaties commonly known as Double Taxation Avoidance Agreements (DTAA's). Section 90A of the Act similarly empowers the Central Government to adopt and implement an agreement between a specified association in India and any specified association in a specified territory outside India for granting relief from 'double taxation' etc. on the lines of section 90 of the Act.

Sub-section (3) of sections 90 and 90A of the Act empowered the Central Government to assign a meaning, through notification, to any term used in the Agreement, which was neither defined in the Act nor in the agreement. Since this assignment of meaning is in respect of a term used in a treaty entered into by the Government with a particular intent and objective as understood during the course of negotiations leading to formalization of treaty, the notification under section 90(3) gives a legal frame work for clarifying the intent, and the clarification should normally apply from the date when the agreement which has used such a term came into force.

Therefore, the legislative intent of sub-section (3) to section 90 and section 90A that whenever any term is assigned a meaning through a notification issued under Section 90(3) or section 90A(3), it shall have the effect of clarifying the term from the date of coming in force of the agreement in which such term is used, needs to be clarified. It is proposed to amend Section 90 of the Act to provide that any meaning assigned through notification to a term used in an agreement but not defined in the Act or agreement, shall be effective from the date of coming into force of the agreement. It is also proposed to make similar amendment in Section 90A of the Act.

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

Brief of Amendment

1. A new sub-section (2A) has been inserted in the section 90 so as to provide that the provisions of newly inserted Chapter X-A shall apply even if such provisions are not beneficial to the assessee.
2. A new sub-section (4) has been inserted in the aforesaid section so as to provide that an assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing prescribed particulars, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.
3. Section 90 of the Act has been amended to provide that any meaning assigned through notification to a term used in an agreement but not defined in the Act or agreement, shall be effective from the date of coming into force of the agreement. Similar amendment is also made u/s 90A.

The new amendment proposes a tax residency certificate (TRC) from the government of the intermediate company to certify that the global corporation has significant operations or value in that country, such government may be unable to issue the TRC. The amendment will henceforth curb the routing of income through Tax heavens like Mauritius & Singapore.

Issues required consideration

There is no clarification in the proposed provisions regarding the fulfillment of condition of transferring all assets to amalgamated company in case of cross holding. In such a case, on amalgamation the shares held by the companies in each other are cancelled out. Thus the said condition of transfer of all assets to the amalgamated company will not satisfy.

Clauses 31, 32

Tax Residence Certificate (TRC) for claiming relief under DTAA

Clauses 31, 32 of Finance Bill, 2012 – Explained as above.

Memorandum to Finance Bill, 2012

Section 90 of the Income Tax Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of –
(i) granting relief in respect of avoidance of double taxation,
(ii) exchange of information and
(iii) recovery of taxes.

Further section 90A of the Act empowers the Central Government to adopt any agreement between specified associations for relief of double taxation.
In exercise of this power, the Central Government has entered into various Double Taxation Avoidance Agreements (DTAA's) with different countries and have adopted agreements between specified associations for relief of double taxation . The scheme of interplay of treaty and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the treaty, is entitled to claim applicability of beneficial provisions either of treaty or of the domestic law. It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits. Therefore, it is proposed to amend Section 90 and Section 90A of the Act to make submission of Tax Residency Certificate containing prescribed particulars, as a necessary but not sufficient condition for availing benefits of the agreements referred to in these Sections. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.

Issues required consideration

The amendment has a retrospective effect from 1st April, 2002 due to which the following practical difficulties arising:

Tax Residency Certificate (TRC)

- ***In case where the tax residency certificate is not obtain or issued*** *- The newly inserted provisions essential to obtain a tax residency certificate (TRC) from the government of the intermediate company to certify that the global corporation has significant operations or value in that country, such government may be unable to issue the TRC in the prescribed form. The amendment will henceforth curb the routing of income through Tax heavens like Mauritius & Singapore.*
- ***Importance of tax residency certificate (TRC):-*** *The certificate is essential to claim the treaty benefits (Under Section 90/90A) but it will not be a 'sufficient' condition.*
- *Furnishing of TRC for every remittance will increase the time and compliance for regular business transactions.*

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

Amendment of Section 153

A. Section 153

I. Section 153(1)

i. First Proviso of sub- section (1) of section 153

Old Provision

"Provided that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2004 or any subsequent assessment year, the provisions of clause (a) shall have effect as if for the words "two years", the words "twenty-one months" had been substituted."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Provided that in case the assessment year in which the income was first assessable is the assessment year commencing ***on or after the 1st day of April, 2004 but before the 1st day of April, 2010****, the provisions of clause (a) shall have effect as if for the words "two years", the words "twenty-one months" had been substituted."*

ii. **Second Proviso of sub- section (1) of section 153**

Old Provision

"Provided further that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2005 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "thirty-three months" had been substituted."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Provided further that in case the assessment year in which the income was first assessable is the assessment year commencing ***on or after the 1st day of April, 2005 but before the 1st day of April, 2009*** *and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—*

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "thirty-three months" had been substituted."

iii. After second proviso of sub- section (1) of section 153 a new proviso shall be inserted [w.e.f. 1st July, 2012]

'***Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—***

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "three years" had been substituted."

II. Section 153(2)

a) Second Proviso of sub- section (2) of section 153

Old Provision

Provided further that where the notice under section 148 was served on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted

New Provision [Amended w.e.f. 1st July, 2012]

"Provided further that where the notice under section 148 was served on or after the 1st day of April, 2005 ***but before the 1st day of April, 2011****, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted*

b) Third Proviso of sub- section (2) of section 153

Old Provision

"Provided also that where the notice under section 148 was served on or after the 1st day of April, 2006 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007,the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted".

New Provision **[Amended w.e.f. 1st July, 2012]**

"Provided also that where the notice under section 148 was served on or after the 1st day of April, 2006 ***but before the 1st day of April, 2010*** *and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—*

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted."

c) A new proviso after third proviso of sub- section (2) of section 153 shall be inserted

[w.e.f. 1st July, 2012]

"Provided also that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted."

III. Section 153(2A)

a) Second Proviso of sub- section (2A) of section 153

Old Provision

Provided further that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted:]

New Provision **[Amended w.e.f. 1st July, 2012]**

Provided further that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2005 ***but before the 1st day of April, 2011****, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted:]*

b) Third Proviso of sub- section (2A) of section 153

Old Provision

Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or

section 264 is passed by the Commissioner on or after the 1st day of April, 2006, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted.

New Provision **[Amended w.e.f. 1st July, 2012]**

Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2006 ***but before the 1st day of April, 2010****, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA—*

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted.

c) A new Proviso after third proviso of sub- section (2A) of section 153 shall be inserted. **[w.e.f. 1st July, 2012]**

'Provided also that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2010, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA—

(i) is made before the 1st day of July, 2012, but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted."

B. Amendment to Explanation 1 of Section 153

a) Clause (viii) of Explanation 1 of section 153

Old provision

"the period commencing from the date on which a reference 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 so requested is received by the Commissioner or a period of six months, whichever is less,"

New Provision **[Amended w.e.f. 1st July, 2012]**

"the period commencing from the date on which a reference 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 so requested is received by the Commissioner or a period of **one year**, whichever is less."*

b) New clause (ix) of Explanation 1 of Section 153 shall be inserted.

[w.e.f. 1st April, 2013]

"the period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,"

Clause 65

Amendment to Section 153B

I. Section 153B(1)

(i) **Second Proviso of sub- section (1) of section 153B**

Old Provision

"Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year,—

(i) the provisions……..

(ii) *the period of limitation……..."*

New Provision **[Amended w.e.f. 1st July, 2012]**

*"Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing **on or after the 1st day of April, 2004 but before the 1st day of April, 2010**,—*

(i) the provisions ……..

(ii) *the period of limitation ……."*

(ii) **Amendment to third Proviso to Section 153B(1)**

Old Provision

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before ……..

(ii) is made on or after the 1st day of June, 2007……."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing ***on or after the 1st day of April, 2005 but before the 1st day of April, 2009*** *and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—*

(i) was made before …….

(ii) is made on or after the 1st day of June, 2007……."

(iii) **A new proviso after the third Proviso to Section 153B(1) shall be inserted.**

[w.e.f. 1st July, 2012]

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of July, 2012, but an order under sub-section (3) of section92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012, the provisions of clause (a) or clause (b) of this sub-section, shall, notwithstanding anything contained in clause (i) of the second proviso, have effect as if for the words "two years", the words "three years" had been substituted."

(iv) **Fourth Proviso to Section 153B(1)**

Old Provision

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA—

(i)……

(ii) ……."

New Provision **[Amended w.e.f. 1st July, 2012]**

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing ***on or after the 1st day of April, 2005 but before the 1st day of April, 2009*** *and during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA—*

(i) ……..

(ii) ……."

(v) **A new Proviso after fourth Proviso to Section 153B(1) shall be inserted.**

[w.e.f. 1st July, 2012]

"Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2009 or any subsequent financial year and during the course of proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of July, 2012 but an order under sub-section (3) of section 92CA has not been made before such date; or

(ii) is made on or after the 1st day of July, 2012, the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (ii) of the second proviso, be the period of thirty-six months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-four months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later."

II. Explanation to Section 153B

a) Clause (viii) of Explanation 1 to Section 153B

Old Provision

"The period commencing from the date on which a reference 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 so requested is received by the Commissioner or a period of six months, whichever is less"

New Provision **[Amended w.e.f. 1st July, 2012]**

"The period commencing from the date on which a reference 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 so requested is received by the Commissioner or a period of ***one year****, whichever is less"*

b) A new Clause (ix) of Explanation 1 to Section 153B shall be inserted.

[w.e.f. 1st April, 2013]

"The period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer."

Notes to Clause

Clause 63 of the Bill seeks to amend section 153 of the Income-tax Act relating to time limit for completion of assessments and reassessments. The existing provisions of the aforesaid section 153, *inter alia*, provide for time limit for completion of assessments and reassessments of total income by the Assessing Officer. It is proposed to amend the aforesaid section so as to revise the time limits wherever specified for completion of assessments and reassessments. The revised time limits shall be the time limits specified under the aforesaid section, as respectively increased by three months. The existing provisions contained in *Explanation* 1 to the aforesaid section 153 provide that certain periods specified therein are to be excluded while computing the period of limitation laid down in the said section for completion of assessments and reassessments. It is proposed to amend clause (viii) of the aforesaid

Explanation so as to extend the period specified therein from six months to one year. These amendments will take effect from 1st July, 2012.aforesaid section 153 so as to provide for exclusion of time period starting from receipt of reference by the Commissioner under sub-section (1) of newly inserted section 144BA and ending on date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of newly inserted section144BA is received by the Assessing Officer. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 65 of the Bill seeks to amend section 153B of the Income-tax Act relating to time limit for completion of assessment under section 153A. The existing provisions of sub-section (1) of section 153B provide for time limit for completion of assessment and reassessment by the Assessing Officer.

It is proposed to amend the aforesaid sub-section so as to revise the time limits specified in the aforesaid section for completion of assessments or reassessment in case of search or requisition. The revised time limits shall be the time limits wherever specified under the aforesaid section, as respectively increased by three months. The existing provisions contained in the Explanation to the aforesaid section 153B provide that certain periods specified therein are to be excluded while computing the period of limitation laid down in sub-section (1) of the said section for completion of assessments under section 153A. It is proposed to amend clause (viii) of the aforesaid Explanation so as to extend the period specified therein from six months to one year.

These amendments will take effect from 1st July, 2012. It is proposed to insert a new clause (ix) in the Explanation of the aforesaid section so as to provide for exclusion of time period starting from receipt of reference by the Commissioner under sub-section (1) of newly inserted section 144BA and ending on date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of newly inserted section 144BA is received by the Assessing Officer. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

During the course of assessment proceedings, in the case of an assessee having income or assets outside India, information is being sought from the tax authorities situated outside India, while completing an assessment. Under the provisions of section 90 or section 90A of the Income-tax Act, information can be exchanged with the foreign tax authorities for prevention of evasion or avoidance of income tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be. The time limit for completion of an assessment or reassessment has been provided in the provisions of section 153 and 153B of the

Income-tax Act. These provisions were amended vide Finance Act, 2011 to exclude the time taken in obtaining information (form foreign tax authorities) from the time prescribed for completion of assessment or reassessment in the case of an assessee. This time period to be excluded would start from the date on which the process of getting information is initiated by making a reference by the competent authority in India to the foreign tax authorities and end with the date on which information is received by the Commissioner. Currently, this period of exclusion is limited to six months. Foreign inquiries generally by nature take longer time for obtaining information. It is, therefore, proposed that this time limit of six months be extended to one year. These amendments will take effect from the 1st day of July, 2012.

Brief of Amendment

[w.e.f. 1st July, 2012]

It is proposed to amend the section so as to revise the time limits specified for completion of assessments or reassessment in case of search or requisition. Time limits for completion of

Proceedings	**Extended time period**
Assessment in non TP cases	24 months from end of FY(Earlier it was 21 months)
Assessment in TP cases	36 months from end of FY(Earlier it was 21+12 months)
Reassessment in non TP cases	12 months from end of FY in which notice is issued (Earlier it was 9 months)
Reassessment in TP cases	24 months from end of FY in which notice is issued. (Earlier it was 21 months)
Assessment pursuant to order of CIT(A) / ITAT / CIT (erroneous and prejudicial to interests of Revenue) in non TP cases	12 months from end of FY in which order is received. (Earlier it was 9 months)
Assessment pursuant to order of CIT(A) / ITAT / CIT (erroneous and prejudicial to interests of Revenue) in TP cases	24 months from end of FY in which order is received. (Earlier it was 21 months)

assessments and reassessments increased by 3 months.

For detailed explanation of Clause 89 refer page no. 27

Rationalisation of Transfer Pricing Provisions
Advance Pricing Agreement (APA)

New Section 92CC shall be inserted. **[w.e.f 1st July 2012]**

"(1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

(2) The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void ab initio,—

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(b) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act."

New Section 92CD shall be inserted. **[w.e.f 1st July 2012]**

"(1) Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

(2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

(5) Notwithstanding anything contained in section 153 or section 153B or section 144C,—

(a) the order of assessment, reassessment or recomputation of total income under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;

(b) the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

(6) For the purposes of this section,—

(i) "agreement" means an agreement referred to in sub-section (1) of section 92CC;

(ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where—

(a) an assessment or reassessment order has been passed; or

(b) no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section."

Notes to clause

The aforesaid new section 92CC is proposed to provide that the Board, with the approval of the Central Government, may enterinto an advance pricing agreement with any person, determining the arm's length price, specifying the manner in which arm's length price is to be determined, in relation to an international transaction, to be entered into by that person. It is further proposed to provide that the manner of determination of arm's length price referred to in sub-section (1) may include the methods, as referred to in sub-section (1) of section 92C or any other method, with

such adjustments or variations, as may be necessary or expedient so to do. It is also proposed to provide that the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, notwithstanding anything contained in section 92C or section 92CA, shall be determined in accordance with the advance pricing agreement so entered. It is also proposed to provide that the agreement referred to in sub-section (1) shall be valid for such period as specified in the agreement which in no case shall exceed five consecutive previous years. It is also proposed to provide that the advance pricing agreement entered into shall be binding on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into and on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction. However, the agreement shall not be binding if there is a change in law or facts having bearing on the agreement so entered. It is also proposed to provide that the Board may with the approval of the Central Government, by an order, declare an agreement to be void *ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. It is also proposed to provide that upon declaring the agreement void *ab initio* all the provisions of the Act shall apply to the person as if such agreement had never been entered into and notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of the order under sub-section (7) shall be excluded. However, where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly. It is also proposed to provide that the Board may, for the purposes of this section, prescribe a Scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement. It is also proposed to provide that where an application is made by a person for entering into an agreement referred to in sub-section (1), proceedings shall be deemed to be pending in the case of the person for purposes of the Act. The aforesaid new section 92CD is proposed to provide that notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement. It is further proposed to provide that save as otherwise provided in this section, all the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139. It is also proposed to provide that if the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1) and the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or re-compute the total income of the relevant assessment year having regard to and in accordance with the agreement. It is also proposed to provide that the where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provision of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished. It is also proposed to provide that

notwithstanding anything contained in section 153 or section 153B or section 144C the order of assessment, reassessment or re-computation of total income under sub-section (2) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished and the period of limitation as provided in section 153 or section 153B or section 144C, for completion of pending assessment or reassessment proceedings referred to in sub-section (3) shall be extended by a period of twelve months.

It is also proposed to define the expressions "agreement" and the deemed provision relating to completion of assessment or reassessment proceedings for an assessment year. These amendments will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012,

Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APAs offer better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach. It is proposed to insert new sections 92CC and 92CD in the Act to provide a framework for advance pricing agreement under the Act. The proposed sections provide the following. –

1. It empowers Board, to enter into an advance pricing agreement with any person undertaking an international transaction.
2. Such APAs shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction which the person undertake.
3. The manner of determination of arm's length price in such cases shall be any method including those provided in subsection (1) of section 92C, with necessary adjustments or variations.
4. The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered and the provisions of section 92C or section 92CA which normally apply for determination of arm's length price would be modified to this extent and arm's length price shall be determined in accordance with APA.
5. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
6. The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change in law or facts having bearing on such APA. The Board is empowered to declare, with the approval of Central Government, any such agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared void ab-initio, all the provisions of the Act shall apply to the person as if such APA had never been entered into.
8. For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void ab-initio shall be excluded. However if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than sixty days, such remaining period shall be extended to sixty days.

9. The Board is empowered to prescribe a Scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.
10. Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under section 133(6) of the Act.
11. The person entering in to such APA shall necessarily have to furnish a modified return within a period of three months from the end of the month in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.
12. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by one year.
13. If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies has been completed before the expiry of period allowed for furnishing of modified return ,the Assessing Officer shall, in a case where modified return is filed, proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the APA and to such assessment, all the provisions relating to assessment shall apply as if the modified return is a return furnished under section 139 of the Act. The period of limitation for completion of such assessment or reassessment is one year from the end of the financial year in which the modified return is furnished.
14. All the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

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

Brief of Amendment

1. Board is empowered to enter into an advance pricing agreement with any person undertaking an international transaction.

2. Such APAs shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, including method those provided in subsection (1) of section 92C.
3. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
4. The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him).
5. The Board is empowered to declare, with the approval of Central Government, any such agreement to be void ab initio.
6. For computing period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void ab-initio shall be

excluded. However if after the exclusion of the aforesaid period, the period of limitation is less than sixty days, such remaining period shall be extended to sixty days.

7. The person entering in to such APA shall necessarily have to furnish a modified return within a period of three months from the end of the month in which the said APA was entered
8. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by one year.
9. In case assessment proceedings already completed, before the expiry of period allowed for furnishing of modified return , the Assessing Officer shall, in a case where modified return is filed, proceed to assess or reassess or recomputed the total income of the relevant assessment year having regard to and in accordance with the APA and to such assessment.

Also the Section 271AAB has been added meaning thereby order imposing penalty u/s 271AAB can be appealed.

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

a) Amendment in section 92CA

Old Provisions

In sub-sections (1), (2) and (3), for the words "**international transaction",**

New Provisions **[Amended w.e.f 1st April 2013]**

In sub-sections (1), (2) and (3), for the words "**international transaction or specified domestic transaction"** shall respectively be substituted.

b) Sub-section (2B) and (2C) of Section 92CA shall be inserted.

i. **Section 92CA(2B)** **[w.e.f. 01/06/2002]**

"Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1)."

ii. **Section 92CA(2C)** **[w.e.f. 01/07/2012]**

"Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012."

Notes to clause

The existing provisions of the aforesaid section 92CA provide for reference to Transfer Pricing Officer for computation of arm's length price in relation to an international transaction. It is proposed to amend sub-sections (1), (2) and (3) of the aforesaid section to substitute the expression "international transaction or specified domestic tansaction" in place of "international transaction" so as to include in the aforesaid section the specified domestic transaction for the purposes of computation of arm's length price. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

It is further proposed to insert a new sub-section (2B) in the aforesaid section so as to provide that where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer in the course of proceeding before him, then he shall be empowered to take into account such transaction as if it is an international transaction referred to him by the Assessing Officer under sub-section (1) and all the provisions of Chapter X of the Income-tax Act shall apply accordingly. This amendment will take effect retrospectively from 1st June, 2002. It is also proposed to insert a new sub-section (2C) so as to provide that nothing contained in this sub-

section shall empower the Assessing Officer either to reassess under section 147 or pass an order

This amendment empowers the TPO on reference by AO to determine ALP of the international transactions noticed by him in the course of proceedings.

enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year commencing on or before 1st April, 2012. This amendment will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012,

Section 92CA of the Act provides that the Assessing Officer, if he considers it necessary or expedient to do so, may with the previous approval of Commissioner of Income tax, refer the matter of determination of Arm's Length Price in respect of an international transaction to the Transfer Pricing Officer (TPO). Once reference is made to the TPO, TPO is competent to exercise all powers that are available to the Assessing Officer under sub-section (3) of Section 92C for determination of ALP and consequent adjustment. Further under section 92E of the Act, there is reporting requirement on the taxpayer and the taxpayer is under obligation to file an audit report in prescribed form before the Assessing Officer (AO) containing details of all international transactions undertaken by the taxpayer during the year. This audit report is the primary document with the Assessing Officer, which contains the details of international transactions undertaken by the taxpayer. If the assessee does not report such a transaction in the report furnished under section 92E then the Assessing Officer would normally not be aware of such an International Transaction so as to make a reference to the Transfer Pricing Officer. The Transfer Pricing Officer may notice such a transaction subsequently during the course of proceeding before him. In absence of specific power, the determination of Arm's Length Price by the Transfer Pricing Officer would be open to challenge even though the basis of such an action is non-reporting of transaction by the taxpayer at first instance. It is proposed to amend the section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the Act. This amendment will take effect retrospectively from 1st June, 2002.It is also proposed to provide an explanation to effect that due to retrospectivity of the amendment no reopening of any proceeding would be undertaken only on account of such an amendment.This amendment will take effect from 1st July, 2012.

Brief of Amendment

This amendment empowers the TPO on reference by AO to determine ALP of the international transactions noticed by him in the course of proceedings before him provided that the assessee has not furnished a report u/s 92E of the Act. But no reopening/rectification of assessment shall be undertaken by AO on account of this amendment for any assessment year proceedings for which has been completed before 1.7.2012.

The careful reading of the clause reveal that such power can be exercised by TPO only when no report u/s 92E is filed and such transaction comes to his notice in the course of proceedings referred to him by AO. The explanatory memorandum however goes to suggest that this power can be exercised in all those cases in which such transactions are omitted from being reported.

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

Transfer Pricing Regulations to apply to certain domestic transactions

Clause 12

Amendment to Section 40A- Expenses or payments not deductible in certain circumstances.

(i) New Proviso to Section 40A(2) shall be inserted. **[w.e.f. 1st April, 2013]**

After the proviso and before the Explanation, the following proviso shall be inserted-

"Provided that no disallowance, on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F."

(ii) Section 40A(2)(b)

Old Provisions

"A company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member."

New Provisions **[Amended w.e.f. 1st April, 2013]**

"a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or ***any other company carrying on business or profession in which the first mentioned company has substantial interest."***

Clause 23

Amendment to Section 80A(6) - Deductions to be made in computing total income.

Old Provision

Sub-section (6)of section 80A

"Notwithstanding anything to the contrary contained in section 10A or section 10AA or …….. goods or services as on that date.

Explanation.—For the purposes of this sub-section, the expression "market value",—

(i) in relation to any goods or services……..

(ii) in relation to any goods or services ……."

New Provision

Sub-section (6)of section 80A

"Notwithstanding anything to the contrary contained in section 10A or section 10AA or …….. goods or services as on that date.

Explanation.—For the purposes of this sub-section, the expression "market value",—

(i) in relation to any goods or services……..

(ii) in relation to any goods or services ……

[A New clause (iii) in the Explanation of Sec. 80A(6) shall be inserted w.e.f. 1st April, 2013]

(iii) in relation to any goods or services sold, supplied or acquired means the arm's length price as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transaction referred to in section 92BA.

Notes to clauses

It is proposed to amend the aforesaid *Explanation* so as to provide that "market value" in relation to any goods or services sold, supplied or acquired, in case of a transaction being a domestic transaction referred to in section 92BA shall be the arm's length price as defined in clause (ii) of section 92F. This amendment will apply in relation to assessment year 2013-2014 and subsequent assessment years.

Clause 29 – ***Provisions are explained in detail on page no. 75.***

Amendment to Section 80-IA- Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

Clause 33

Amendment to Section 92- Computation of income from international transaction having regard to arm's length price.

A. Section 92(2)

Old Provisions

"Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be."

New Provisions **[Amendment w.e.f. 1st April, 2013]**

"Where in an ***"international transaction or specified domestic transaction****, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be."*

B. New Sub-section (2A) of section 92 shall be inserted. **[w.e.f. 1st April, 2013]**

"Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price."

C. Amendment to Section 92(3) **[w.e.f. 1st April, 2013]**

Old Provisions

"The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or the determination of the allowance for any expense or interest under that sub-section, or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into."

New Provisions

"The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), has the effect of reducing the income chargeable to tax or

increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the ***international transaction or specified domestic transaction*** *was entered into."*

Notes to clauses

It is proposed to amend the aforesaid section to insert a new sub-section (2A) so as to provide that any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price. It is further proposed to amend sub-sections (2) and (3) of the aforesaid section to substitute the expression "international transaction or specified domestic transaction" in place of "international transaction" so as to include therein the specified domestic transaction and apply the provisions of sub-sections (2) and (3) to specified domestic transactions. These amendments will apply in relation to assessment year 2013-2014 and subsequent assessment years.

Clause 35

New section 92BA shall be inserted-Meaning of Specified domestic transaction

[w.e.f 1st April 2013]

"92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

- ***(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;***
- ***(ii) any transaction referred to in section 80A;***
- ***(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;***
- ***(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;***
- ***(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or***
- ***(vi) any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees."***

Notes to Clause

The proposed new section 92BA provides for meaning of "specified domestic transaction" with reference to which the income is computed under section 92 having regard to arm's length price.

Issues required consideration

Applicability of transfer pricing provisions to domestic transaction (including the expenditure covered u/s 40A) will going to increase the compliance burden for the assessees by enforcement of obligation to maintain mandatory documentation for related party transactions, to file Form 3CEB along with the income-tax return.

Clause 37

Old Provisions

"In Section 92C, 92D and section 92E of chapter X words ***"international transaction"***

New Provisions **[w.e.f 1st April 2013]**

"In sections 92C, 92D and section 92E of Chapter X of the Income-tax Act, for the words "international transaction" wherever they occur, the words ***"international transaction or specified domestic transaction"*** *shall respectively be substituted."*

Notes to Clause

The existing provisions of the aforesaid Chapter X makes special provisions relating to avoidance of tax. Sections 92C, 92D and 92E under the aforesaid Chapter provide for meaning of international transaction, maintenance and keeping of information and document by persons entering into an international transaction and report from an accountant to be furnished by person entering into international transaction. It is proposed to amend the aforesaid sections to substitute the words "international transaction or specified domestic transaction", for the words "international transaction" wherever they occur so as to extend the provisions of the aforesaid sections to the specified domestic transaction.

Clause 38 – ***Provisions are explained on page no. 136.***

Clause 92
Amendment in section 271

Explanation 7 to Sub-section (1) of section 271
Old Provision

"Where in the case of an assessee who has entered into an international transaction defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, then, the amount so added or disallowed shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished, unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence."

New Provision **[Amended w.e.f. 1st April, 2013]**

"Where in the case of an assessee who has entered into an ***international transaction or specified domestic transaction*** *defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, then, the amount so added or disallowed shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished, unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner that the price charged or paid in such transaction*

was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence."

Notes to clause:

The existing provision of *Explanation* 7 of the aforesaid section 271 provides that where in the case of an assessee who has entered into an international transaction, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, the amount so added or disallowed shall be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner that the price charged or paid in such transaction was computed in good faith and with due diligence in accordance with the provisions contained in section 92C and the manner prescribed thereunder. It is proposed to amend the aforesaid *Explanation* so as to include therein the reference of a specified domestic transaction for the purposes of said *Explanation*. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 94

Amendment in section 271AA by Section 93 of the Finance Bill, 2012

"Without prejudice to the provisions of section 271 or section 271BA, if any person in respect of an international transaction,—

(i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;

(ii) fails to report such transaction which he is required to do so; or

(iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent. of the value of each international transaction entered into by such person."

New Provision **[Amended w.e.f. 1st April, 2013]**

"Without prejudice to the provisions of section 271 or section 271BA, if any person in respect of an ***international transaction or specified domestic transaction****,—*

(i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;

(ii) fails to report such transaction which he is required to do so; or

(iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent. of the value of each international transaction entered into by such person."

Notes to clause

It is proposed to amend the aforesaid section so as to include therein the reference of "specified domestic transaction" to provide that in the cases where information and document in respect of specified domestic transaction has not been maintained, or such specified domestic transaction has not been reported, or the assessee maintains or furnishes incorrect information or documents,

a penalty of 2% of the value of the specified domestic transaction shall be levied. This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 97
Amendment in section 271G
Old Provision

"If any person who has entered into an international transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction for each such failure."

New Provision **[Amended w.e.f. 1st April, 2013]**

"If any person who has entered into an ***international transaction or specified domestic transaction*** *fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the* ***international transaction or specified domestic transaction*** *for each such failure."*

Notes to clause

It is proposed to amend the aforesaid section to include therein the reference of "specified domestic transaction" so as to provide in the cases where the assessee fails to furnish any document or information as required by section 92D, a penalty of 2% of the value of the specified domestic transaction shall be levied in such cases. This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum Explaining Finance Bill 2012

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

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

related domestic parties. It will create legally enforceable obligation on assessees to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions will lead to increase in compliance burden on all assessees which may not be desirable. Therefore, the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA. The concerns of administrative and compliance burden are addressed by restricting its applicability to the transactions, which exceed a monetary threshold of Rs. 5 crores in aggregate during the year. In view of the circumstances which were present in the case before the Supreme Court, *there is a need to expand the definition of related parties for purpose of section 40A to cover cases of companies which have the same parent company*.

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

It is further proposed to amend the meaning of related persons as provided in section 40A to include companies having the same holding company.

This amendment will apply in relation to the Assessment Year 2013-14 and subsequent assessment years.

Brief of Amendment

- The existing provision of the Explanation to sub-section (6) of section 80A provides the definition of expression “market value” in relation to any goods or services sold or supplied and in relation to goods or services acquired. Amendment has been made to said Explanation so as to provide that “market value” in relation to any goods or services sold, supplied or acquired, in case of a transaction being a domestic transaction referred to in section 92BA shall be the arm’s length price as defined in clause (ii) of section 92F.

- Proviso inserted so as to provide that no disallowance under this clause shall be made , on account of any expenditure being excessive or unreasonable having regard to the fair market value, in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm’s length price as defined in clause (ii) of section 92F.
- Clause (b) of S. 40A(2) amended so as to include therein any other company carrying on a business or profession in which the company referred to in sub-clause (b)(ii) has substantial interest.

- New sub-section (2A) inserted so as to provide that any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm’s length price.

- Sub section (2) and (3) of section 92 are further amended to substitute the expression “international transaction or specified domestic transaction” in place of “international transaction” so as to include therein the specified domestic transaction and apply the provisions of sub-sections (2) and (3) to specified domestic transactions also.

- New section 92BA inserted to provide for the meaning of specified domestic transaction with reference to which the income is computed under section 92 having regard to arm's length price.

- Amendment made to respective sections to substitute the words "international transaction or specified domestic transaction", for the words "international transaction" wherever they occur so as to extend the provisions of the aforesaid sections to the specified domestic transaction.

- The scope of explanation has been enlarged so as to cover not only the international transactions define u/s 92B but also specified domestic transactions as defined in section 92BA(see clause 35 for meaning of specified domestic transaction). Penalty to include domestic transactions subject to TP regulations.

- Penalty of 2% of the value of the specified domestic transaction shall be levied for failure to keep and maintain adequate documentation to cover domestic transactions subject to TP regulations also, besides International transaction.

- Under the existing provisions of section 271G, penalty on account of failure to furnish information or documents u/s 92D in respect of international transaction under taken by a person is imposable.

- The expression `International Transaction' has been substituted at each place wherein it occurs in the said section by the expression `International Transaction and specified Domestic Transaction' so as to make the person entering into specified domestic transactions also liable for penalty for not furnishing the details of transaction.

Issues required consideration

Section 92BA

Applicability of transfer pricing provisions to domestic transaction (including the expenditure covered u/s 40A) will going to increase the compliance burden for the assessees by enforcement of obligation to maintain mandatory documentation for related party transactions, to file Form 3CEB along with the income-tax return.

Determination of Arm's Length Price (ALP)

Amendment to Section 92C- Computation of arm's length price.

Old Provisions

"Sub-section (1)……..
Sub-section (2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed :

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices.

Provided further that if the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken does not exceed such percentage of the latter, as may be notified. [five per cent of the latter], the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price."

New Provisions **[Amended w.e.f 1st April 2013]**

"Sub-section (1)……..
Sub-section (2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed.

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices.

[w.e.f. 1st April 2013]

Provided further that if the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken ***does not exceed such percentage not exceeding three per cent. of the latter, as may be notified*** *[five per cent of the latter], the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price.*

[Explanation newly inserted, w.e.f. 1st October 2009]

"Explanation.—For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009."

New Section 92C (2A) shall be inserted. **[w.e.f. 1st April, 2002]**

"Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009, is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent. of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso."

New Section 92C (2B) shall be inserted. **[w.e.f. 1st July, 2012]**

"Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009."

Notes to clause

It is proposed to amend the aforesaid second proviso so as to confer power upon the Central Government to notify the limit of percentage as not exceeding 3% of the latter in case of the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken. This amendment will apply in relation to the assessment year 2013-2014 and subsequent assessment years.

It is further proposed to insert an Explanation after the second proviso to sub-section (2) of the aforesaid section so as to clarify that the provisions of the second proviso *shall also be applicable to any assessment or reassessment proceedings for computation of arm's length price, if pending as on the 1st day of October, 2009 before an AO.* This amendment will take effect retrospectively from 1st October, 2009.

It is also proposed to insert new sub-section (2A) to the aforesaid section so as to provide that where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act,2009, is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in said proviso and the price at which such transaction has actually been undertaken exceeds 5% of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso. These amendments will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

It is also proposed to insert new sub-section (2B) to the aforesaid section so as to provide that nothing contained in sub-section (2A) shall empower the AO either to assess or reassess u/s 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee u/s 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009.

Memorandum Explaining Finance Bill 2012

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

Subsequently, disputes arose regarding the interpretation of the proviso. Whether the tolerance band is a standard deduction or not, in case variation of ALP and transaction value exceeded the tolerance band. Different courts interpreted it differently. In order to bring more clarity and resolving the controversy the proviso was substituted by Finance Act (No.2), 2009. The substituted proviso not only made clear the intent that 5% tolerance band is not a standard deduction but also changed the base of determination of the allowable band, linked it to the

transaction price instead of the earlier base of Arithmetic mean. The amendment clarified the ambiguity about applicability of 5% tolerance band, not being a standard deduction. However, the position prior to amendment by Finance (No.2) Act, 2009 still remained ambiguous with varying judicial decisions. Some favouring departmental stand and others the stand of tax payer. There is, therefore, a need to bring certainty to the issue by clarifying the legislative intent in respect of first proviso to sub-section (2) which was inserted by the Finance Act, 2002.
It is, therefore, *proposed to amend the Income Tax Act to provide clarity with retrospective effect in respect of first proviso to section 92C(2) as it stood before its substitution by Finance Act (No.2), 2009 so that the tolerance band of 5% is not taken to be a standard deduction while computing Arm's Length Price and to ensure that due to such retrospective amendment already completed assessments or proceedings are not reopened only on this ground.* The amendments proposed above shall be effective retrospectively from 1st April, 2002 and shall accordingly apply in relation to the Assessment Year 2002-03 and subsequent Assessment Years.

II. There is need to clarify the legislative intent of making the proviso applicable for all assessment proceedings pending as on 01.10.2009 instead of it being attracted only in respect of proceeding for assessment year 2010-11 and subsequent assessment years. *It is, therefore, proposed to amend the Income Tax Act to provide clarity that second proviso to section 92C shall also be applicable to all proceedings which were pending as on 01.10.2009. [The date of coming in force of second proviso inserted by Finance (No.2) Act, 2009].* The amendments will take effect retrospectively from 1st October, 2009.

Brief of Amendment

Two amendments are carried out through this clause.
One relates to the proviso to sub section 2 inserted by finance act 2002 and now stands substituted by the finance (No 2) Act 2009. The controversy with regard to assessment years to which this proviso applied was whether or not the tolerance band of five percent linked to arithmetical mean arrived at as per the proviso is a standard deduction. The amendment clarifies that the intent of the law was never to allow this tolerance band to work as standard deduction.

Second amendment also resolves a controversy with regard to applicability of the proviso to sub section 2 of section 92C as substituted by the Finance Act 2009 as to all pending proceedings as on 1.10.2009, the date on which this proviso became effective or to assessment year following the said date. Through an explanation to section 2 of section, it is clarified that substituted proviso shall apply to all pending assessment years.

The amendments being proposed are to override the judicial controversies on the application of new and substituted proviso in order to cap some sort of stability on the issues on account of several conflicting decisions particularly at the level of the tribunal. It is a different matter however that all clarifications, as is usual, lean in favor of the department.

Issues required consideration

Section 92C *- It is not cleared from the proposed amendment that the whether the specified tolerance band is also available to the assessee for the period starting from 1st April, 2012 to 31st March, 2013. The existing provision is applicable only till April 1 2011 and the new proposed provisions are effective April 1, 2013.*

Definition of international transaction and Filing of return of income

Clause 34

New Explanation to Section 92B shall be inserted. **[w.e.f 1st April 2002]**

"Explanation.—For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(ii) the expression "intangible property" shall include—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value.

(k) ***methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;***

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes."

Clause 56

Old Provisions

Explanation 2.-In this sub-section, "due date" means,-

(a) where the assessee is-

(i) a company; (other than a company referred to in clause (aa)

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

*the **[**30th day of September**]** of the assessment year;*

(aa) in the case of an assessee being a company, which is required to furnish a report referred to in section92E, the 30th day of November of the assessment year.

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.

New Provisions

"Explanation 2.-In this sub-section, "due date" means,-

*(a) where the assessee **other than an assessee referred to in clause (aa)** is-*

*(i) a company; **~~(other than a company referred to in clause (aa)~~***

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

*the **[**30th day of September**]** of the assessment year;*

*(aa) in the case of an assessee **who** is required to furnish a report referred to in section92E, the 30th day of November of the assessment year.*

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year."

Notes to clause

The existing provisions of clause (a) of Explanation 2 to sub-section (1) of the aforesaid section 139 provides the due date for filing return of income, in the case of company other than a

company referred to in clause (aa), or a person "other than a company" whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force; or a working partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law for time being in force shall be the 30th day of September of the assessment year. Clause (aa) of the aforesaid Explanation provides that in the case of assessee which is a company, which is required to furnish a report from an accountant by persons entering into international transaction under section 92E, the due date for filing return of income shall be the 30th day of November of the assessment year. It is proposed to amend the aforesaid clauses (a) and (aa) *so as to extend the due date for filing return of income in case of all the persons who are required to furnish a report referred to section 92E. These amendments will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent assessment years*.

Memorandum Explaining Finance Bill 2012

Section 92B of the Act, provides an exclusive definition of International Transaction. Although, the definition is worded broadly, the current definition of International Transaction leaves scope for its misinterpretation. Certain judicial authorities have taken a view that in cases of transactions of business restructuring etc. where even if there is an international transaction Transfer Pricing provisions would not be applicable if it does not have bearing on profits or loss of current year or impact on profit and loss account is not determinable under normal computation provisions other than transfer pricing regulations. The present scheme of Transfer pricing provisions does not require that international transaction should have bearing on profits or income of current year. It is, therefore, proposed to amend section 92B of the Act, *to provide for the explanation to clarify meaning of international transaction and to clarify the term intangible property used in the definition of international transaction and to clarify that the 'international transaction' shall include a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets or such enterprises at the time of the transaction or at any future date*. This amendment will apply in relation to the assessment year 2002-03 and subsequent assessment years.

Brief of Amendment

- *Explanation* to s. 92B inserted, so as to clarify the definition of the expressions "international transaction" and "intangible property.

- Explanation 2 to Section 139 amended so as to extend due date of filling return of income in case of all assessee to who needs to furnish report under section 92E.

Issues required consideration

The amendment has a retrospective effect from 1st April, 2002 due to which the following practical difficulties arising:

- *Calculation of arm length price (ALP) of transaction entered in past years.*
- *The retrospective effect of amendment will mandate the assessees (who have entered into an international transaction during the past years) to maintain the prescribed book of accounts and furnish report of accountant under the Act otherwise the provisions of Section 271AA & 271BA get attracted.*

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

Clause 90

Amendment in section 253

A. Section 253(1)

(i) Clause (d) of sub-section (1) of section 253

Old Provision

"an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order."

New Provision **[Amended w.e.f. 1st October 2009]**

"an order passed by an Assessing Officer under sub-section (3), of section 143 or ***section 147 or section 153A or section 153C*** *in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order."*

(ii) New clause (e) of sub-section (1) of section 253 shall be inserted

[w.e.f. 1st April, 2013]

"an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order."

B. Section 253(1)

(i) New Sub-section (2A) to Section 253 Shall be inserted

[w.e.f.1st July, 2012]

"The Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order."

(ii) New Sub-section (3A) to Section 253 shall be inserted

[w.e.f. 1st July, 2012]

"Every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C."

(iii) Amendment Sub-section (4) of section 253

Old Provision

"The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3)."

New Provision **[Amended w.e.f. 1st July, 2012]**

"The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A)."

Notes to clause

The existing provisions contained in clause (ba) of sub-section (1) of the aforesaid section 253 provide that any assessee aggrieved by an order passed by an AO u/s 143(3) or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed u/s 154 in respect of such order may appeal to the Appellate Tribunal. It is proposed to amend clause (d) of the aforesaid sub-section (1) so as *to provide that any assessee aggrieved by an order passed by an AO u/s 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed u/s 154 in respect of such order may also appeal to the Appellate Tribunal*. This amendment will take effect retrospectively from 1st October, 2009.

It is further, amend the aforesaid sub-section (1) to insert clause (e) in the said sub-section to provide that *an order of assessment or reassessment passed with approval of the Commissioner under sub-section (12) of newly inserted section 144BA or an order under section 154 or section 155 passed in respect of such an order against which appeal lies before the Appellate Tribunal*. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

It is also proposed to insert a new sub-section (2A) in the aforesaid section so as to provide that *the Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel u/s*

144C(5) in respect of any objection filed on or after the 1st July, 2012, by the assessee u/s 144C (2) in pursuance of which the AO has passed an order completing the assessment or reassessment, direct the AO to appeal to the Appellate Tribunal against the order. It is also proposed to insert a new sub-section (3A) in the aforesaid section so as to provide that every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C. It is also proposed to amend sub-section (4) so as to provide that an appeal can also be filed by the Assessing Officer against the order passed by him in pursuance of the directions of the Dispute Resolution Panel. These amendments will take effect from 1st July, 2012.

Clause 91

Amendment to Section 254(2A)- Orders of Appellate Tribunal

Old Provision

"In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253."

New Provision **[Amended w.e.f. 1st July, 2012]**

"In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) ***or sub-section (2A)*** *of section 253 "*

Notes to clause

It is proposed to amend sub-section (2A) of the aforesaid section 254, so as to insert therein a reference of sub-section (2A) of section 253. The proposed amendment is consequential in nature in view of the amendment to section 253.

Memorandum Explaining Finance Bill 2012

Under the provisions of sub-section (8) of section 144C, the DRP has the power to confirm, reduce or enhance the variations proposed in the draft order. The Income Tax Department does not have the right to appeal against the directions given by the DRP. The taxpayer has been given a right to appeal directly to the Income Tax Appellate Tribunal (ITAT) against the order passed by the AO in pursuance of the directions of the DRP. As the directions given by the DRP are binding on the AO, *it is accordingly proposed to provide that the AO may also file an appeal before the ITAT against an order passed in pursuance of directions of the DRP.* It is therefore proposed to amend the provisions of section 253 and section 254 of the Income-tax Act to provide for filing of appeal by the AO against an order passed in pursuance of directions of the DRP in respect of an objection filed on or after 1st July, 2012. These amendments will take effect from the 1st day of July, 2012.

Brief of Amendment

- Sub clause (d) of section 253(1) provides that an order of passed by an AO in pursuance of directions of DRP, u/s 143(3) or 147, is appealable before ITAT directly.

- Vide clause (a) of the existing clause, the orders of search assessment passed u/s 153A or 153C in pursuance of directions of DRP have been made directly appealable before ITAT and not CIT(A).

- A new clause (e) is inserted u/s 253(1) so as to provide that orders passed with the approval of CIT u/s 144BA(12) read with section 143(3) or 147 or 153A or 153C or 154 or 155 in respect of such orders shall be directly appealable before ITAT.

- Presently only an assessee can file an appeal before ITAT against an order passed in pursuance of directions of the DRP u/s 144C. w.e.f. 01/07/12, a new sub section (2A) is proposed to be inserted so as to provide that even the department can prefer an appeal in case the CIT objects to any direction issued by DRP.

- Sub section (3A) has also been similarly inserted so as to provide that the appeal by the department against the directions issued by the DRP should be furnished within a period of 60 days of the date on which the orders sought to be appeal against is passed by the AO in pursuance of the direction of DRP. It is interesting to note here that the time limit in case of filing of an appeal generally commences with the date on which the order sought to be appeal against is received / served on the aggrieved party whereas in this case the time limit begins from the date on which the order is passed and not served.

- Lastly the existing sub section (4), relating to filing of cross of objections within 30 days of the intimation of receipt of notice of filing of appeal by the other party before ITAT, has been substituted w.e.f. 01.07.2012, so as also to include a reference to the orders passed in pursuance of directions of DRP.

- Sub section 2A of section 254 has been amended so as to provide a reference to the departmental appeals filed against the directions issued by the DRP (refer clause 90 supra also).

Clause 60

Power of the DRP to enhance variations

Amendment to Section 144C- Reference to dispute resolution panel.

Old Provisions

"Sub-section (4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

Sub-section (13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received."

New Provisions

"Sub-section (4) **[w.e.f 1st October 2009]**

*"The Assessing Officer shall, notwithstanding anything contained in section 153**or section 153B**, pass the assessment order under sub-section (3) within one month from the end of the month in which,—*

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires."

Sub-section (8)…….

Explanation shall be inserted and shall be deemed to have been inserted w.e.f. 1st day of April, 2009, namely:—

"Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee."

Sub-section (13) **[w.e.f. 1st October 2009]**

*Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 **or section 153B**, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.*

Sub-section (14A) shall be inserted w.e.f. the 1st day of April, 2013, namely:—

"The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Commissioner under sub-section (12) of section 144BA."

Notes to clause

It is proposed to amend the aforesaid sub-section so as to give the reference of section 153B also in the said sub-section. This amendment will take effect retrospectively from 1st october, 2009. The existing provisions of sub-section (8) of the aforesaid section 144C provide that the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order. It is proposed to insert an *Explanation* in the aforesaid sub-section so as to clarify that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee. This amendment will take effect retrospectively from 1st April, 2009. The existing provisions of sub-section (13) of the aforesaid section 144C provide that upon receipt of the directions issued under sub-section (5), the AO shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in aforesaid section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received. It is proposed to amend the aforesaid sub-section so as to give the reference of section 153B also in the said sub-section. This amendment will take effect retrospectively from 1st October, 2009.

It is proposed to insert a new sub-section (14A) in the aforesaid section 144C so as to provide that provisions of section144C shall not apply to an assessment or reassessment order passed by the Assessing Officer with the approval of the Commissioner in accordance with sub-section (12) of newly inserted section 144BA. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum Explaining Finance Bill 2012

In a recent judgement, it was held that the power of DRP is restricted only to the issues raised in the draft assessment order and therefore it cannot enhance the variation proposed in the order as a result of any new issue which comes to the notice of the panel during the course of proceedings before it. This is not in accordance with the legislative intent. It is accordingly proposed to insert an Explanation in the provisions of section 144C to clarify that the power of the DRP to enhance the variation shall include and shall always be deemed to have included the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order. This power to consider any issue would be irrespective of the fact whether such matter was raised by the eligible assessee or not. *This amendment will be effective retrospectively from the 1st day of April, 2009 and will accordingly apply to assessment year 2009-10* and subsequent assessment years.

Brief of Amendment

DRP empowered to consider a matter not covered by draft assessment order.

Grant power to DRP to considering any matter, whether or not such matter was raised by the assessee.

Completion of assessment in search cases referred to DRP

(w.e.f. 01/10/2009)

Amendment vide clause no. 60, 89 & 90 are already explained.

Memorandum Explaining Finance Bill 2012

Under the provisions of section 144C of the Income-tax Act where an eligible assessee files an objection against the draft assessment order before the Dispute Resolution Panel (DRP), then, the time limit for completion of assessments are as provided in section 144C notwithstanding anything in section 153. A similar provision is proposed to be made where assessments are framed as a result of search and seizure to provide that for such assessments, time limit specified in section 144C will apply, notwithstanding anything in section 153B. It is also proposed to provide for exclusion of such orders passed by the Assessing Officer in pursuance of the directions of the DRP, from the appellate jurisdiction of the Commissioner (Appeals) and to provide for filing of appeals directly to ITAT against such orders. Accordingly, consequential amendments are proposed to be made in the provisions of section 246A and 253 of the Income-tax Act.

General Anti-Avoidance Rules (GAAR)

Clause 31, 32, 60, 63, 65, 89, & 90 are already explained above.

I. After Chapter X of the Income-tax Act, the following Chapter shall be inserted w.e.f 1st April, 2013, -

CHAPTER X-A
GENERAL ANTI-AVOIDANCE RULE

Section 95. *Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.*

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

Section 96*. (1) An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and it—*

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

(2) An arrangement which results in any tax benefit (but for the provisions of this Chapter) shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit unless the person obtaining the tax benefit proves that obtaining the tax benefit was not the main purpose of the arrangement.

(3) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

Section 97*. (1) An arrangement shall be deemed to lack commercial substance if—*

(a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or

(b) it involves or includes—

(i) round trip financing;

(ii) an accommodating party;

(iii) elements that have effect of offsetting or cancelling each other; or

(iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or

(c) it involves the location of an asset or of a transaction or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party.

(2) For the purposes of sub-section (1), round trip financing includes any arrangement in which, through a series of transactions—

(a) funds are transferred among the parties to the arrangement; and

(b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter), without having any regard to—

(A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;

(B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or

(C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.

(3) For the purposes of this Chapter, a party to an arrangement shall be an accommodating party, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the party is a connected person in relation to any party to the arrangement.

(4) The following shall not be taken into account while determining whether an arrangement lacks commercial substance or not, namely:—

(i) the period or time for which the arrangement (including operations therein) exists;

(ii) the fact of payment of taxes, directly or indirectly, under the arrangement;

(iii) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

<u>Section 98</u>. (1) If an arrangement is declared to be an impermissible avoidance arrangement, then the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

(a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;

(b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) reallocating amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital or revenue nature; or

(ii) any expenditure, deduction, relief or rebate;

(f) treating—

(i) the place of residence of any party to the arrangement; or

(ii) the situs of an asset or of a transaction, at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

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

(2) For the purposes of sub-section (1),—

(i) any equity may be treated as debt or vice versa;

(ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or vice versa; or

(iii) any expenditure, deduction, relief or rebate may be recharacterised.

Section 99. For the purposes of this Chapter, in determining whether a tax benefit exists—

(i) the parties who are connected persons in relation to each other may be treated as one and the same person;

(ii) any accommodating party may be disregarded;

(iii) such accommodating party and any other party may be treated as one and the same person;

(iv) the arrangement may be considered or looked through by disregarding any corporate structure.

Section 100. The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

Section 101. The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions and the manner as may be prescribed.

Section 102. In this Chapter, unless the context otherwise requires,—

(1) "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

(2) "asset" includes property, or right, of any kind;

(3) "associated person", in relation to a person, means—

(a) any relative of the person, if the person is an individual;

(b) any director of the company or any relative of such director, if the person is a company;

(c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member if the person is a firm or association of persons or body of individuals;

(d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;

(e) any individual who has a substantial interest in the business of the person or any relative of such individual;

(f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;

(g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member have a substantial interest in the business of the person, or family or any relative of such director, partner or member;

(h) any other person who carries on a business, if—

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

(ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

(4) "benefit" includes a payment of any kind whether in tangible or intangible form;

(5) "connected person" means any person who is connected directly or indirectly to another person and includes associated person;

(6) "fund" includes—

(a) any cash;

(b) cash equivalents; and

(c) any right, or obligation, to receive, or pay, the cash or cash equivalent;

(7) "party" means any person including a permanent establishment which participates or takes part in an arrangement;

(8) "relative" shall have the meaning assigned to it in the Explanation to clause (vi) of sub-section (2) of section 56;

(9) a person shall be deemed to have a substantial interest in the business, if—

(a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent. Or more, of the voting power; or

(b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent. or more, of the profits of such business;

(10) "Step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;

(11) "Tax benefit" means—

(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or

(b) an increase in a refund of tax or other amount under this Act; or

(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or

(e) a reduction in total income including increase in loss, in the relevant previous year or any other previous year.

(12) "tax treaty" means an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A.

II. <u>New Section 144BA -Reference to Commissioner in certain cases shall be inserted</u>.

<u>[w.e.f 1st April 2013]</u>

"(1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.

(2) The Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.

(3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Commissioner shall issue such directions as it deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.

(4) In case the assessee objects to the proposed action, and the Commissioner, after hearing the assessee in the matter, is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.

(5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of reference from the Commissioner under sub-section (4) shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

(i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such further inquiry or cause to make such further inquiry to be made by any other income-tax authority and furnish a report containing the results of such inquiry to it; or

(ii) call for and examine such records related to the matter as it deems fit; or

(iii) require the assessee to furnish such document and evidence as it may so direct.

(9) If the members of the Approving Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction, issued by the Approving Panel under sub-section (6) or the Commissioner under sub-section (3), shall be binding on the Assessing Officer and the Assessing Officer on receipt of the directions shall proceed to complete the proceedings referred to in sub-section (1) in accordance with the directions and provisions of Chapter X-A.

(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year to which the proceeding referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Commissioner if any tax consequences have been determined in the order under the provisions of Chapter X-A pursuant to a direction issued under sub-section (6) or sub-section (3) declaring the arrangement as impermissible avoidance arrangement.

(13) No direction under sub-section (6) shall be issued after a period of six months from the end of the month in which the reference under sub-section (4) was received by the Approving Panel.

(14) The Board shall, for the purposes of this section, constitute an Approving Panel consisting of not less than three members being the income tax authorities of the rank of Commissioner and above.

(15) The Board may make rules for the purposes of the efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).".

Memorandum Explaining Finance Bill 2012

The question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context, judicial decisions have varied. While some courts in certain circumstances had held that legal form of transactions can be dispensed with and the real substance of transaction can be considered while applying the taxation laws, others have held that the form is to be given sanctity. The existence of anti-avoidance principles is based on various judicial pronouncements. There are some specific anti-avoidance provisions but general anti-avoidance has been dealt only through judicial decisions in specific cases. In an environment of moderate rates of tax, it is necessary that the correct tax base be subject to tax in the face of aggressive tax planning and use of opaque low tax jurisdictions for residence as well as for sourcing capital. Most countries have codified the "substance over form" doctrine in the form of

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

A. The main feature of such a regime are

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

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

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

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

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

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

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

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

(a) disregarding or combining any step of the arrangement.
(b) ignoring the arrangement for the purpose of taxation law.
(c) disregarding or combining any party to the arrangement.
(d) reallocating expenses and income between the parties to the arrangement.
(e) relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement.
(f) considering or looking through the arrangement by disregarding any corporate structure.
(g) re-characterizing equity into debt, capital into revenue etc.

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

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

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

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

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

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

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

(v) The final order in case any consequence of GAAR is determined shall be passed by AO only after approval by Commissioner and, thereafter, first appeal against0 such order shall lie to the Appellate Tribunal.

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

(vii) The Approving Panel shall be set up by the Board and would comprise of officers of rank of Commissioner and above.

The panel will have a minimum of three members. The procedure and working of Panel shall be administered through subordinate legislation.

In addition to the above, it is provided that the Board shall prescribe a scheme for regulating the condition and manner of application of these provisions.
These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

- *New chapter inserted - GAAR*
- *GAAR introduced to deal with 'aggressive tax planning'. Where an arrangement is held to be an 'impermissible avoidance arrangement', consequences in relation to benefit under a tax treaty can be determined keeping in view circumstances of the case, with certain illustrative steps having been specified in the Act. Procedure for invoking GAAR to include reference by AO to Commissioner, who will further make reference to an 'Approving Panel' (consisting of atleast 3 members of the rank of Commissioner or above). Final order to be passed by AO only after obtaining approval of Commissioner.*

- *An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and it—*

  (a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
  (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
  (c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
  (d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

  - *Once the arrangement is held to be an impermissible avoidance arrangement then the consequences of the arrangement in relation to tax or benefit under a tax treaty can be determined by keeping in view the circumstances of the case, however, some of the illustrative steps are:-*
    - *disregarding or combining any step of the arrangement.*
    - *ignoring the arrangement for the purpose of taxation law.*
    - *disregarding or combining any party to the arrangement.*
    - *reallocating expenses and income between the parties to the arrangement.*
    - *relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement.*
    - *considering or looking through the arrangement by disregarding any corporate structure.*
    - *re-characterizing equity into debt, capital into revenue etc.*

Issues required consideration

1. **Tax authorities have been given the unimaginable powers** -They can disregard or combine steps or parties in the transaction, reallocate expenses and income between parties, relocate place of residence of a party or location of a transaction or situs of an asset to a place other than provided in the transaction, re-characterise equity into debt, capital into revenue, etc; even look through the arrangement by disregarding any corporate structure. Thus, a person of a Country can be told that he is now a different person with a residential status of other Country.

   The basic criticism of statutory GAAR which is raised worldwide is that it provides a wide discretion and authority to the tax administration which at times is prone to be misused. The same will also provide under GAAR provisions.

2. **The onus of proof** - The onus of proof is continue to be on the taxpayer, the provisions continue to be sweeping, and the orders of the Commissioner invoking the GAAR provisions continue to be subject to the approval of a panel of tax commissioners and above. Thus, it seems that the main aim of granting such wide-ranging powers to the tax authorities is revenue collection only.

3. **Investment of Capital Gain to claim exemption u/s 54EC**- In case a person makes a capital gain and invests the same in bonds to claim the exemption. The tax authorities can argue that the main purpose of investment in such bonds as opposed to investments in more lucrative securities which did not carry a tax benefit was devoid of commercial substance.

Other Amendments

Clauses 5, 6, 58

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

1. New proviso to Section10 (23C) shall be inserted. **[w.e.f. 1st April, 2009]**

After the sixteenth proviso, the following proviso shall be inserted

"Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded."

2. New sub-section (8) of Section 13 shall be inserted. **[w.e.f. 1st April, 2009]**

"Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

3. After second proviso to Section 143(3), the following proviso shall be inserted

[w.e.f 1st April 2009]

"Provided also that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded."

Notes to Clause

It is insert a new proviso to section 143 (3) so as to provide that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the AO to the provisions of section 10(23C) in case of a trust or institution for a previous year, if the provisions of first proviso to section 2(15) become applicable in the case of such person in such previous year whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded. This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-2010 and subsequent assessment years.

Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered u/s 12AA of the Act. Section 10(23C) also provides exemption in respect of approved charitable funds or institutions. Section 2(15) provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business. The 2nd proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed Rs. 25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it. Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded. It is, therefore, proposed to amend section 10(23C), section 13 and section 143 of the Act. This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years.

Brief of Amendment

A charitable trust or Institution does not get the benefit of tax exemption i.e. it shall automatically forfeit the benefit of Tax Exemption in the year in which its receipts from commercial activities exceeds the threshold limit, whether or not the registration or approval granted is cancelled, withdrawn or rescinded.

Clause 13

Due date of furnishing audit report in case of international transactions

Clause 13 is explained in detailed on page no. 65.

Memorandum Explaining Finance Bill 2012

As per the existing provisions of the Income-tax Act, the report of audit under section 44AB is required to be furnished by 30th September of the assessment year. Section 139 was amended vide Finance Act 2011 to extend the due date of furnishing of return by the corporate assessees, who have undertaken international transactions, from 30th September to 30th November of the assessment year. In order to align the due date for furnishing tax audit report under section 44AB of the Act and due date specified for furnishing of return under section 139 of the Act, it is proposed to provide that the due date for furnishing tax audit report under section 44AB would be the same as due date specified for furnishing of return under section 139. This amendment will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent assessment years.

Clause 46

Minimum Alternate Tax (MAT)

Amendment to Section 115JB

Old Provisions

Section 115JB(2)

"Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956) :

Explanation 1 after clause (i) - if any amount referred to in clauses (a) to (i) is debited to the profit and loss account, and as reduced by,—",

New Provisions **[Amended w.e.f 1st April 2013]**

"Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956; or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of this section, prepare its profit and loss

account for the relevant previous year in accordance with the provisions of the Act governing such company:";

*Explanation 1 after clause (i) - "**(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by.."***

Notes to clause

The existing provisions of sub-section (2) of aforesaid section 115JB provide that every assessee being a company shall prepare its profit and loss account in accordance with the provisions of Part-II and Part-III of Schedule VI to the Companies Act.

It is proposed to amend the aforesaid sub-section so as to provide that every assessee, (a) being a company, other than a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of the aforesaid section, prepare its profits and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956; or (b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company.

Explanation 1 to the aforesaid section provides "book profit" means the net profit as shown in the profit and loss account for the relevant previous year under sub-section (2) of the aforesaid section as increased by the amount specified in clause (a) to clause (i).
It is proposed to amend the aforesaid Explanation to insert a new clause after clause (i) so as to provide that the book profit shall be increased by the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset, if not credited to the profit and loss account.

Memorandum Explaining Finance Bill 2012

I. Under the existing provisions of section 115JB of the Act, a company is liable to pay MAT of eighteen and one half per cent of its book profit in case tax on its total income computed under the provisions of the Act is less than the MAT liability. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the Schedule VI of the Companies Act, 1956. As per section 115JB, every company is required to prepare its accounts as per Schedule VI of the Companies Act, 1956. However, as per the provisions of the Companies Act, 1956, certain companies, e.g. insurance, banking or Electricity Company, are allowed to prepare their profit and loss account in accordance with the provisions specified in their regulatory Acts. In order to align the provisions of Income-tax Act with the Companies Act, 1956, it is proposed to amend section 115JB to provide that the companies which are not required under section 211 of the Companies Act to prepare their profit and loss account in accordance with the Schedule VI of the Companies

Act, 1956, profit and loss account prepared in accordance with the provisions of their regulatory Acts shall be taken as a basis for computing the book profit under section 115JB.

II. It is noted that in certain cases, the amount standing in the revaluation reserve is taken directly to general reserve on disposal of a revalued asset. Thus, the gains attributable to revaluation of the asset is not subject to MAT liability. It is, therefore, proposed to amend section 115JB to provide that the book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed, if the same is not credited to the profit and loss account.

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

Brief of Amendment

- Book profit in cases of companies not required to prepare P/ L a/c as per Companies law.
  For companies not required to prepare P/L a/c as per Schedule VI of Companies Act, P/L a/c prepared as per their respective regulatory Act shall be taken as basis for computing MAT.

- Gain on revaluation of asset subject to MAT liability.
  Book profits for the purpose of section 115JB shall be increased by the amount standing in revaluation reserve relating to the revalued asset which has been disposed, if the same has not been credited to P/L a/c.

Issues required consideration

It is not cleared from the proposed amended provisions whether the profit & loss for the computation of MAT is prepared according to the Old Schedule VI or Revised Schedule VI.

Clause 81

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

A new proviso to sub-section (1) of section 209 shall be inserted **[w.e.f. 1st April, 2012]**

"Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax."

Notes to clauses

The existing provisions contained in the aforesaid section 209, inter alia, provides that where advance tax is payable, the assesse shall himself compute the advance tax payable on his current income at the rates in force in the financial year and deposit the same whether or not he has been earlier assessed to tax or not. It further provides that in all the cases the tax calculated at the rates in force in the financial year shall be reduced by the amount deductible at source or collectible at source from any income which has been taken into account in the computation of current income. it is proposed to amend clause (d) of sub-section (1) of the aforesaid section 209 so as to insert a proviso to provide that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by person responsible for collecting tax without collection of such tax. This amendment will take effect retrospectively from 1st April, 2012.

Memorandum Explaining Finance Bill 2012

In cases where the assessee receives or pays any amount (on which the tax was deductible or collectible) without deduction or collection of tax, it has been held by Courts that he is not liable to pay advance tax to the extent the tax is deductible or collectible from such amount. In order to make an assessee liable for payment of advance tax in respect of income which has been received or paid without deduction or collection of tax, it is proposed to amend the aforesaid section to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income. This amendment will take effect from the 1st April, 2012 and would, accordingly, apply in relation to advance tax payable for the financial year 2012-13 and subsequent financial years.

Brief of Amendment

It has been held by Courts that a person is not liable to pay advance tax to the extent tax is deductible or collectible at source. To negate this position, it is proposed that advance tax is payable where income is received without deduction or collection of tax at source u/s 209(1).

Clause 3

Definition of Commissioner to include Director

Section 2(16)

Old Provisions

"Commissioner" means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117.

New Provisions **[Amendment w.e.f.1st April, 1988]**

"Commissioner" means a person appointed to be a Commissioner of Income-tax ***or a Director of Income-tax*** *under sub-section (1) of section 117.*

Notes to clause

It is further proposed to amend clause (16) of the aforesaid section 2 so as to include the Director of Income-tax in the definition of the Commissioner. This amendment will take effect retrospectively from 1st April, 1988.

Memorandum to Finance Bill, 2012

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

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

Brief of Amendment

Amend the definition of 'Commissioner' to include Director of Income-tax.

Cost of acquisition in case of certain transfers

Amendment to Section 49

Section 49(1)(iii)(e)

A. Old Provisions

(1) Where the capital asset became the property of the assessee—

(iii) (a) ……., or

(b)……..,. or

(c) ……., or

(d) ……., or

(e) under any such transfer as is referred to in clause (iv) [or clause (v)] [or clause (vi)] [or clause (via)] [or clause (viaa)] [or clause (vica) or [clause (vicb)] or clause (xiiib) of section 47];

New Provisions **[Amended w.e.f. 1st April, 1999]**

(1) Where the capital asset became the property of the assessee—

(iii) (a) ……., or

(b)……..,. or

(c) ……., or

(d) ……., or

(e) *Under any such transfer as is referred to in clause (iv) [or clause (v)] [or clause (vi)] [or clause (via)] [or clause (viaa)] [or clause (vica) or [clause (vicb)] or* ***clause (xiii) or clause (xiiib) or clause (xiv) of section 47.”***

Notes to clauses

The existing provisions of section 49, contained in the aforesaid section 49 provide that, in certain circumstances the cost of acquisition of the assets shall be deemed to be the cost for which the previous owner of the assets acquired it. Clause (xiii) of section 47, *inter alia*, provides for transfer of any capital asset or intangible asset by a firm to company as a result of succession of the firm by a company and clause (xiv) of section 47 provides, *inter alia*, for transfer of any capital asset or intangible asset by a sole proprietary concern to a company as a result of succession by a sole proprietary concern to a company. It is proposed to amend sub-clause (e) of clause (iii) of sub-section (1) of the aforesaid section so as to bring the transfers referred to in clause (xiii) and clause (xiv) of section 47 within the scope of section 49 which deals with cost with reference to certain modes of acquisition. This amendment will take effect retrospectively from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Where transfer of an asset from one person to another is not regarded as a transfer under section 47, then, for the purpose of computation of capital gains, the cost of the asset in the hands of the successor under section 49 is taken as that of the predecessor. Certain transactions like transfer of assets by a sole proprietorship or a firm to a company on conversion are not regarded as transfer under the provisions of section 47(xiv) and section 47(xiii). While computing capital gains on

subsequent sale of such assets by the company, there is no reference in the provisions of section 49 with regard to the cost to be taken for such assets. Accordingly, it is proposed to amend the provisions of section 49 of the Income-tax Act to provide that in case of conversion of sole proprietorship or firm into a company which is not regarded as a transfer, the cost of acquisition of asset in the hands of the company would be the same as that in the hand of the sole proprietary concern or the firm, as the case may be. This amendment will take effect retrospectively from 1st day of April, 1999 and will accordingly apply to assessment year 1999- 2000 and subsequent assessment years.

Brief of Amendment

In case of conversion of sole proprietor / firm into company which is not regarded as transfer of capital asset, cost of acquisition of asset in hands of company would be the same as that in hands of sole proprietor / firm.

Clause 18

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

Amendment to Section 54B-Fair market value deemed to be full value of consideration in certain cases.

Old Provisions

"Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes 17 [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) ……..

(ii) ……..

New Provisions **[Newly inserted w.e.f. 1st April, 2013]**

"Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by ***the assessee being an individual or his parent, or a Hindu undivided family*** *for agricultural purposes 17 [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to*

income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—
(i)……..
(ii)……..”

Notes to clauses

The existing provisions contained in section 54B(1) provide that if an assessee transfers land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes, giving rise to capital gain and purchases any other land for being used for agricultural purposes, within two years after the date of such transfer, the capital gain is exempt to the extent such gain has been utilised for the aforesaid purpose. It is proposed to amend the aforesaid sub-section so as to extend the benefit of exemption to the assessee being a Hindu undivided family. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Capital gains on transfer of land which, in the two years preceding the year in which it has been sold, has been used for agricultural purposes by assessee or his parent, is exempt if the whole of capital gains has been reinvested in the purchase of agricultural land in the next two years. It is now proposed that this benefit be also granted to a HUF. Accordingly, it is proposed to amend the provisions of section 54B of the IT Act to provide that the rollover relief is available if the land is used for agricultural purposes by an individual or his parent, or by a HUF. This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

Rollover relief under section 54B on transfer of land is available not only to individual, but **HUF also.**

Reference to a Valuation Officer & Fair Market Value to be full value of consideration in certain cases

Amendment to Section 55A

Old Provisions

"With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter , the [Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—

(a) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [Assessing] Officer is of opinion that the value so claimed is less than its fair market value."

New Provisions

"With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—

(b) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [Assessing] Officer is of opinion that the value so claimed ***is at variance with its fair market value."***

Section 50D- Newly Inserted **[w.e.f. 1st April, 2013]**

"Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer."

Notes to clauses

Clause 20-The existing provisions contained in clause (a) of the aforesaid section 55A provide that an AO with a view to ascertain the fair market value of a capital asset may refer the valuation of a capital asset to a Valuation Officer where, in his opinion the value of the asset as claimed by the assessee is less than its fair market value. It is proposed to amend the aforesaid clause so as to provide that reference may be made to the Valuation Officer for ascertaining the fair market value of a capital asset in case such value is at variance with its fair market value instead of making a reference only when such value is less than its fair market value. This amendment will take effect from 1st July, 2012.

Clause 17-The existing provisions of the Income-tax Act provide that on the transfer of a capital asset, capital gains are calculated as the difference between the sale consideration and the cost of acquisition. It is proposed to insert a new section 50D so as to provide that where the consideration received or accruing as a result of the transfer of a capital asset by an assessee, is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Under the provisions of section 55A, where in the opinion of the Assessing Officer value of asset as claimed by the assessee is less than its market value, he may refer the valuation of a capital asset to a Valuation Officer. Under section 55 in a case where the capital asset became the property of the assessee before 1st April, 1981, the assessee has the option of substituting the fair market value of the asset as on 1st April, 1981 as the cost of the asset. In such a case the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, would lead to a lower amount of capital gains being offered for tax. Accordingly, it is proposed to amend the provisions of section 55A of the Income-tax Act to enable the Assessing Officer to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value. Therefore, in case where the Assessing Officer is of the opinion that the value taken by the assessee as on 1.4.1981 is higher than the fair market value of the asset as on that date, the Assessing Officer would be enabled to make a reference to the Valuation Officer for determining the fair market value of the property.

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

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

It is, therefore, proposed that where in the case of a transfer, consideration for the transfer of a capital asset(s) is not attributable or determinable then for purpose of computing income chargeable to tax as gains, the fair market value of the assetshall be taken to be the full market value of consideration. Accordingly, it is proposed to insert a new provision (section 50D) in the Income-tax Act to provide that fair market value of the asset shall be deemed to be the full value of consideration if actual consideration is not attributable or determinable. This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

- *If AO is if the opinion that value taken by assessee as on 1-04-1981 is higher than FMV of the asset on that date, AO would be enabled to make a reference to Valuation Officer for determining FMV of the property.*

- *Section 50D shall be newly inserted to provide that FMV of capital asset to be considered where sales consideration cannot be determined.*

  In the case of transfer of capital asset, where value of consideration is not determinable; FMV of the asset shall be taken to be full value of consideration received for the purpose of computing capital gains.

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

Amendment in proviso to Section 111A(1)

Old Provision

"Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at ***the rate of ten per cent."***

New Provisions **[w.e.f 1st April 2009]**

"Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at ***the rate of fifteen per cent."***

Notes to Clause

The proviso to the aforesaid sub-section provides that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of ten per cent. It is proposed to amend the aforesaid proviso of the said sub-section so as to increase the tax on the balance of such short-term capital gains to fifteen percent, instead of ten per cent.

Memorandum Explaining Finance Bill 2012,

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

Brief of Amendment

Clerical error pertaining to rate of tax in the Proviso rectified.

Section 111A retrospectively amended w.e.f 1st April 2009 to provide in case of equity shares / units on which STT is paid, short term capital gains tax rate is 15%. In the Proviso, the rate is erroneously mentioned as 10%. It is accordingly proposed to amend the said Proviso.

Capital gains in cases of amalgamation and demerger

1. Clause 15

Amendment to Section 47- Transactions not regarded as transfer

Section 47(vii)(a)

A. Old Provisions

"*Any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—*

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

New Provisions **[Newly inserted w.e.f. 1st April, 2013]**

"Any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—

(a) the transfer is made in consideration of the allotment to him of any share or shares in the ***amalgamated company except where the shareholder itself is the amalgamated company, and"***

Notes to clauses

Under the existing provisions contained in sub-clause (a) of clause (vii) of the aforesaid section 47, in case of a merger, any transfer of capital asset being shares, held by a shareholder in the amalgamating company, shall not be regarded as transfer, if—

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

(b) the amalgamated company is an Indian Company.

It is proposed to amend the aforesaid sub-clause so as to provide that to the extent where the amalgamated company itself is the shareholder in the amalgamating company, it shall not be necessary for it to issue share or shares. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

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

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

(b) the amalgamated company is an Indian company.

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

issue shares to the other shareholders of the amalgamating company. This amendment will take effect from 1st day of April, 2013 and will accordingly apply to assessment year 2013-14 and subsequent assessment years.

2. Clause 3

Section 2(19AA)(iv)

Old Provisions

"The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis."

New Provisions **[Amendment w.e.f.1st April, 2013]**

The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on ***a proportionate basis except where the resulting company itself is a shareholder of the demerged company****.*

Notes to Clauses

It is also proposed to amend sub-clause (iv) of clause (19AA) of the aforesaid section 2 so as to exclude the requirement of issue of shares to the shareholders of the demerged company where resulting company itself in a scheme of demerger is a shareholder of the demerged company.
This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

In the case of a demerger, there is a requirement under section 2(19AA)(iv) that the resulting company has to issue its shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company. Therefore, it is proposed to amend the provisions of section 2(19AA) so as to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. The requirement of issuing shares would still have to be met by the resulting company in case of other shareholders of the demerged company. This amendment will apply to assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

In case where subsidiary company amalgamates into holding company, it is not possible to satisfy the requirement of issue of shares to shareholders of amalgamating company, for obvious reasons. Accordingly, requirement to issue shares to shareholders of amalgamating company relaxed when subsidiary company amalgamates into holding company.

Issues required consideration

There is no clarification in the proposed provisions regarding the fulfillment of condition of transferring all assets to amalgamated company in case of cross holding. In such a case, on amalgamation the shares held by the companies in each other are cancelled out. Thus the said condition of transfer of all assets to the amalgamated company will not satisfy.

Clause 21

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

Provisions of clause 21 are explained in detailed on page no. 45

Memorandum to Finance Bill, 2012

Under the existing provisions of clause (vii) of sub-section (2) of section 56 any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head "Income from other sources". However, in the case of an individual, receipts from relatives are excluded from the purview of this section and are therefore treated as not taxable. The definition of relative as given in this sub-clause is only in relation to an individual and not in relation to a HUF. It is therefore proposed to amend the provisions of section 56 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation. This amendment will take effect retrospectively from the 1st day of October, 2009.

Clause 58

Processing of return of income where scrutiny notice issued

New sub –section (1D) of Section 143 shall be inserted. [w.e.f 1st July 2012]

"Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)."

Notes to Clause

The existing provision of aforesaid section 143, *inter alia*, provides that where a return has been made in section 139 or in response to a notice u/s 142(1), such return shall be processed in the manner provided therein. It is proposed to insert a new sub-section (1D) in the aforesaid section so as to provide that notwithstanding anything contained in sub-section (1), processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2).

Memorandum Explaining Finance Bill 2012

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

It is therefore proposed to amend the provisions to provide that processing of return will not be necessary in a case where notice u/s 143(2) has already been issued for scrutiny of the return. This

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Brief of Amendment

Processing of return not necessary where notice has been issued u/s 143(2)

Some returns of income are selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing. Accordingly, processing of return is not necessary where process for scrutiny is initiated by way of issue of notice u/s 143(2).

Clause 64, 66, 108

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

Third proviso to sub-section (1) of section 153A **[Newly Inserted w.e.f. 1st July, 2012]**

"Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.".

After Proviso to sub-section (1) of section 153C **[Newly Inserted w.e.f. 1st July, 2012]**

"Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

Amendment in section 296
Section 296

Old Provision

"The Central Government shall cause every rule made under this Act, the rules of procedure framed by the Settlement Commission under sub-section (7) of section 245F, the Authority for Advance Rulings under section 245V and the Appellate Tribunal under sub-section (5) of section 255 and every notification issued before the 1st day of June, 2007 under sub-clause (iv) of clause (23C) of section 10 and every notification issued under sub-section (1C) of section 139 to be laid as soon as may be after the rule is made or the notification is issued before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, that rule or notification shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."

New Provision **[Amended w.e.f. 1st July, 2012]**

"The Central Government shall cause every rule made under this Act, the rules of procedure framed by the Settlement Commission under sub-section (7) of section 245F, the Authority for Advance Rulings under section 245V and the Appellate Tribunal under sub-section (5) of section 255 and every notification issued before the 1st day of June, 2007 under sub-clause (iv) of clause (23C) of section 10 and every notification issued under sub-section (1C) of section 139 ***or third proviso to sub-section (1) of section 153A or second proviso to sub-section (1) of section 153C*** *to be laid as soon as may be after the rule is made or the notification is issued before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, that rule or notification shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."*

Memorandum to Finance Bill, 2012

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

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

Consequential amendments are also proposed to be made to the provisions of section 296 of the Act. These amendments will take effect from the 1st day of July, 2012.

Notes to Clause

Clause 64 of the Bill seeks to amend section 153A of the Income-tax Act relating to assessment in case of search or
requisition. It is proposed to insert a third proviso to the aforesaid sub-section so as to provide that the Central government may by rules made by it and published in the Official Gazette, (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years
immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. This amendment will take effect from 1st July, 2012.

Clause 66 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person. It is proposed to insert a second proviso to the aforesaid section 153C so as to provide that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing
or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated. This amendment will take effect from 1st July, 2012.
Clause 108 The existing provisions of the aforesaid section 296 provide for laying of rules and certain notifications before Parliament. It is proposed to amend the aforesaid section so as to provide that the rules made by the Central Government under the third proviso to sub-section (1) of section 153A or under the second proviso to sub-section (1) of section 153C are laid before Parliament. This amendment will take effect from 1st July, 2012.

Brief of Amendment

Section 153A, 153C & 296-Notification of a class of search cases where compulsory reopening of past 6 years not required

Central Govt. is empowered to notify cases in which Assessing Officer shall not issue notice for initiation of proceedings for preceding 6 AYs. However, action for completion of assessment proceedings for the year in which search or requisition has been made, would be taken.

Clause 85

Charging of interest on recovery of refund granted earlier

Amendment to Explanation to section 234D

Old Provision

"Explanation.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section."

New Provision **[Amended w.e.f. 1st June, 2003]**

*"Explanation **1**.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.*

Explanation 2 newly inserted **[w.e.f. 1st June, 2003]**

Explanation 2.—For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date."

Notes to clause

The existing provisions of sub-section (1) of the aforesaid section 234D provides that where any refund is granted to the assessee under sub-section (1) of section 143 and no refund is due on regular assessment, or the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment, then, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the whole or the excess amount so refunded for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment. The Explanation to the aforesaid section provides that where, in relation to an assessment year, an assessment is made for the first time u/s 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of the said section. It is proposed to insert a new Explanation so as to clarify that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date. This amendment will take effect retrospectively from 1st June, 2003.

Memorandum Explaining Finance Bill 2012

Under the existing provisions of section 234D of the Income-tax Act (inserted with effect from 1.6.2003, vide Finance Act, 2003), where any refund has been granted to the assessee under sub-section (1) of section 143 and subsequently on regular assessment, no refund or lesser amount of refund is found due to the assessee, then, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the excess amount so refunded for the period starting from the date of refund to the date of such regular assessment. In a recent decision of the Court, it has been held that the provisions of section 234D inserted with effect from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after 1st June,

2003 or refund was granted for those years after the said date. This is not in conformity with the legislative intent of the provision. It is, therefore, proposed to clarify that the provisions of section 234D would be applicable to any proceeding which is completed on or after 1st June, 2003, irrespective of the assessment year to which it pertains. This amendment will take effect retrospectively from the 1st day of June, 2003

Brief of Amendment

Interest applicable to any proceeding which is completed on or after 1 June 2003

Interest u/s 234D is applicable to any proceeding which is completed on or after 1st June 2003, irrespective of the AY to which it pertains.

Clause 87

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

Amendment in section 245C

Clause (b) of Explanation of proviso of sub-section (1) of section 245C

Old Provision

"a person shall be deemed to have a substantial interest in a business or profession, if—

(A) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(B) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession."

New Provision **[Amended w.e.f. 1st July, 2012]**

"*a person shall be deemed to have a substantial interest in a business or profession, if—*

*(A) in a case where the business or profession is carried on by a company, such person is, **on the date of search**, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and*

*(B) in any other case, such person is, **on the date of search**, beneficially entitled to not less than twenty per cent of the profits of such business or profession."*

Notes to clause

The existing provisions of clause (ia) of the proviso to sub-section (1) of the aforesaid section 245C provide that no application shall be made unless, in a case where the applicant is related to the person referred to in clause (i) who has filed an application; and the proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees. The Explanation to the aforesaid clause defines the expressions "applicant in relation to the specified person" and "substantial interest" for the purposes of the said clause. Clause (b) of the said Explanation provides that a person shall be deemed to have a substantial interest in a business or profession, if – (A) in a case where the business or profession is carried on by a company, such person is at any time during the previous year, the beneficial owner of shares (not being share entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent. Of the voting power; and (B) in any other case, such person is, at any time during the previous year beneficially entitled to not less than twenty per cent. of the profits of such business or profession. It is proposed to amend the aforesaid clause (b) so as to provide that the person shall be deemed to have substantial interest, if such person is beneficial owner on the date of search. This amendment will take effect from 1st July, 2012.

Memorandum Explaining Finance Bill 2012

Currently, an application can be filed before the Settlement Commission under the provisions of section 245C of the Income-tax Act. 2. The definition of related person which is currently being used is "…the substantial interest is found to exist, where a person holds more than 20% shares or 20% share in profits, at any time during the previous year". It is proposed to provide that the substantial interest should exist as on the "date of the search" in place of "at any time during the previous year" as the proceedings before the Commission are filed for many previous years. It is accordingly proposed to amend the provisions of section 245C of the Income-tax Act so as to provide that a person shall be deemed to have a substantial interest in a business or profession if such person is a beneficial owner of not less than 20% of shares or of 20% share in profits on the date of search. This amendment will take effect from the 1st day of July, 2012

Brief of Amendment

Related person for the purpose of making application before Settlement Commission

A person shall be deemed to have substantial interest in a business or profession if such person is a beneficial owner of not less than 20% of shares / share in profits on the date of search.

Clause 88

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

Amendment in section 245Q(2)

Old provision

"The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees"

New Provision **[Amended w.e.f. 1st July, 2012]**

"The application shall be made in quadruplicate and be accompanied by a fee of ***ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher"***

Memorandum Explaining Finance Bill 2012

Under section 245Q of the Income-tax Act, the prescribed fee for filing an application before the Authority for Advance Rulings (AAR) is Rs.2500. This fee was prescribed in 1993, when the provisions for Advance Rulings were first introduced and there has been no change/review thereafter. It is therefore proposed to amend the provisions of section 245Q so as to provide for increase in the fee for filing an application for advance ruling from Rs.2500 to Rs.10,000 or such fee as may be prescribed, whichever is higher. This amendment will take effect from the 1st day of July, 2012 and will accordingly apply to any application for advance ruling filed on or after the 1st day of July, 2012

Notes to clause

Clause 88 of the Bill seeks to amend section 245Q of the Income-tax Act relating to application for advance ruling. The provisions contained in sub-section (2) of the aforesaid section 245Q provide that the application for an advance ruling shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees. It is proposed to amend the aforesaid sub-section so as to enhance the fee from two thousand five hundred rupees to ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher. This amendment will take effect from 1st July, 2012.

Brief of Amendment

Increase in fee for filing application before AAR

Fee for filing application before AAR increased from Rs.2500 to Rs.10000 or such fee as may be prescribed, whichever is higher.

Authorisation or requisition and subsequent assessment in search cases

Amendment After section 292C

Section 292CC

New Provision **[Newly Inserted w.e.f. 1st April, 1976]**

(1) ***Notwithstanding anything contained in this Act,—***

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

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

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

Notes to Clause

It is proposed to insert aforesaid *new section 292CC so as to provide that notwithstanding anything contained in this Act, it shall not be necessary to issue an authorisation u/s 132 or make a requisition u/s 132A separately in the name of each person*.

It is further proposed that where an authorisation u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an AOP or BOI consisting of such persons.

It is also proposed to provide that notwithstanding that an authorisation u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.

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

Memorandum to Finance bill, 2012

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

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

In a recent Court decision, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorisation must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.
This decision is not in accordance with the legislative intent.
It is accordingly proposed to insert a new section 292CC in the Income-tax Act to provide that –

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

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

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

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

Brief of Amendment

Authorization or requisition and subsequent assessment in search cases (w.e.f. 01/04/1976 – Refer clause 107 of Finance bill 2012).

In a recent Allahabad High Court decision Commissioner of Income-tax (Central) v. Smt. Vandana Verma, INCOME-TAX APPEAL NO. 21 OF 2009, it has been held that in search cases

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

In order to curtail and nullify various judicial pronouncements lying that joint panchnamas or search authorization in joint names are invalid, it has been provided by way of clarificatory retrospective amendment that

a. Joint panchnama does not refers that it has been issued in the name of AOP or BOI consisting such persons
b. Notwithstanding Authorisation or Requisition u/s 132 or 132A in more than one name, assessment shall be made separately in name each of such persons.

Therefore the scope of authorization has been widened by proposing the retrospective amendment w.e.f. 01/04/1976 by inserting a new section 292CC in the Income-tax Act.

Clauses 27, 28

Prohibition of cash donations in excess of ten thousand rupees

Clause27

Section 80G(5D) **[Newly Inserted w.e.f. 1st April, 2013]**

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

Clause28

Section 80GGA(2A) **[Newly Inserted w.e.f. 1st April, 2013]**

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

Notes to clauses

Clause 27 of the Bill seeks to amend section 80G of the Income-tax Act relating to deduction in respect of donations to certain funds, charitable institutions, etc. It is proposed to insert a new sub-section (5D) in the aforesaid section so as to provide that no deduction shall be allowed

under this section in respect of donation of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Clause 28 of the Bill seeks to amend section 80GGA of the Income-tax Act relating to deduction in respect of certain donations for scientific research or rural development. It is proposed to insert a new sub-section (2A) in the aforesaid section so as to provide that no deduction shall be allowed under this section in respect of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Section 80G of the Income-tax Act provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to specified conditions. The deduction is allowed in respect of any donation being a sum of money. Similarly, section 80GGA of the Income-tax Act provides for a deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/institutions, subject to specified conditions. Currently, there is no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, it is proposed to amend sections 80G and 80GGA so as specify therein that any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

- Any payment exceeding Rs.10,000/- shall be allowed as deduction under section 80G only if paid by any mode other than cash.

- Any payment exceeding Rs.10,000 shall be allowed as deduction under section 80GGA only if paid by any mode other than cash.

Issues required consideration

It is not cleared from the proposed provision that limit of rupees ten thousand is applicable for the aggregate contribution made by the assessee to an institution or to all institutions during the year or for the each contribution made by him.

Eligibility conditions for exempt life insurance policies

Amendment to Section 10

Old Provisions

"any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or*

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day of April, 2003 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured:

Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the [Explanationto sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be].

Explanation.—For the purposes of this clause, "Keyman insurance policy" means 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."

New Provisions **[Amended w.e.f. 1st April, 2013]**

"any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or*

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day of April, 2003 ***but on or before the 31st day of March, 2012*** *in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum* ***assured: or***

(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent. of the actual capital sum assured.

Provided that the provisions of ***sub-clauses (c) and (d)*** shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under ***sub-clause(c)****, effect shall be given to the [Explanationto sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be].*

Explanation ***1****.—For the purposes of this clause, "Keyman insurance policy" means 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."

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the Explanation to sub-section (3A) of section 80C.

Notes to clause

Clause 5 of the Bill seeks to amend section 10 of the Income-tax Act relating to income not included in total income. The existing provisions of clause (10D) of the aforesaid section provide that any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy other than any sum received under sub-section (3) of section 80DD or any sum received under a Keyman insurance policy, or any sum received under an insurance policy for which the premium amount exceeds twenty per cent of the actual capital sum assured, shall be exempt. It is proposed to allow exemption of any sum received under an insurance policy issued on or after 1st April, 2012 only if the premium for the policy does not exceed ten per cent. of the actual capital sum assured. This amendment will take effect from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

Under the existing provisions contained in section 10(10D) of the Income-tax Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt. For this purpose, it is necessary that the premium payable for any of the years shall not exceed 20% of the actual capital sum assured. It is proposed to reduce the threshold of premium payable to 10% of the actual capital sum assured from 20% of the actual capital sum assured. Accordingly, *it is proposed to amend section 10(10D) so as to provide that the exemption for insurance policies issued on or after 1st April, 2012 would only be available for policies where the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured*. Further, in order to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year, it is also proposed to provide that the capital sum assured would be the minimum of the sum assured in any of the years of the policy. Insertion of a new Explanation 2 has been proposed towards this effect by referring to the new definition of "actual capital sum assured" under Explanation of section 80C(3A). This Explanation will apply to insurance policies issued on or after the 1st April, 2012. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

Eligibility conditions for exempt Life insurance policies

Exemption for insurance policies issued on or after 1 April 2012 would only be available for policies where the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured. In order to ensure that life insurance products are not designed to circumvent the prescribed limits by varying capital sum assured from year to year, it is proposed to provide that the capital sum assured would be the minimum of the sum assured in any of the years of the policy.

Eligibility condition for deduction in respect of life insurance policies

Amendment to Section 80C-

A. Old Provisions

Section 80C(3)

"The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum assured, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

New Provisions

Section 80C(3) **[Amended w.e.f. 1st April, 2013]**

"The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an ***insurance policy, other than a contract for a deferred annuity, issued on or before the 31st day of March, 2012*** *as is not in excess of twenty per cent of the actual capital sum assured.*

Explanation.—In calculating any such actual capital sum assured, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

Section 80C (3A)

New Provisions **[w.e.f. 1st April, 2013]**

"The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy, other than a contract for a deferred annuity, issued on or after the 1st day of April, 2012 as is not in excess of ten per cent. of the actual capital sum assured.

Explanation.—For the purposes of this sub-section, "actual capital sum assured" in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account—

(i) the value of any premium agreed to be returned; or

(ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person."

Notes to clauses

The existing provisions of sub-section (3) of the aforesaid section 80C provide that sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent. of the actual capital sum assured. It is proposed to amend the aforesaid section so as to restrict the deduction for insurance policies issued on or after 1st April, 2012 to any premium or other payment made on such insurance policy as is not in excess of ten per cent. of the actual capital sum assured.

It is further proposed to define the expression "actual capital sum assured". These amendments will take effect from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.

Memorandum to Finance Bill, 2012

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

It is further proposed to insert the definition of "**actual capital sum assured"** so as to provide that the *actual capital sum assured in relation to a life insurance policy shall be the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account— (i) the value of any premiums agreed to be returned, or (ii) any*

benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person. This amendment has been proposed to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year. This definition is also referred to in the proposed *Explanation* 2 in section 10(10D). These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Brief of Amendment

Eligibility condition for deduction in respect of life insurance policies.

Deduction for life insurance premium on insurance policies issued on or after 1 April 2012 shall be allowed for only so much of the premium payable as does not exceed 10% of the actual capital sum assured.

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

Amendment to Section 2 - Definitions

Old Provision

"assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means—

(i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometers from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

New provision **[Amended w.e.f. 1st April, 2013]**

"assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means—

(i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include—

*(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than **ten lakh rupees."***

Memorandum of Finance Bill, 2012

Under the existing provisions of section 2 of the Wealth-tax Act, the specified assets for the purpose of levy of wealth tax do not include a residential house allotted by a company to an employee or an officer or a whole time director if the gross annual salary of such employee or officer, etc. is less than five lakh rupees. Considering general increase in salary and inflation since revision of this limit, it is proposed to increase the existing threshold of gross salary from five lakh rupees to ten lakh rupees for the purpose of levying wealth-tax on residential house allotted by a company to an employee or an officer or a whole time director.

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

Brief of Amendment

Definition of 'assets' for the purpose of Wealth-tax not to include a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a ***gross annual salary of less than 10 lakh rupees.***

Clause 112

Exemption from Wealth Tax - Reserve Bank of India

New clause (k) to section 45(k) shall be inserted. **[w.e.f. 1st April, 1957]**

"(k) the Reserve Bank of India incorporated under the Reserve Bank of India Act, 1934."

Notes to clause

The existing provisions of the aforesaid section 45 provide that Wealth-tax shall not be levied in respect of the net wealth of entities enumerated in that section.

It is proposed to insert a new clause (k) in the aforesaid section so as to provide that tax shall not be levied in respect of net wealth of the Reserve Bank of India. This amendment will take effect retrospectively from 1st April, 1957, and will, accordingly, apply in relation to the assessment year 1957-1958 and subsequent assessment years.

Memorandum of Finance Bill, 2012

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

exempting RBI from the levy of wealth-tax either in the Wealth-tax Act or in Reserve Bank of India Act, 1934.

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

Brief of Amendment

Wealth tax not applicable in respect of net wealth of RBI.