THE UNION BUDGET 2012-13

Economic & Direct Tax Implications

Minoo R. Shroff
Kanu H. Doshi

FORUM
OF FREE ENTERPRISE

"Free Enterprise was born with man and shall survive as long as man survives".

- A. D. **Shroff**
Founder-President
Forum of Free Enterprise

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I

Economic Implications

Budget is the key document of the Government which transmits powerful signals to investors at home and abroad. It also reflects the ideology of Government in power and to some extent the predilections of the Finance Minister (FM).

With so much uncertainty on the political and economical fronts, it was expected that the Budget would provide a glimmer of hope for the future. The FM has himself stated that his endeavour was to create an enabling environment for renewal of growth. The Budget has certainly not succeeded in doing so. The disappointment was all the more as the expectations were high. Even allowing for the challenging external and domestic environment the FM could have been bolder in shaping his proposals.

The Report Card for 2011-12 is of performance below par – growth (6.9% v/s 8.5 projected), inflation (8.5% v/s 5 to 6%), fiscal deficit (5.9% v/s 4.6%), current account deficit (3.6% v/s 2.5%). Even in a trying year the economy could have done better with improved governance, more skilful political engagement with the opposition parties and display of greater realism in place of misplaced over-confidence. Instead of focusing on timely implementation of planned projects more populist schemes were announced involving huge outlays as if there was no tomorrow. As Martin Feldstein, the renowned US Economist observed recently -"The Government needs to work hard to reduce fiscal deficit so that funds can be channelised for investments in crediting real assets which can take India's

growth rate from 9% to 10%. The entrepreneurial spirit among its people and a functioning capital market are the two things which show that India has invested in growth. But a great deal needs to be done. The infrastructure is terrible, primary and secondary education system needs to improve. He believes a lot could be done here but doesn't get done because of the political situation."

The tragedy is that bold and innovative initiatives required in policy formulation are totally lacking. Today we have not only deficit in governance but in leadership. We have plethora of political leaders who are only interested in the next election and hardly any statesman who cares for the next generation. As an eminent thinker observed – The crisis in India is a crisis of leadership. There is no one who is willing to articulate a view of India and Indianness with clarity and force so that the country can come together and make the sacrifices needed to build a new India that the framers of the Constitution imagined. Indians are ready to be led again. India is the largest single experiment in democracy and social justice the world has ever seen. Leaders in India, in fact all Indians, have to ask themselves "what will be the judgement of history? What will be our legacy"?

It is a pity that given our enormous strengths we have failed to create a favorable environment for stimulating growth. Comments of the Economist are relevant. "By mid-2000 India was a land of surging optimism, open and full of entrepreneurs who overcame a retreating but still cranky public sector. The country seemed destined to enjoy a long spurt of turbo-charged growth, thanks to its favourable demography fired-up firms, gradual reforms and willingness to save and invest."

One distinguishing feature of our very impressive growth between 2004 and 2007 was the high rate of savings and investments 35% and 38% respectively, almost equaling the levels attained by Japan and South Korea at their peak. These

have fallen by 4% in the last two years. The disturbing feature is that public sector savings whose share in the overall savings has been rising in the last few years have slipped badly due to the poor performance of public sector undertakings and the railways. In the case of private savings also there is a shift from financial savings to physical assets, realty and gold.

Of major concern is the high rate of inflation which has persisted during the last two years, particularly in case of food articles and oil products This is due to the very low annual growth in agriculture sector, an average of below 3%, while the demand for food articles especially non-cereals, has grown rapidly and the continuing rise in global oil prices. The big question mark is how will crude oil prices behave in the current year. In the 2010-2011 budget the average crude price assumed was $.95 per barrel but in reality turned out to be $.115. With anticipated disruption in oil supplies from Iran, the crude price can go up by 15% to 20% which will not only accelerate inflation but also put severe strain on our balance of payments.

The Budget has taken steps for improving agricultural productivity and rural infrastructure. In any event India will not be able to sustain 4% growth in agriculture in view of innumerable constraints. Besides agriculture can only contribute at best 0.5% to our GDP growth on a sustained basis. The service sector has been the backbone of our high growth story so far, growing at between 8.5% to 10% annually and thus accounting for 5% to 6% of GDP.

Industrial production has shown a declining trend in the last two years because of very poor infrastructure, especially acute shortage of power, pathetic roads and drop in investments. Business confidence level has been at a low ebb in view of the ambivalence in policy making and very dilatory clearances especially in respect of land and environment. The manufacturing sector which should have emerged as the lead

sector, as in China, has proved to be a laggard despite the burst of entrepreneurship witnessed in several fields. The new manufacturing policy which is well conceived and expected to increase the share of manufacturing in GDP from 17% to 25% and create 100 million new jobs in a decade, must be implemented with great vigour.

The Budget addresses some of these deficiencies for improving the growth rate from 6.9% to 7.6%. This is certainly achievable provided concerted action is taken at all levels of government, central and states, to address the deficiencies in policy formulation and implementation.

Overall subsidies shown in the Budget at 2% of GDP are grossly underestimated. Numerous implicit subsidies given by the States are not included. It is estimated that the national total could be as high as 15% of GDP i.e. close to US$. 300 billion a year. Going by official figures the fiscal deficit shot up to 5.9% against the estimated 4.6% in the current fiscal year. Budget a provision for the next year is 5.1%. This seems very optimistic as besides the existing large plan and non-plan outlays, there are plethora of social programmes on the anvil, like the food security Bill, which will make a further charge on the Budget even if implemented in the second half of the year. This deficit in short implies additional borrowings which have been swelling from year to year. There is little realization in Government that debt like any other trap is easy enough to get into but hard enough to get of. The additional tax mobilization of Rs.45,000 crores envisaged, will only alleviate the position slightly. However, little attempt has been made to reduce wasteful subsidies or to audit and target spending better.

Exports which had displayed great buoyancy in the last five years have started flagging in recent months as a result of perceptible economic slowdown in USA and Europe. One favourable development has been the geographical diversification of our exports, away from USA and Europe

to Asia, Gulf, Africa and Latin America. However, imports in value terms have been rising faster than exports as a result the trade deficit has increased from $.62 billion in 2006-07 to about $.180 billion in 2011-12. If oil prices were to rise as is likely, both the trade and current account deficits (CAD) will widen further. While we may just about manage CAD of 3.5% of GDP in the current year we can only sustain at best 2.5% in the long term. The overall balance will after many years be in the red in 2011-12 resulting in a decline in our forex reserves.

The overall tax GDP ratio in India (Centre and States) is still very low, averaging between15% to 16% of GDP in recent years. Even in other emerging countries it has crossed 20%. Hence there is imperative need for increasing this ratio not by raising tax rates but by spreading the net wider (currently hardly 3% of the population are income-tax assesses), ensuring more effective collection and speedier assessments. The long awaited GST which the FM has promised would be made operational by August 2012, could alone contribute as much as 1.5%, besides considerably reducing tax evasion. But this is doubtful as the Central Government has yet to bring around the recalcitrant states which calls for statesmanship of a high order as some of the concerns of the States are genuine.

India's unfinished agenda is huge. Crony capitalization rather than free competition prevails in many sectors, especially real estate sector, national resources and Government contracts. Public services, subsidized food, employment programmes, education, health are stymied by lethargy, corruption and leakages. The judicial system is moribund and justice is delayed unduly and litigation is proving exhorbitant.

More urgent than the need for reforms is to improve governance. Economic reforms so far have indeed created a mini-miracle. Non-Governance needs a miracle.

II

Overview of Significant Proposals

I. DIRECT TAX PROPOSALS :

A. INCOME TAX

1. Rates of Income Tax for Assessment Year 2013-2014 :

Basic tax exemption for resident individuals/ Hindu Undivided Families (HUF) is increased to Rs.2,00,000/-.

Further, the Bill levies Alternate Minimum Tax (AMT) at the rate of 18.5% to persons other than company.

No change in the rates of income tax in respect of other categories of tax payers.

'Education Cess' (2%) and 'Secondary and Higher Education Cess' (1%) on the amount of income-tax and surcharge (where applicable) continued.

The table below gives at a glance the income slabs and rates of income tax applicable to different categories of tax payers.

Income	**Existing** rate for **A.Y.2012-2013** [Ref. Note]	Proposed rate for A.Y. **2013-14**
For Individuals (Other than specified note below), ***HUF***, AOP and 801		
Up to Rs. 1,80,000	NIL	NIL
From Rs. 1,80,001 to 2,00,000	10.3%	NIL
From Rs. 2,00,001 to Rs. 5,00,000	10.3%	10.3%
From Rs. 5,00,001 to 8,00,000	20.6%	20.6%
From Rs. 8,00,001 to 10,00,000	30.9%	**20.6%**
Above Rs. 10,00,000	30.9%	30.9%
For Local ***authorities***	30.9%	NO CHANGE
For Firms	30.9%	NO CHANGE
For ***Co-operative*** Societies		
Upto Rs. 10,000	10.3%	NO CHANGE
From Rs. 10,001 to 20,000	20.6%	NO CHANGE
Above Rs. 20,000	30.9%	NO CHANGE
For Domestic Companies		
Up to Rs. 1 crore	30% + 2% EC + 1% SEC = 30.9%	NO CHANGE
Above Rs. 1 crore	30%+5% SC + 2% EC + 1% SEC = 32.445%	NO CHANGE
For Foreign ***Companies***		
Up to Rs. 1 crore	40% + 2% EC + 1% SEC =41.2%	NO CHANGE
Above Rs. 1 crore	40%+2% SC +2 %EC +1% SEC = 42.024%	NO CHANGE
Dividend Distribution Tax ***u/s.115-O***		
By Domestic Company	16.2225%	NO CHANGE
By Money Market Mutual Fund or Liquid Fund		
- Recipient is	27.0375%	
Individual/HUF		
- Other Recipients	32.445%	
By other Mutual Funds (debt)	NIL	-
- Recipient is		
Individual/HUF	13.51875%	
- Other Recipients	32.445%	

By Equity oriented Fund	NIL	
Minimum Alternate Tax (MAT) u/s.115JB Book Profit upto Rs. 1 crore	18.5% + 2% EC + 1% SEC = 19.055%	**NO CHANGE**
Above Rs.1 crore-Domestic Companies	18.5% + 5% SC + 2% EC + 1% SEC = 20.00775%	NO CHANGE
Above Rs.1 crore - Foreign Companies	18.5% + 2.% SC + 2% EC + 1% SEC = 19.4361%	NO CHANGE
Alternate Minimum Tax (AMI) ***u/s.115JC*** (1) LLP (2) Other than above	18.5% + 2% EC + 1% SEC = 19.055% Not applicable	NO CHANGE 19.055%

Notes :

(i) Resident individual/HUF will continue to be eligible for deduction from income chargeable to tax under Section 80C of an amount not exceeding Rs.1,00,000/- with respect to sums paid or deposited in specified schemes, financial savings etc.

(ii) Benefit of additional deduction in respect of investments in notified long-term Infrastructure Bonds to the extent of Rs.20,000/- u/s.80CCF is not extended for A.Y. 2013-14.

(iii) In the case of a resident Senior Citizen of the age of 60 years or more, having total income up to Rs.2,50,000/- would not be required to pay any income tax.

(iv) In the case of a resident (Super) Senior Citizen of the age of 80 years or more having total income up to Rs.5,00,000/- would not be required to pay any income tax.

2. Definition of demerger rationalized **[2(19AA)]** :

Under the existing provision 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 and the resulting company, the holding company.

Therefore, it is proposed to amend the provisions of section 2(19AA) 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 take effect from Assessment Year 2013-14.

3. Offshore Share Transactions Taxable; [Sec 9 amended retrospectively]:

a) The existing provisions of Section 9(1)(i) provide set of circumstances in which income shall be deemed to accrue or arise, directly or indirectly; in India. One of the limbs of Clause (i) is income accruing or arising directly or indirectly through the transfer of a capital asset situate in India. This source rule of taxation of income arising from Offshore transactions where the value is attributable to the underlying assets situate in India, was the subject of litigation in the case of Vodafone. The Supreme Court in this case held in January 2012 that subject matter of transfer being shares outside India and the corporate structure created for commercial purpose which is not sham & colourable device then gains from Offshore transactions cannot be taxed in India.

Further, SC ruled that provisions of Section 9(1)(i) being not a "look through" cannot, by a process of interpretation be extended to cover indirect transfer of capital assets situate in India.

SC also held that a share sale transaction is not a asset sale as such and cannot be broken into separate individual assets, rights such as management rights, controlling rights and so on as shares constitute a bundle of rights.

It was also observed by SC that source in relation to an income has to be construed to be where the transaction of sale takes place and not where the item of value, which was the subject matter of transaction, was acquired or derived from.

Further, by a separate ruling Justice Radhakrishnan concluded that the expression "any person" in Section 195 would mean any person who is resident in India and as such would apply only if payments are made from a resident to another non-resident and not between two non residents situated outside India.

The Bill proposes an amendment to tax offshore share transfers if the value is derived substantially from the assets located in India. These amendments according to the Bill, are to affirm the legislative intent to tax such transactions by way of 'source rule'. Further, Bill proposes to amend Section 195(1) to clarify that tax has to be deducted at source, whether the payment is made by a resident or by a non-resident.

The Bill therefore, proposes to amend the Income Tax Act 1961 as below:-

(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.

(iii) 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.

(iv) 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.

(v) Amend section 195(1) to clarify that obligation to comply with subsection (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 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.

The amendment has the effect of completely overruling the Supreme Court Judgement in Vodafone case, delivered in January 2012.

b) The Finance Bill has also proposed a Validation Clause, for validation of tax demands raised under the Income-tax Act 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. This Validation Clause effectively lays down that any tax levied, demanded, assessed, imposed or deposited before the commencement of the Finance Act that was 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 the Finance Act, 2012.

Validating Clause will render invalid all judgments and orders of competent courts by this retrospective legislation. Validation Clause proposed by the Finance Bill therefore provides that "notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any authority," all notices sent, taxes levied, demanded, etc, in respect of income accruing or arising by way of 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," shall be deemed to have been validly made.

4. Computer Software to be taxable as Royalty:-

The existing provisions of Clause (vi) of Section 9(1) provide that income shall be deemed to accrue or arise in India, by way of 'Royalty' if the amount is payable by the Government or a resident. The term 'Royalty' is defined in Explanation 2 e mean consideration in respect of transfer of all or any right in respect of any property or information.

The taxability of 'Computer Software' as 'Royalty' under section 9(1)(vi) was the subject of litigation and different courts have given conflicting decisions. Delhi HC in Ericsson Radio System AB has upheld the ITAT (SB) ruling in the case of Motorola Inc. wherein it was held that 'Computer Software' being a 'copy righted product' and not a 'copy right' itself cannot be considered as 'Royalty' either under the Act or under the DTAA. However, a contrary view was taken by Karnataka HC in the case of Samsung Electronic Ltd.; and Lucent Technologies.

The Bill now proposes to amend the Section 9(1)(vi) by inserting Explanation 4 to reaffirm the legislative intent to tax payment for use of 'Computer Software' as 'Royalty'. Accordingly, it proposes 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 license) irrespective of the medium through which such right is transferred.

This amendment will also take retrospective effect from 1st June, 1976 and will accordingly apply in relation to the Assessment Year 1977-78 and subsequent assessment years.

Similarly there was some doubt regarding the meaning

of the term "process" and whether the right, property or information had to be used directly by the payer or was to be located in India or control or possession of it had to be with the payer.

The Bill now proposes to amend Section 9(1)(vi) by inserting Explanations 5 & 6 to clarify that -

(i) 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.

(ii) 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 also take effect retrospectively from 1st June, 1976 and will accordingly apply in relation to the assessment year 1977-78 and subsequent assessment years.

5. Limit for exempt life insurance policies reduced to 10%: [Section 10(10D)] :

Under the existing provisions of 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; provided the premium payable for

any of the years shall not exceed 20% of the actual capital sum assured.

Bill proposes to provide that the exemption for insurance policies issued on or after 1st April, 2012 would 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 Assessment Year 2013-14.

6. Pass through Status reinstated to all Venture Capital Fund (VCF) or Venture Capital Company (VCC) without Sectoral restriction : [Section 10 (23FB) & 115U] :-

Under the existing provisions of Section 10(23FB), Venture Capital Fund (VCF) or Venture Capital Company (VCC) registered with SEBI are granted exemption in respect of income if its investments are in unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU) provided the VCU is engaged in only nine specified businesses. Section 115U provides that income, in the hand of the investor through VCFNCC 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 exempt from Dividend Distribution Tax (DDT).

The working of VCF & VCC is regulated by SEBI and RBI. The provisions of section 115U currently allow an opportunity of indefinite deferral of taxation in the hands of investor as income is taxed in the hands of investors on receipt basis. To avoid multiplicity of conditions in different regulations for the same entities, and to remove the sectoral restriction on business of VCU and to rationalize and align it with the true intent of a pass-through status, it is proposed to amend sections 10(23FB) and 115U to provide that :-

(i) The Venture Capital Undertaking shall have the 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 provisions of TDS on income will apply to such income accruing or arising to or received by VCF/ VCC as if such income is deemed to be credited to investor's account on the last day of the previous year.

This amendment will take effect from Assessment Year 2013-14.

7. Benefit of additional depreciation of 20% extended to Power Sector [Section 32(1) (iia)] :

At present, additional depreciation on purchase of new machinery or plant (other than ships and aircraft) @ 20% of actual cost is allowed only to the assessees engaged in the business of manufacture or production of any article or thing; subject to certain conditions mentioned therein. This

deduction is not currently available to the Power Sector.

The Bill proposes to extend the benefit of such additional depreciation to business of generation and/or distribution of power in order to encourage new investment by the assessees engaged in the business of generation or generation and distribution of power.

The amendment will apply w.e.f. Assessment Year 2013-14.

8. Extension of sun-set date for weighted deduction in respect of expenditure incurred on in-house research by an specified assesses [Section 35(2AB)(5)] :

At present, a weighted deduction is allowed at 200% of any expenditure (not being expenditure in the nature of cost of any land or building) on in-house scientific research by a company engaged in the business of biotechnology or in any business of manufacture or production of any article or thing incurred upto 31.03.2012 and not applicable to any expenditure incurred after that date.

The Bill proposes to extend the benefit of the weighted deduction for a further period of five years i.e. upto 31.07.2017 in order to incentivise the corporate sector to continue to spend on in-house research.

9. Deduction in respect of capital expenditure on specified business [Section 35AD]:

Under the existing provisions, 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 "specified businesses" eligible for availing the investment-linked

deduction are listed" in section 35AD (5).

a) Scope of section widened to include 3 new businesses

The Bill proposes to include three new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD, namely:-

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

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

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

It is proposed that the date of commencement of operations for availing investment linked deduction in respect of the above businesses shall be on or after 1st April, 2012.

This amendment is applicable w.e.f. Assessment Year 2013-14.

b) Weighted deduction increased for specified services

The Bill proposes to insert a new sub-section (1A) in order to allow specified businesses a deduction of 1.5 times of the capital expenditure under section 35AD(5) 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.

It is proposed that the date of commencement of operations for availing investment linked deduction in respect of the above businesses shall be on or after 1st April, 2012.

This amendment will take effect Assessment Year 2013-14.

c) Scope of section 35AD(8)(c)(iv) widened to include franchisees of Hotels :

Under the existing provisions, investment-linked deduction is allowed to an assessee engaged in the business of building and operating a hotel of two star or above category as classified by the Central Government; whereby the deduction can only be granted to the owner of a hotel if he himself operates it.

The Bill proposes to insert a new sub-section (6) to clarify that a hotel owner shall be deemed to be carrying on the business of building and own hotel even if he transfers the operation of such hotel to another person while continuing to own the hotel. Accordingly such hotel owner shall also get benefit of deduction u/s 35AD.

This amendment will apply retrospectively with effect from Assessment Year 2011-12.

10. Rationalization of business expenditure for non-deduction of TDS [Section 40(a)(ia)] :

Under the existing provisions of section 40(a)(ia), certain expenses are disallowed if the assessee fails to deduct tax at source from such specified nature of expenses.

However, section 191 provides that the payee shall pay the tax directly in case of non-deduction of tax by the deductor. If the payee fails to pay tax directly then the person shall be deemed to be an assessee in default.

The Bill now proposes to amend the provisions of section 40(a)(ia) to rationalize it with the provisions of section 191. Accordingly, it is proposed that the assessee shall be eligible to claim expenditure u/s 40(a)(ia) even if the assessee has not deducted any tax at source provided the following conditions are satisfied :-

(i) The amount of payment has been made by the assessee to a resident person without deduction of tax.

(ii) The deductee has furnished his return of income under section 139.

(iii) The deductee has taken into account such sum for computing income in such return of income.

(iv) The deductee has paid the tax due on the income declared by him in such return of income, and

(v) The payer (assessee) furnishes a certificate to this effect from an accountant in such form as may be prescribed.

These amendments will apply w.e.f. Assessment Year 2013-14.

11. Tax Audit [Section 44AB] :

a) Threshold limits for applicability increased :

Under the existing provisions of Section 44AB, every person carrying on business or profession is required to get his accounts audited before the specified due date if his total sales, turnover or gross receipts exceed Rs..60 Lakhs (for business)/Rs. 15 Lakhs (for profession) in the previous year.

The Bill now proposes to increase the threshold limit with a view to reducing the compliance burden on small businesses and on professionals, as follows –

Total Sales, Turnover or Gross Receipts	Existing Threshold Limit	Proposed Threshold Limit
from Business	Rs. 60 Lakhs	Rs. 1 Crore
from Profession	Rs. 15 Lakhs	Rs. 25 Lakhs

This amendment will apply w.e.f. Assessment Year 2013-14.

b) Amendment to Section 44AD

Correspondingly, under section 44AD, the limit of maximum total turnover or gross receipts for presumptive scheme of taxation for any business (except business of plying, hiring or leasing goods carriage) is proposed to be increased from Rs. 60 Lakhs to Rs. 1 Crore.

This amendment will apply retrospectively w.e.f. Assessment Year 2013-14.

c) Due date for furnishing Tax Audit Report aligned with due date of furnishing return of income as per section 139(1)

Under the existing provisions of Section 44AB, the report of audit under section 44AB is required to be furnished by 30th September 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 apply w.e.f. Assessment Year 2013-14.

12. Transactions not regarded as transfer in case of Amalgamation of Holding and Subsidiary Company [Section 47(vii)] :

Under the existing provisions of Section 47(vii), any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being shares held by him in the amalgamating company is not regarded as a transfer if:

(a) the transfer is made in consideration of allotment of shares in the amalgamated company, and

(b) the amalgamated company is an Indian company.

However, the amalgamated company (i.e. the holding company) does not satisfy the condition of issuance of shares to the shareholders of the amalgamating company, since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself.

To overcome this, the Bill proposes to amend the provisions of section 47(vii) to exclude the requirement of issue of shares to the shareholder where such amalgamated company is itself the shareholder.

However, the amalgamated company will be required to issue shares to the othershareholders of the amalgamating company.

This amendment shall apply w.e.f. Assessment Year 2013-14.

13. Cost of acquisition in case of certain transfers [Section 49]

Under the current provisions of Section 49, where the 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

acquisition of the asset in the hands of the successor is taken as that of the predecessor. However, 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 sections 47(xiv) and 47(xiii). Thus, 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.

Therefore the Bill proposes to amend the provisions of section 49 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.

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.

14. Fair Market Value to be full value of sale consideration in certain cases [Section 50D]

Under the existing provisions of Sections 45 and 48, the capital gain on transfer of a capital asset is calculated as difference between net sale consideration and cost of acquisition. In appellate recent rulings, it has been held that when the consideration in respect of transfer of an asset is not determinable under the existing provisions of the Income-tax Act, the gains arising from the transfer of such assets are not taxable.

Therefore, the Bill proposes to insert a new section 50D to provide that if actual consideration is not determinable, the fair market value of the asset shall be deemed to be the full market value of consideration.

This amendment shall apply w.e.f. Assessment Year 2013-14.

15. Relief from long-term capital gains tax on transfer of residential property if invested in a manufacturing small or medium enterprise [Section 54GB] :

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.

The Bill proposes to insert a new section 54GB to provide rollover relief from long-term capital gains tax to the assessee being an individual or Hindu Undivided Family on sale of a residential property (house or plot of land) in case of re-investment of net 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.

The relief would be subject to the conditions that:

(i) The net consideration is utilised by the assessee for subscription in equity shares in the eligible company before the due-date of furnishing of return of income under section 139(1).

(ii) The definition of the eligible company in whose equity the assessee needs to invest is as follows:

   (a) the company should be 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 section 139(1) by the assessee;

   (b) the company should be engaged in the business of manufacture of article or thing;

(c) the assessee should have more than 50% share capital or voting rights after subscription in shares of the company;

(d) the company qualifies to be small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006.

(iii) The amount of subscription in equity shares by the assessee is to be utilized by the eligible company for the purchase of new plant and machinery within a period of one year from the date of subscription in the equity shares.

(iv) If the amount of net consideration, which has been received by the eligible company for issue of shares to the assessee, is not so utilized by the eligible company before the due date of filing of return by the assessee, the unutilized amount shall be dep osited under a deposit scheme to be prescribed in this behalf.

(v) 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 tax in case any of the conditions are violated.

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

These amendments shall apply w.e.f. Assessment Year 2013-14.

16. Definition of 'relative' in section 56(2) amended :

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.

Since the definition of relative, as given in clause (e) of Explanation to the aforesaid 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 Ist day of October, 2009.

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

The Bill proposes to introduce a new clause (viib) to Section 56(2), to provide that where a company, not being a company in which the public are substantially interested, receives from any person being a resident, any consideration for issue of shares, which 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".

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.

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 as referred to in clause (23FB) of section 10.

Further, it is also proposed to provide the company an opportunity to substantiate its claim regarding the fair market value.

This amendment shall apply w.e.f. Assessment Year 2013-14.

18. Cash credits under section 68 of the Act - Higher onus of proof on Assessee:

Under the existing provisions of section 68 of the Income tax Act 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 Assessing Officer, then, the sum so credited may be taxed as the income in the hands of the assessee.

Thus the onus of satisfactorily explaining such credits is on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person.

Certain judicial pronouncements have created doubt about the onus of proof and requirements of the section.

A higher onus is required to be placed on closely held companies to prove the source of money in the hands of 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.

Therefore as a measure to prevent generation and circulation of unaccounted money it is 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 company, (not being a company in which the public are substantially interested) 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 and such explanation is found to be satisfactory by the Assessing Officer.

However, 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) as referred to in clause (23FB) of section 10.

This amendment shall apply w.e.f. Assessment Year 2013-14.

19. Scope of "Health Insurance Premia" expanded to include payment made on account of preventive health check-up. [Section 80D] :

The Bill proposes to extend the Health Insurance Premia deduction upto Rs.5,000/- under section 80D to include any payment made by an assessee on account of

preventive health check-up of self, spouse, dependant children or parents(s) during the previous year as eligible for deduction by any mode, including cash within the overall limit of Rs.15,000/- prescribed in the section.

The Bill also proposes to amend the definition of senior citizen for the purpose of section 80D by reducing the age limit from 65 years to 60 years. Similar provision is also proposed in Section 80DDB.

This amendment will be applicable from Assessment year 2013-14.

20. Deduction for Cash donation restricted to Rs.10,000/- [80G & 80GGA] :

At present Sections 80G and 80GGA provide for a deduction in respect of certain donations subject to specified conditions. The said deductions are allowed in respect of any donation being a sum of money.

The Bill now proposes to amend Section 80G & 80GGA to specify therein that any payment exceeding a sum of Rs.10,000/- shall only be allowed as a deduction if such sum is paid by any mode other than cash.

These amendments will take effect from Assessment year 2013-14.

21. Deduction in respect of interest on deposits in savings accounts [Section 80TTA] :

The Bill proposes to insert a new Section 80 TTA to provide for a deduction of up to Rs.10,000/- in aggregate to an assessee, being an individual or a Hindu undivided family, in respect of any income by way of interest on deposits (not being time deposits) in a savings account with certain Banks, Co-operative Society and Post Office.

This amendment will take effect from Assessment year 2013-14.

22. Sections 90 and 90A – Relief from Double Taxation :

(i) In exercise of its power under section 90 the Central Government of India has entered into various Double Taxation Avoidance Agreements (DTAA) with different countries for granting relief of double taxation.

The provisions of sections 90(2) and 90A (2) stipulate that the assessee or specified association who is a resident of a country to whom DTAA/ adopted agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to that assessee.

The Bill proposes to introduce Chapter X-A on 'General Anti-Avoidance Rule' whereby any arrangement or agreement having the main purpose of obtaining tax benefits are impermissible.

Accordingly, the Bill proposes to introduce sub-section (2A) to section 90 whereby it has been clarified that the provisions of Chapter X-A shall apply to the assessee irrespective of the fact that assessee is eligible for beneficial provisions of DTAA entered into by the Central Government of India.

This amendment will be applicable w.e.f. 1st April, 2013.

(ii) Further, Bill proposes to make it mandatory for a non resident to obtain Tax Residency Certificate from the Government of that country.

This amendment has been proposed with an intention to curb the practice of third party residents claiming unintended treaty benefits.

This condition is necessary for availing the DTAA benefits.

This amendment will be applicable w.e.f. 1st April, 2013.

(iii) Under the existing provisions the Central Government is empowered to assign a meaning to any "term" used in a DTAA or agreement adopted for specified association through notification if such term was neither defined in the Act nor in the agreement.

Bill proposes to clarify that such notified meaning will relate back to the date on which DTAA or said agreement for specified association came into force.

The amendment relating to sections 90 and 90A will be applicable w.e.f. 1st October, 2009 and 1st June 2006 respectively.

23. TRANSFER PRICING :

I. 'Specified Domesfic Transacfions'to come under purview of Transfer Pricing provisions [S. 92 & *40A]* :

(A) At present, provisions of Arms' Length Price are applicable only to the international transactions entered into between two associated enterprises one of which shall be non resident. Section 40A(2)(a) of the Act provides that if Assessing Officer is of the opinion that expenditure incurred is excessive or unreasonable having regard to the fair market value or legitimate need of the business then excess payments or expenses are disallowable if payment in respect of such expenditure is made to the person specified in 40A(2)(b).

Bill proposes to introduce provisions to make Transfer Pricing regulations applicable to certain specified domestic transactions (having aggregate value of more than Rs. 5 Crores) entered into between resident tax payers or units of the tax payer.

(B) "Specified Domestic Transaction" in case of an assessee,

in terms of the newly inserted Section 92BA, means any of the following transactions, where the aggregate value of these transactions exceeds Rs. 5 Crores, namely :-

(i) payment made to resident related parties as defined in section 40A(2)(b);

(ii) transactions referred to in section 80A;

(iii) inter-unit transfer of goods or services referred to in section 80IA(8);

(iv) inter-company transactions covered by section 80IA(10);

(v) transactions of similar nature [governed by provisions of sections 80IA(8) or 80IA(10)] entered into by a taxpayer and which forms part of business for which deduction is claimed uls 10AA or other sections of Chapter VI-A; or

(vi) any other transaction as may be prescribed.

(C) The said provisions would not apply if it results in reduction of taxable income / increase in loss.

The assessee having specified domestic transaction will have to maintain prescribed documents and also obtain an accountant's certificate in Form 3CEB.

Further, the assessment / appellate provisions like reference to TPO, option of filing objections with DRP, etc. which are applicable to assessees having international transactions would also be applicable to assessees having specified domestic transactions.

Penalty provisions would also be applicable in case of failure to:

(i) report specified domestic transactions;

(ii) maintainlfurnish prescribed documents; or

(iii) file the certificate in Form 3CEB with the revenue authorities by the due date of filing tax returns.

(D) Accordingly, the Bill proposes to amend section 40A(2)(a) so as to provide that in respect of a specified domestic transaction, expenditure shall be considered as excessive or unreasonable only if it exceeds the arm's length price and not otherwise. Hence, the disallowance under this sub-section, if any, would only be restricted to the difference between the transaction value and the arm's length price.

(E) It is further proposed to amend the meaning of related persons as provided in section 40A(2)(b)(iv) to include: 'any other company carrying on business or profession in which a company, having substantial interest, in the assessee, has substantial interest.

These amendments will be applicable w.e.f. 1st April, 2013.

II. Definitions of 'International Transaction' & 'Intangible Property' [S. 92B]

(A) The current definition of International Transaction under section 92B, being concisely defined, leaves scope for misinterpretation.

The definition by its concise nature does not mention all the nature and details of transactions, taking benefit of which large number of International Transactions are not being reported by taxpayers in transfer pricing audit report.

In the definition, the term "intangible property" is included. Still, due to lack of clarity in respect of scope of intangible property, the taxpayers have not reported several such transactions.

Certain judicial authorities have taken a view that in cases of transactions of business restructuring etc., even if there

is an international transaction, transfer pricing provisions would not be applicable if it does not have bearing on profit or loss of current year or impact on P&L 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.

(B) Accordingly, the Bill proposes to amend the definition of international transaction in order to clarify the true scope of the term "international transaction" to include:

(i) purchase, sale, transfer, lease or use of tangible property such as building, machinery, furniture or any other article, product or thing;

(ii) purchase, sale, transfer, lease or use of intangible property, such as copyrights, patents, trademarks, brand, design or any other business or commercial rights of similar nature;

(iii) capital financing, including borrowings, lending, guarantees, purchase or sale of marketable securities, advances, deferred payments or receivables or debts arising during the course of business;

(iv) provision of services;

(v) transaction of business restructuring or reorganisation, irrespective of whether it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date.

(C) The expression "intangible property" shall include :

(i) marketing, technology, artistic related intangible assets;

(ii) data processing, engineering, customer, contract, human capital related intangible assets;

(iii) location and goodwill related intangible assets;

(iv) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(v) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(vi) any other similar item that derives its value from its intellectual content rather than its physical attributes.

This amendment will be applicable retrospectively w.e.f. 1st April, 2002.

III. Computation of Arms' Length Price _[S. 92C] :_

Section 92C (1) provides for 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 as to 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 clarity and resolve the doubt, 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.

However, the position prior to amendment by Finance (No.2) Act, 2009 still remained ambiguous with varying judicial decisions.

It is now clarified to bring certainty that the revised provisions shall apply to all proceedings pending before the AO as on 1st October, 2009.

However, no reopening of concluded assessments would be permitted on this account only.

Tolerance Range reduced to 3%

The Finance Act, 2011 amended S. 92C so as to remove the rule of 5% variation in ALP from the actual price and instead to allow industry-wise percentage variation to be notified by Central Government w.e.f. **1-4-2012**.

While the same has not yet been notified the Bill has proposed an upper tolerance range of 3% **from transaction price with effect from 1st April** 2013.

_IV._ Examination _by_ the Transfer Pricing Officer of international transactions not referred _by_ the _Assessee_ :

Presently section 92CA, provides that the Assessing Officer 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).

Further, u/s.92E the taxpayer is under obligation to file an audit report in prescribed form 3CEB before the Assessing Officer containing details of all international transactions undertaken by the taxpayer during the year. 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 proceedings before him. In absence of specific power, the determination of Arm's Length Price by the Transfer Pricing Officer would be open to challenge.

It is proposed to amend the section 92CA of the Act retrospectively to empower (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, 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 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.

V. *Advance Pricing Agreements (APA) Introduced :*

At present litigation against the upward adjustment made by TPO in arms length price for international transactions has increased considerably. To reduce the litigation and to provide certainty to the pricing of international transactions between associated enterprises, provision of Advance Pricing Agreement is proposed to be introduced by inserting two new sections - 92CC and 92CD.

APA is an agreement entered into by the Central Board of Direct Taxes (Board), with the approval of the Central Government, with any person for 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.

Salient features of the proposed APA are as follows :

A. *Determination of Arm's Length Price :*

The manner of determination of arm's length price would be based on methods referred to in section 92C(1) or any other method, with such adjustments or variations, as may be necessary or expedient so to do. The said agreement would have an over-riding effect on the provisions of sections 92C and 92CA.

B. *Validity* :

The said agreement shall be valid for such period, not exceeding five consecutive previous years, as may be specified in the agreement.

C. *Binding Nature :*

The advance pricing agreement entered into shall be binding -

(i) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(ii) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

However, the said agreement shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

D. *Filing modified return*

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 APA. Such a modified return shall be considered as a return furnished uls 139.

E. *Assessment / Reassessment :*

(i) Assessment pending on date of furnishing modified return

Where the assessment I reassessment is pending on date of furnishing modified return, in respect of the previous year to which the agreement applies, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with APA and the modified return so furnished. The normal period of limitation for completion of proceedings would be extended by 1 year.

(ii) Assessment completed before furnishing modified return

Where the assessment 1 reassessment is completed before furnishing modified return, in respect of the previous year to which the agreement applies, the Assessing Officer shall proceed to reassess or recompute the total income of the relevant assessment year in accordance with APA and based on modified tax return within a period of 1 year from end of the financial year in which modified return is furnished.

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

It is also proposed to provide that an order of assessment made with respect to any modified return filed pursuant to an APA is appealable before the Commissioner (Appeals).

F. *Declaring the agreement void-ab-initio :*

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. Upon declaring the agreement void *ab initio* –

(i) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(ii) 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 such order shall be excluded. Further, after the exclusion of the aforesaid period, the period of limitation, should not be less than sixty days.

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

24. *General Anti-Avoidance Rule (GAAR)* : *(Chapter X-A, Sections 95 to 102)* :-

To deal with the aggressive tax planning with use of sophisticated structures, these provisions are proposed to be inserted 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. Several countries have introduced and are administering Statutory General Anti Avoidance Provisions. The basic criticism of Statutory GAAR, raised worldwide, is that it provides a wide discretion to the tax administration, which may be prone to misuse.

Similar provisions are already proposed in Direct Taxes Code Bill, though with some differences.

A. The main features proposed in the Finance Bill:

(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 "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 for 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 determine as to whether the arrangement is an impermissible avoidance arrangement or not.

(ii) The Approving Panel has to dispose off 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 making further inquiry.

(iv) The Assessing Officer (AO) will determine consequences of such a positive declaration

of arrangement as an impermissible avoidance arrangement.

(v) The final order in case any consequence of GAAR is determined shall be passed by AO only after approval by Commissioner and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.

(vi) The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.

(vii) The Approving Panel shall be set up by the Board and would comprise of officers of the rank of Commissioner and above.

The panel will have a minimum of three members. The procedure and working of the 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 assessment year 2013-14 onwards.

25. Taxation of cash credits, unexplained money, investments etc. [Section 115BBE] :

Under the existing provisions of the Act, the following unexplained amounts are deemed to be the income of the assessee under relevant sections and are taxable at normal slab rates as applicable to the assessee.

i) Section 68 (Unexplained cash credit)

ii) Section 69 (Unexplained investments)

iii) Section 69A (Unexplained money, etc.)

iv) Section 69B (Under-disclosed investments, etc.)

v) Section 69C (Unexplained expenditure)

vi) Section 69D (Amount borrowed or repaid on hundi otherwise than by account payee cheque).

The Bill proposes to tax the incomes referred to in above sections at flat rate of 30%. It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be available to the assessee under any of the provisions of the Act from the income referred to in the above sections.

This amendment shall apply from assessment year 2013-14.

26. Minimum Alternate Tax (MAT) made applicable to Insurance & Banking Companies [Section 115JB] :

Under the existing provisions of section 115JB, every company is liable to pay Minimum Alternate Tax (MAT) @ 18.5% of its book profit in case tax on its total income computed under the normal provisions of the Act is less than the MAT liability.

The existing provisions provide that every company for the purposes of section 115JB, 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. This provision has been interpreted by the Mumbai Tribunal in the case of **Krung Thai Bank PCL v. JDIT International Taxation 133 TTJ 435** to mean that the provisions of section 115JB do not apply to companies which are not liable to prepare their accounts as per Part II and III of Schedule VI to the Companies Act, 1956. As per section 211 of the Companies Act, the form specified in Schedule VI to the Companies Act, 1956 is not applicable to the companies which are required to

prepare their accounts in form specified in or under any other Act or Regulation governing them (e.g. Banking, Insurance and Electricity Companies).

The Bill now proposes 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.

The Bill also proposes 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. This amendment is proposed to avoid cases where the amount of revaluation is directly credited to reserves without routing them through the Profit and Loss Account and thus is not included in book profit computed under section 115JB.

It is also proposed to omit the reference of Part III of 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 to align the provisions of the Act with that of the Companies Act, 1956.

These amendments shall apply from assessment year 2013-14.

27. Alternate Minimum Tax (AMT) payable by Persons other than Companies [Chapter XII - BA] [Sections 115JC, 115JD, 115JE, 115JEE and 115JF]:

Under the existing provisions, Alternate Minimum Tax

(AMT) is levied on Limited Liability Partnerships (LLPs) only. However, no such tax is levied on other forms of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base vis-a-vis profit linked deductions, a new section 115JEE is proposed to be inserted to specify persons to whom AMT will apply. The section provides that this shall apply to a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C – Deductions in respect of certain incomes" or under section 10AA. **However, 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 Rs.20 Lakhs.**

Consequential amendments have been made in sections 115JC, 115JD and 115JE to make them applicable to persons specified in section 115JEE.

Section 115JD has been amended to provide for availing of tax credit for AMT paid u/s. 115JC to the extent of the excess of the AMT paid over the regular income-tax. This credit shall be allowed to be carried forward upto the 10th assessment year immediately succeeding the assessment year for which such credit become allowable.

For the purpose of computing AMT it is proposed to provide:

i) "adjusted total income" shall be the total income before giving effect to provisions of Chapter XII-BA as increased by the 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;

ii) "regular income-tax" shall be the income-tax payable for a previous year by a person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.

iii) "alternate minimum tax" shall be the amount of tax computed on adjusted total income at a rate of 18.5%.

Consequential amendments are also proposed in 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 to provide for credit of AMT claimed to be set off in accordance with section 115JD for computing the self-assessment tax under section 140A, interest under section 234B and 234C.

The said amendment will apply w.e.f. A.Y. 2013-14.

28. Removal of the cascading effect of Dividend Distribution tax (DDT) [Section 115-O(1A)]:

Section 115-0 provides for levy of Dividend Distribution Tax (DDT) @15% on dividend declared, distributed or paid by a company, whichever is earlier.

Existing provisions of clause (i) of subsection (1A) of section 115-O of the Act provide that for the purpose of computing DDT on the dividend declared, distributed or paid by a holding company, the dividend received by the holding company from its subsidiary shall be reduced provided the subsidiary company has paid the DDT on the dividend paid to the Holding Company and the holding company must not be a subsidiary of any other company.

This removes the cascading effect of DDT only in a two-tier corporate structure.

With a view to removing the cascading effect of DDT in a multi-tier corporate structure, the Bill now proposes to delete the condition that the holding company must not be a subsidiary of any other company to claim the benefit of clause (i) of subsection (1A). Accordingly, under the proposed provision any dividend accrued from any subsidiary company during the year and on which DDT is paid, then dividend distributed by the holding company in the same year shall be reduced to that extent for computing DDT u/s.115-O.

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

29. Compulsory filing of income tax return in relation to assets located outside India [Section 139(1)] :

Under the existing provisions of section 139(1), only those assessees who have taxable income are required to furnish their return of income.

The Bill proposes to amend the provisions of section 139(1) to make it mandatory for every resident who has any asset (including financial interest in any entity) located outside India or is a signing authority in any bank account located outside India to furnish their return of income irrespective of the fact whether the resident taxpayer has taxable income or not.

This amendment will take effect retrospectively from Assessment Year 2012-13.

30. TDS on remuneration paid to the director [Section 194J] :

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.

The Bill now proposes to amend section 194J(1) of the Act to provide for deduction of tax at source @10% by a company in respect of remuneration paid to a director which is not in the nature of salary.

These amendments shall apply with effect from 1st July 2012.

31. Tax Deduction at Source on transfer of certain immovable properties (other than agricultural land) [Section 194LAA] :

Under the existing provisions of the Act, on transfer of an 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, the Bill now proposes to insert a new provision of Section 194LAA 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 as follows –

Sr.	No Place of Immovable Property Threshold Limit	
1.	Greater Mumbai, Delhi Kolkata, Chennai, Hyderabad, Bengaluru, Ahmedabad and their urban Agglomeration.	Rs. 50 Lakhs
2.	District of Faridabad, Gurgaon, Gautam Budh Nagar, Ghaziabad, Gandhinagar and City of Secunderabad.	Rs. 50 Lakhs
3.	Any other area.	Rs. 20 Lakhs

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.

For better compliance, it is also proposed to provide that 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.

For reducing the compliance burden on the transferee, it is also proposed that 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.

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

32. Penalty for failure to furnish TDS statements etc. (sections 271H and 272A)

The Bill proposes to insert a new section 271H with effect from the 1st day of July, 2012, for levy of penalty for :-

(a) failure to deliver or cause to be delivered a statement within the time prescribed in Sections 200(3) or 206C(3), or

(b) furnishing incorrect information in the statement which is required to be delivered under Sections 200(3) or 206C(3).

The minimum penalty shall be Rs.10,000 and may extend to Rs. One lakh. No penalty shall be levied for the failure referred to in Clause (a), 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 the statement referred to in Section 200(3) or Section 206C(3) before the expiry of a period of one year from the time prescribed for delivering such statement.

33. Penalty for failure to furnish information, returns or statement etc. (Section 272A)

The existing penalty u/s.272A of Rs.100/- per day for delay in furnishing information, statement etc. is proposed to be increased to Rs.200/- per day to provide effective deterrence against delay in furnishing of statement, information or to comply with notices.

34. Prosecution for Wilful attempt to evade tax, etc.[276C, 276CC, 277, 277A, 278]

Under the existing provisions relating to prosecutions for willful attempt to evade tax, interest chargeable or imposable, the assessee shall be punishable with rigorous imprisonment for a term which shall not be less than six months but may extend upto seven years,

in a case where the amount of such evasion exceeds Rs.100,000/-.

The Bill now proposes to increase the threshold amount from "Rs.1,00,000/- to Rs.25,00,000/-. In summons trials, where the amount evaded does not exceed Rs.25,00,000/-, the maximum imprisonment is proposed to be reduced from three years to two years in addition to a fine.

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

B. WEALTHTAXACT

1. Limits for exclusion of residential house allotted to employee raised to Rs. 10 Lacs from Rs.5 Lacs

Presently residential house allotted by company to an employee or officer or whole time director having gross annual salary of less than Rs. 5 lacs is not included in the specified assets for the purpose of levying Wealth Tax.

Bill proposes to raise aforesaid threshold of Gross Salary Rs. 5 lacs to Rs. 10 Lacs.

This amendment will be applicable w.e.f. 1st April, 2013.

2. Reassessment of wealth in relation to any asset located outside India :

As per the existing provisions of section 17 of the Wealth Tax Act, if the assessing officer has reason to believe that any wealth chargeable to tax has escaped assessment or reassessment, he may assess or reassess such wealth and also any other net wealth which has come to assessing officer's notice subsequently. Further, no action can be taken under section 17 after a period of 4 years from the end of relevant assessment year where assessment under section 16(3) or section 17 has been completed.

The Bill now proposes to provide for assessment of or reassessment of wealth which, in relation to any asset

(including financial interest in any entity) located outside India, is chargeable to tax and has escaped assessment. In such cases the time limit for issue of notice for reopening has been increased to 16 years as against 6 years provided u/s.17(1A).

These amendments will be applicable w.e.f. 1st July, 2012 and shall also be applicable for any assessment year beginning on or before 1st April 2012.

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SHAILESH KAPADIA

(24-12-1949 – 19-10-1988)

Late Mr. Shailesh Kapadia, FCA, was a Chartered Accountant by profession and was a partner of M/s G.M. Kapadia & Co. and M/s Kapadia Associates, Chartered Accountants, Mumbai.

Shailesh qualified as a Chartered Accountant in 1974 after completing his Articles with M/s Dalal & Shah and M/s G.M. Kapadia & Co., Chartered Accountants, Mumbai. Shailesh had done his schooling at Scindia School, Gwalior and he graduated in Commerce from the Sydenham College of Commerce & Economics, Mumbai in 1970.

Shailesh enjoyed the confidence of clients, colleagues and friends. He had a charming personality and was able to achieve almost every task allotted to him. In his short but dynamic professional career, spanning over fourteen years, Shailesh held important positions in various professional and public institutions. His leadership qualities came to the fore when he was the President of the Bombay Chartered Accountants' Society in the year 1982-83. During his tenure he successfully organized the Third Regional Conference at Mumbai. He was member, Institute of Fiscal Studies, U.K.; member of the Law Committee and Vice-chairman of the Direct Taxation Committee, Indian Merchants' Chamber. He was also a Director of several public companies in India and Trustee of various Public Charitable Trusts.

He regularly contributed papers on diverse subjects of professional interest at refresher courses, seminars and conferences organised by professional bodies.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good".

- Eugene Black
Former President,
World Bank

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