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INDIA BUDGET STATEMENT 2012

The Direct Tax proposals

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This document is a result of our study of the direct tax proposals forming part of the Finance Bill and is intended to bring to you the salient proposals in a simple, condensed and comprehensible manner.

We would like to reiterate that what have been discussed in the following pages are the proposals pertaining to the direct taxes. The said proposals are open to modifications and alterations during the course of discussion in the Parliament before they eventually become law upon receiving the assent of the President of India.

Disclaimer

This document is intended for use by Firm's personnel and clients only. It summarizes the Direct tax proposals forming part of the Union Budget 2012.

While due care has been taken during the compilation of this document to ensure that the information is accurate to the best of our knowledge and belief, the content is not to be construed in any manner whatsoever as a substitute for professional advice. We do not assume any liability or responsibility for the outcome of decisions taken as a result of any reliance placed on this publication.

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Foreword

The Finance Minister, Mr. Pranab Mukerjee, presented the Finance Bill 2012 to the Parliament on March 16, 2012.

For the Indian economy fiscal year 2011-12 has been a year of challenges which include a sub-seven percent growth rate of the GDP primarily due to deceleration in industrial and agricultural growth, deterioration in the fiscal balance due to tight monetary policy, expanded outlays and increased subsidies, high inflationary pressure, adverse exchange rates for the Indian Rupee, slippages in direct tax revenues and failure to meet disinvestment targets etc.. With a deficit of about Rs. 32,000 crores in direct tax revenue collection during fiscal year 2011-12 the Budget proposals for direct taxes intend to introduce far reaching changes in tax laws, some of them with retrospective effect, with an aim to shore up the revenues.

The much awaited Direct Tax Code failed to make its debut on April 1, 2012 as was promised one year back, although the Finance Minister has assured to enact the same at the earliest after expeditious examination of the report of the Parliamentary Standing Committee. However many of the budget proposal on direct taxes are in line with the provisions of the DTC.

On the personal taxation front the proposed changes seek to nudge upwards the exemption limit for the general category to Rs. 200,000. The upper limit for the 20% tax rate slab is raised to Rs. 10,00,000. A deduction of Rs. 10,000 shall be allowed in respect of interest income on savings bank accounts. A deduction of Rs. 5,000 shall be allowed for expenditure on preventive health check-ups although this shall be within the current limit of health insurance premia. Senior citizens not having business income shall be exempted from payment of advance tax. The Individuals and HUF's can invest their gains on sale of residential property in plant and machinery for new start-up enterprises to save tax. A new equity investment scheme for taxpayers having income below Rs. 10 lacs shall enable fifty percent deduction for investments in stocks up to Rs. 50,000 with a lock in period of three years.

MAT and AMT shall no longer be the sole obligation of the Companies and LLP's but is proposed to be extended to all persons who claim profit-linked deductions.

The black money has been under the close lens of the taxmen as much as it has caught the attention of the entire nation in the recent past. A slew of measures are proposed to counter the generation and accumulation of unaccounted income and recovery of taxes thereon. Individual owning assets abroad shall be compulsorily required to file tax returns and shall be liable to present record of such assets for up to sixteen years, if demanded by the tax authorities. Essentially to put in place an early reporting mechanism for investments in popular assets, it is proposed to impose a 1% TDS on transfer of immovable properties and

cash transactions of bullion/jewellery. The penalties for unexplained sums of money, credit, investments or expenditures discovered by tax officials during the course of search have been enhanced and shall be levied @ 10% to 90%. Sale of shares at a premium in excess of the fair market value will be treated as income – a move which is intended to counter the practice of closely held companies laundering black money by bringing it back as share capital. To encourage repatriation of monies, the concessional tax of 15% on dividends received from foreign companies has been extended by one year

On the Transfer Pricing Front the setting up of Advance Pricing Mechanism intends to reduce the litigation since the taxpayers would know their liabilities on transactions with their associated enterprises in advance. The APA shall be binding on both the taxpayers and the taxmen. It is also proposed to bring the specified domestic transactions valued over Rs. 50 million within the purview of transfer pricing regime.

From the international tax perspective, it is proposed to re-write the tax laws that would allow retroactively taxing the cross-border deals resulting in indirect transfer of capital assets in India. The proposed provisions are essentially aimed at overturning the much recent ruling rendered by the Supreme Court of India in the case of Vodafone. Likewise another retroactive amendment in the definition of the term Royalty intends to bring within the tax net the income from sale of shrink-wrapped software in India and licensing of software.

Another big ticket measure is the proposed introduction of General Anti Avoidance Rules which intend to counter aggressive tax avoidance schemes.

To conclude, it can be said that the thrust of the revenue raising effort is directed towards tax collection through anti-abuse measures and promoting voluntary compliance. The proposed stringent penalties and new prosecution measures are intended to act as a deterrent against accumulation of unaccounted money.

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March 20, 2012.

At a glance

Income Tax

- No change in Corporate tax rates
- Basic exemption limit for all individual taxpayers (other than senior citizens) to be Rs. 200,000. No separate exemption limits for women.
- Upper limit of 20 per cent tax slab raised from Rs. 800,000 to Rs. 1,000,000.
- GAAR provisions introduced to address aggressive tax planning and codify the doctrine of 'substance over form'.
- Obtaining Tax Residency Certificate essential but may not be regarded as sufficient evidence for treaty benefits.
- Income arising to non-residents directly or indirectly through transfer of shares of foreign companies having substantial underlying assets situated in India to be taxable in India.
- A definition of the term, 'royalty' taxable in the hands of non-resident, clarified and shall include income consideration for computer software including transmission by satellite, cable, optic fibre etc.
- Income of foreign company received in India/in Indian currency on account of sale of crude oil to any person in India shall subject to certain condition be exempt.
- Dividend from foreign companies received in India to continue to be taxed at a concessional rate of fifteen percent for one more year i.e. up to March 31, 2013.
- Where dividend distributed by a subsidiary company has been subjected to DDT, no further DDT obligation on the holding company while further distributing said dividend in the same year.
- Income of non-resident entertainers performing in India to be also taxable. Special tax rate for non-resident entertainers and sportsmen enhanced to twenty percent.
- Interest income earned by non-residents from certain infrastructure businesses to be taxed at a reduced rate of five percent, subject to fulfillment of certain conditions.

- Transfer Pricing Regulations to apply to certain domestic transactions also.
- Rationalization of transfer pricing provisions relating to filing of return of income, definition of international transactions, tolerance band for ALP, penalties and reassessment of transfer pricing cases.
- Mechanism for Advance Pricing Agreements introduced.
- TDS obligation on payment from one non-resident to another non-resident is applicable in all scenarios irrespective of the formal tax presence in India.
- Liability to pay advance tax introduced even if entire income is subject to TDS and where no tax has been withheld by the payer.
- Right to appeal against DRP directions also given to the tax department.
- Enhancement power of DRP to include any matter arising out of draft assessment order and not necessarily those proposed by the AO.
- Applicability of AMT extended to all persons other than companies (e.g. partnership firms, sole proprietorship, AOP's HUF's etc.)
- Revaluation reserve relating to revalued assets sold/discarded, if not credited to profit and loss account to be added to book profits for computing MAT.
- Companies in insurance, banking, electricity sectors etc. to prepare profit and loss account as per applicable regulatory provisions for computing book profits under MAT.
- Return filing obligatory for every resident relating to assets located overseas.
- Tax department conferred power to re-open assessments for past sixteen years in the case of income from assets located outside India escaping tax.
- Time limit to initiate re-assessment proceedings on an agent of non resident increased from two years to six years.
- Sunset date for claiming tax holiday by power generating, distributing or transmitting companies extended to March 31, 2013
- Initial depreciation benefit extended to the power sector.
- Onus of proving the source of funds of shareholders to avoid taxability of share capital/ share premium shifted to investee closely held companies.
- Share premium in excess of fair market value received by a private company shall be treated as income and not capital receipt.

- Investment linked deduction for capital expenditure to be also available to five new categories of business. The definition of 'hotel owner' also amended to include franchise business system.
- Sunset date for weighted deduction for expenditure incurred on in-house research and development extended to March 31, 2017.
- Weighted deduction at the rate of 150% available on expenditure incurred on agriculture extension projects and on skill development projects.
- Charitable organizations engaged in commercial activities beyond the prescribed threshold in a particular year not entitled to tax exemption even if approval is not withdrawn.
- Mandatory Tax Audit threshold limit raised to Rs. 10,000,000 for business and Rs. 2,500,000 for professionals
- Relief from long-term capital gains tax on transfer of residential property for investment in plant and machinery of start up SMEs.
- Unexplained credits, money, investment, expenditure under sections 68, 69, 69A, 69B, 69C or 69D to be taxed @ 30%.
- Deduction for donations in excess of Rs. 10,000 prohibited if made in cash.
- Deduction for expenditure on preventive health check-up.
- Interest up to Rs. 10,000 on savings bank account deductible.
- Receipts under a life insurance policy will be exempt from tax if the premium is not in excess of ten percent of actual sum assured.
- Senior citizens not having business/professional income shall not be liable to pay advance tax
- Age limits for residential individuals entitled to receive income without TDS subject to furnishing a declaration reduced from sixty five years to sixty years.
- Directors' remuneration (not being salary) made subject to TDS at the rate of ten percent.
- Seller of bullion and jewelry to collect tax at the rate of one percent of sale consideration, if the same exceeds Rs. 200,000 and is transacted in cash.
- Purchaser of an immovable property (other than agricultural land) to deduct tax at the rate of one percent of total consideration, subject to certain limits.
- TCS provisions also applicable to seller of coal, lignite or iron ore.
- Penalty provisions in search cases amended and made more stringent.

- New provisions introduced for Special Courts for trial of offenses as summons case and application of Code of Criminal procedure.
- Revision of thresholds of tax evasion amount and term of rigorous imprisonment.

Direct Tax Proposals

This section summarizes significant proposals on direct taxes announced in Union Budget 2012. These proposals are generally effective from financial year commencing April 1, 2012 relevant to Assessment year 2013-14. However some of the proposals are effective either prospectively or retrospectively in which case the dates from which they become applicable have been mentioned against respective proposals.

Income Tax

Rates of Tax

- The **tax slabs for individual (other than senior citizens)/ HUF/ AOP/ BOI/ artificial juridical person**, shall be as under:

Income Slabs		Tax Rate (percent)
AY 2012-13	AY 2013-14	
Upto Rs. 180,000	Upto Rs. 200,000	Nil
Rs. 180,000 to Rs. 500,000	Rs. 200,000 to Rs. 500,000	10%
Rs. 500,000 to Rs. 800,000	Rs. 500,000 to Rs. 1,000,000	20%
Above Rs. 800,000	Above Rs. 1,000,000	30%

The above tax slabs are also applicable to all tax non-resident individuals irrespective of the fact whether they fall within the age limit for senior citizens or more senior citizens.

- The **tax slabs for senior citizens, resident in India** who are of the age of sixty years or more but less than eighty years shall be as under:

Income Slabs		Tax Rate (percent)
AY 2012-13	AY 2013-14	
Upto Rs. 250,000	Upto Rs. 250,000	Nil
Rs. 250,000 to Rs. 500,000	Rs. 250,000 to Rs. 500,000	10%
Rs. 500,000 to Rs. 800,000	Rs. 500,000 to Rs. 1,000,000	20%
Above Rs. 800,000	Above Rs. 1,000,000	30%

- The **tax slabs for senior citizens**, being a **resident in India** and who are of the age of eighty years or more, shall be as under:

Income Slabs		Tax Rate (percent)
AY 2012-13	AY 2013-14	
Upto Rs. 500,000	Upto Rs. 500,000	Nil
Rs. 500,000 to Rs. 800,000	Rs. 500,000 to Rs. 1,000,000	20%
Above Rs. 800,000	Above Rs. 1,000,000	30%

- *Separate tax slab for women assessee's* have been withdrawn.
- The *Education Cess and the Secondary and Higher Education Cess* shall continue at old rates of two percent and one percent respectively.
- *Surcharge on domestic companies* having a total income exceeding Rs. 10,000,000 shall continue to be levied at a rate of 5%.
- *Surcharge on foreign companies* having a total income exceeding Rs. 10,000,000 shall continue to be levied at a rate of 2%.
- For all other classes of taxpayers the tax rates remain unchanged.

Definitions

- The definition of term '***property***' as contained in section 2(14) is proposed to be enlarged by insertion of an explanation so as to clarify that the term 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. *To be effective retrospectively from 1.4.1962.*
- The definition of the term '***Commissioner***' as contained in section 2(16) is proposed to be amended so as to bring within its ambit the Director of Income Tax.
- Explanation 2 to section 2(47) is proposed to be inserted to clarify that the term '***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. *To be effective retrospectively from 1.4.1962*

Deemed Incomes

- Explanation 4 is proposed to be inserted under section 9(1)(i), to clarify that the expression '***through***' as used in the Act, has always meant and included '***by means of***', '***in consequence of***' or '***by reason of***'. *To be effective retrospectively from 1.4.1962.*
- Explanation 5 is proposed to be inserted under section 9(1)(i), to clarify that the asset or capital asset comprising ***share/ interest in a company registered/ incorporated outside India shall be deemed to be situated in India*** if the said share/interest derives, directly or indirectly, its value substantially from the assets located in India. *To be effective retrospectively from 1.4.1962.*
- Explanation 4 to section 9(1)(vi) is proposed to be inserted to clarify that the ***consideration for use of computer software including granting of a license to use computer software is royalty.*** *To apply retrospectively w.e.f. assessment year 1977-78*

- A clarification on the scope of the term '**royalty**' as used in section 9(1)(vi) is proposed by insertion of explanation 5 to said section to specify that the **consideration for use or right to use of computer software(including granting of a license) is to be considered as royalty, irrespective of the medium through which such right is transferred. To apply retrospectively w.e.f. assessment year 1977-78**
- Explanation 6 to section 9(1)(vi) is proposed to be inserted to clarify that royalty includes and has always included **consideration in respect of any right, property or information**, irrespective of, whether or not:
 - (i) the possession or control of such right, property or information is with the payer;
 - (ii) such right, property or information is used directly by the payer;
 - (iii) the location of such right, property or information is in India.

To apply retrospectively w.e.f. assessment year 1977-78

Exemptions

- Section 10(10D) is proposed to be amended to provide that sums received under an **insurance policy issued after 31.03.2012**, the premium of which, payable for any of the years during the term of policy **exceeds ten percent of the sum assured**, shall not be eligible for exemption. The earlier condition for non-exemption in cases where premium amount exceeds 20% of the sum assured shall continue to apply for policies issued during the period 1.4.2003 to 31.3.2012.
- Section 10(23C) is proposed to be amended to provide that an assessee engaged in activities for **charitable purposes, tax exemption** shall not be available in a year if its receipts from commercial activities exceed the threshold limit of Rs. 2,500,000 in the said year. Consequential amendments are proposed to be made in sections 13 and 143 of the Act. *To apply retrospectively w.e.f. 1.4.2009*
- With a view to relax the sectoral restrictions applicable on **exemption of income of venture capital undertaking**, clause (c) under Explanation 1 to section 10(23FB), is proposed to be amended to provide that the term 'venture capital undertaking' shall have the same meaning as assigned to it under the SEBI(VCF) Regulations, 1996.
- It is proposed to insert a new sub-section (48) under section 10 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) receipt of such income in India must be under an agreement/arrangement entered into by the Central Government or approved by it;
 - (ii) the foreign company and the arrangement/agreement has been notified by the Central Government having regard to the national interest.
 - (iii) the foreign company is not engaged in any other activity in India.
 - (iv) *To apply retrospectively w.e.f. 1.4.2012*

Profit and gains from business or profession

- It is proposed to amend section 32(1)(iia) to provide that an assessee engaged in the business of ***generation/distribution of power shall also be allowed initial depreciation*** in addition to the normal depreciation at the rate of 20% of actual cost of new plant and machinery (other than ship and aircraft) acquired and installed in the previous year.
- It is proposed to amend 35(2AB) to extend the ***sun-set date for a weighted deduction at the rate of 200% of expenditure on approved in-research and development*** (not being expenditure in the nature of cost of any land or building) by another five years i.e. from the present 31.3.2012 to 31.3.2017.
- It is proposed to also include the following three businesses as “specified business” for the purposes of entitlement for ***hundred percent investment-linked deduction for capital expenditure*** under section 35AD provided the operations of such businesses commence on or after 1.4.2012:
 - (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 also proposed that the following specified businesses commencing operations on or after 1.4.2012. shall be allowed a ***deduction of one hundred and fifty percent of capital expenditure*** under section 35AD:
 - (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.
- A new sub-section (6A) is proposed to be inserted in section 35AD to provide that where the ***assessee builds a hotel of two star or above category and gets the same operated through another person under an outsourcing arrangement***, the owner of the hotel shall be deemed to be carrying on the specified business of building and operating hotel and would be entitled to investment linked deduction for capital expenditure. *To apply retrospectively w.e.f. 1.4.2011.*
- It is proposed to insert new section 35CCC to allow ***weighted deduction of one hundred and fifty percent of the expenditure incurred on agricultural extension project***. The agricultural extension project eligible for this deduction shall be notified by the CBDT.

- A new section 35CCD is proposed to be introduced to ***provide weighted deduction of one hundred and fifty percent of expenses (not being expenditure in the nature of cost of any land or building) incurred on skill development project.*** The skill development projects eligible for this deduction shall be notified by the CBDT.
- Section 40(a)(ia) is proposed to be amended by insertion of a new proviso therein to provide that ***where the assessee, though having failed to deduct tax at source, is not treated as an assessee in default under section 201(1),*** then the assessee shall be deemed to have deducted and paid taxes on the date of furnishing of return of income by the resident payee.
- Section 40A is proposed to be amended by insertion of a proviso to provide certainty to the method for determination of fair market value in respect of transactions entered into between domestic related parties. The proposed proviso provides that ***no expenditure shall be disallowed under this section if the transaction value is determined to be at arm's length price as defined under section 92F(ii).*** Corresponding amendments have been proposed in the transfer pricing provisions.

Further clause (b) to section 40A(iv) is proposed to be amended so as to include the ***holding companies within the scope of the term 'related persons'***.

- The threshold limit of total sales, turnover or gross receipts, for obtaining a ***mandatory tax audit report*** under section 44AB is proposed to be enhanced to:
 - (i) Rs. 10,000,000 (existing limit Rs. 6,000,000) in the case of person carrying on business; and
 - (ii) Rs. 2,500,000 (existing limit Rs. 1,500,000) in the case of persons carrying on profession.
- For the purpose of ***presumptive taxation under section 44AD***, the threshold limit of total turnover or gross receipts would be increased from Rs. 6,000,000 to Rs. 10,000,000.
- Section 44AD currently applicable only to a person carrying on any business, except business of plying, hiring or leasing goods carriage. It is proposed to amend the said section to clarify that this ***presumptive scheme is not applicable to:***
 - (i) a persons carrying on profession as referred to in sub-section (1) of section 44AA;
 - (ii) persons earning income in the nature of commission or brokerage income; or
 - (iii) persons carrying on any agency business.

To apply retrospectively w.e.f. 1.4.2011

Capital Gains

- It is proposed to amend the provisions of section 47(vii), so as to remove the requirement of issuing shares to the shareholders in case of **transfer of shares under a scheme of amalgamation**, provided 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.
- It is proposed 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/ the firm, as the case may be. *To apply retrospectively w.e.f 1.4.1999.*
- It is proposed to insert a new section 50D in the Income Tax Act to provide that in cases where the actual consideration for transfer is not determinable, the **fair market value of the asset shall be deemed to be the full value of consideration.**
- It is proposed to amend section 54B which provides for **relief from capital gains arising on transfer of land used for agricultural purposes** to provide that the said relief would be available if the land is used for agricultural purposes by the either assessee himself being an individual, or his parent or his HUF.
- New section 54GB is proposed to be inserted to provide relief from tax on long term capital gains arising to an individual or an HUF, from sale of a residential property (being a house or a plot of land), where such **sale consideration of residential property is re-invested in the equity of a newly set-up SME company**, to operate in the manufacturing sector, before the due date for furnishing of ROI under section 139. The said exemption shall be subject to the following conditions:
 - (i) The company must, within one year from the date of subscription, utilize the amount so invested in purchase of new plant and machinery (*'new asset'*).
 - (ii) the equity shares subscribe by the assessee as well as the new asset purchased by the company shall have to be held for a lock-in period of five years from the date of their acquisition.The quantum of capital gains exempt from tax shall be in the same proportion to total capital gains, as the amount invested would bear to the net consideration received on sale of property.
- The scope of **power of the Assessing Officer for making a reference under section 55A to a Valuation Officer**, is proposed to be enhanced by enabling him to make a reference where the value declared by the assessee is at variance from the fair market value.

Income from other sources

- Definition of the term 'relative' as referred to in section 56(2)(vii) is proposed to be amended to exclude the ***sums or property received by an HUF from its members, without consideration or with inadequate consideration***, from the purview of taxation. *To apply retrospectively w.e.f. 1.10.2009.*
- New clause (viib) is proposed to be inserted under section 56(2), to bring to tax the ***consideration received by a closely held company for issue of shares, to the extent the said consideration exceeds the fair market value*** of such shares. However, the provisions of this clause shall not be made applicable to a VCU receiving consideration of shares from a VCC/VCF.

Taxation of cash credits, unexplained money, investments etc.

- Section 68 of the Act is proposed to be amended to provide that in case of a company assessee, being a closely held company, the ***onus to prove the genuineness of sums credited in the books of such company, on account of share application money, share capital, share premium, etc.*** shall not be relieved unless:
 - a) The shareholder, being a resident, in whose name such credit is recorded, offers an explanation about the nature and source of such receipt in his hands; and
 - b) the explanation so offered is found to be satisfactory by the AO

However, the burden of additional explanation shall not be attracted if the shareholder is a well regulated entity, i.e. a VCF/VCC registered with the SEBI.

- A new section 115BBE is proposed to be inserted to provide ***that income deemed as unexplained credits, money, investments, expenditures etc shall be taxable at the rate of thirty percent*** (plus surcharge and cess as applicable). It is also proposed that no deduction in respect of any expenditure or allowance shall be allowed in computing the above deemed income.

Deductions from taxable income

- It is proposed to amend the provisions of section 80C so as to provide that the ***deduction for life insurance premium*** for insurance policies issued on or after April 1, 2012 shall apply only to so much of the premium payable as does not exceed 10% (as against 20% at present) of the actual capital sum assured.
- Deduction allowed under section 80D is proposed to also include a sum up to Rs. 5,000 towards 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. This deduction shall be within the overall limit of Rs. 15,000 presently prescribed in the said section. It is also proposed that for the purpose of availing deduction for expenditure on preventive health check-up the payment may be made in any mode, including cash.

- To provide uniformity in the prescribed age for the purpose of availing senior citizen benefits under various provisions it is proposed to **reduce the age for availing of the benefits available to senior citizen from sixty-five years to sixty years** for the purpose of following sections:
 - (i) Section 80D - deduction on account of premia paid towards a health insurance policy
 - (ii) Section 80DDB - deduction on account of medical treatment of a specified disease or ailment.

- Amendments are also proposed to provide that deduction for donations of amounts to charitable institutions etc. u/s 80G and donations to research associations u/s 80GGA shall be available only if such **donations in excess of Rs. 10,000 are made by any mode other than cash.**

- The **sun-set date for section 80-IA** is proposed to be enhanced by one year i.e. up to 31.3.2013.

- New section 80TTA is proposed to be introduced to provide a deduction up to Rs. 10,000 in aggregate, to an individual or a Hindu undivided family, in respect of any **income by being interest on deposits (not being time deposits) in a savings account** with—
 - (i) a banking company to which the Banking Regulation Act applies
 - (ii) a co-operative society
 - (iii) a post office

Provided the provisions of this section shall not apply to cases where interest income is derived by an eligible assessee from any savings account held by, or on behalf of a firm, AOP or BOI.

Double Taxation Relief

Agreement with foreign countries or specified territories:

- A new sub-section (2A) is proposed to be inserted under section 90, to provide that provisions of the newly inserted Chapter X-A – **“General Anti-Avoidance Rule” shall apply** to the non-resident assessee’s **even if the same are not beneficial** to him. The said sub-section commences with a non-obstante clause and is intended to override the provisions of section 90(2).

- Sub-section (4) is proposed to be inserted under section 90, to provide that relief to a non-resident assessee, to whom any agreement referred to in section 90(1) applies shall not be granted **unless the assessee furnishes a tax residency certificate obtained from the government** of that country containing such particulars as are prescribed.

- Explanation 3 to section 90 is proposed to be inserted to provide that the **terms which have not been specifically defined in the DTAA's or the Act** but have been assigned meaning by way of notifications issued u/s 90(3), shall be deemed to have the same meaning with retrospective effect from the date on which the respective DTAA came into force. *To apply retrospectively from 1.10.2009.*

Adoption by Central Government of Agreement between specified associations for double taxation relief

- Sub-section (2A) is proposed to be inserted under section 90A, to provide that **provisions of GAAR shall apply to the non-residents even if the same are not beneficial to them** vis-à-vis the applicable DTAA.
- Sub-section (4) is proposed to be inserted under section 90A, to provide that relief to a non-resident assessee, to whom section 90A(1) applies shall not be granted **unless the assessee furnishes a tax residency certificate obtained from the government** of that country containing such particulars as are prescribed.
- Explanation 3 to section 90A is proposed to be inserted to provide that the **terms which have not been specifically defined in the agreements specified under section 90A(1) or the Act** but have been assigned meaning by way of notifications issued u/s 90(3), shall be deemed to have the same meaning with retrospective effect from the date on which the respective DTAA came into force. *To apply retrospectively from 1.10.2006..*

Transfer Pricing

Computation of income from international transactions having regard to arm's length price

- The **applicability of transfer pricing provisions is extended to transactions between domestic related parties**, by proposed substitution of the words "international transaction", as appearing in section 92, with the words, "international transaction or specified domestic transaction". Consequential amendments are also proposed to sections 92C, 92CA, 92D & 92E.
- Sub-section (2A) to section 92, is proposed to be inserted to provide that any allowance, expenditure, allocation of expense or income in relation to a transaction between domestic related parties shall be computed having regard to its arms length price.

Meaning of the term 'International Transaction'

- An explanation is proposed to be inserted under section 92B, whereby under clause (i), it has been clarified that the expression "international transaction" shall include following transactions:
 - (i) Purchase, sale, transfer, lease or use of any tangible property
 - (ii) Purchase, sale, transfer, lease or use of any intangible property

- (iii) Capital financing, purchase or sale of marketable securities or any types of advance, payments or deferred payments or receivable or any other debt arising in the course of business
 - (iv) Provision of services
 - (v) Transactions of business restructuring or reorganisation, irrespective of the fact whether it has any impact on the profit/losses/assets of the enterprise.
- Clause (ii) of the explanation is intended to clarify the scope of term “*intangible property*” to include intangible assets related to marketing, technology, art, data processing, engineering, customers, contract, human capital, location, goodwill, etc. *To apply retrospectively w.e.f. 1.4.2002*

Meaning of the term ‘specified domestic transaction’

- New section 92BA is proposed to be inserted, whereby the term ‘*specified domestic transaction*’ has been defined to mean:
 - (i) any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b);
 - (ii) any transaction referred to in section 80A;
 - (iii) any transfer of goods or services referred to in section 80-IA(8);
 - (iv) any business transacted between the assessee and other person as referred to in section 80-IA(10); or
 - (v) any other prescribed transaction
 These provisions shall apply where the sum total of aforesaid transactions entered into during the relevant previous year exceeds Rs. 50,000,000.

Computation of arm’s length price

- Second proviso to sub-section (2) to section 92C, is proposed to be amended to provide that where more than one price is determined by the most appropriate method and arm’s length price is taken to be the arithmetic mean of such prices, no adjustment shall be required to be made to the transaction value if the ***variation between arithmetic mean and transaction value is not more than 3% of the transaction value as against the present tolerance limit of 5%.***
- An explanation to section 92C(2) is proposed to be inserted, to clarify that, the provisions of said second proviso with respect to ***tolerance band shall apply to all assessment/reassessment proceedings pending as on 1.10.2009. To apply retrospectively from 1.10.2009.***
- A clarification regarding the applicability of tolerance band as provided in the second provision to section 92C(2), is proposed to be provided by insertion of sub-section (2A), which states that the ***relief of five percent variation between the arithmetic mean of ALP and the transaction value is not intended to be provided by way of a standard deduction*** and that where the said variation exceeds the prescribed limit of five percent the assessee shall not be entitled to take benefit of the provisions of said second proviso. *To be effective retrospectively, from 1.4.2002*

- Sub-section (2B) to section 92C is proposed to be introduced to provide that in respect of any assessment year, assessment of which has been completed before 1.10.2009, no action should be taken under section 147 or under section 154 in respect of such completed assessments, in view of the newly inserted section 92C(2A).

Reference to Transfer Pricing Officer

- Sub-section (2B) to section 92CA is proposed to be inserted to provide that where in respect of any international transaction the assessee has not furnished audit report in Form 3CEB and such ***international transaction comes to the notice of TPO during the course of assessment proceedings***, the said transaction shall be treated as that having been referred to him for computation of ALP and the TPO shall have the powers to proceed with the computation thereof. *To apply retrospectively w.e.f. 1.6.2002.*
- Sub-section (2C) to section 92CA is proposed to be introduced to provide that in respect of any assessment year, assessment of which has been completed before 01.07.2012, no action should be taken under section 147 or section 154 in respect of such completed assessments, in view of the newly inserted section 92CA(2B).

Advance Pricing Agreement

- New Sections 92CC and 92CD are proposed to be introduced to provide a framework for advance pricing arrangements (APA)
- APA shall be an agreement between a taxpayer and the tax authorities on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future.
- CBDT shall be empowered to enter into an APA with any person undertaking an international transaction.
- 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.
- The manner of determination of arm's length price in such cases shall be any method including those provided in section 92C(1), with necessary adjustments or variations.
- 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 transfer pricing provisions 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.
- The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
- 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 CBDT 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.
- For the purpose of computing any period of limitation, 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.

- The CBDT is empowered to prescribe a Scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.
- 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.
- 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.
- 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.
- 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 re-compute 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.
- All the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

To apply w.e.f. July 1, 2012

General Anti-Avoidance Rule (GAAR)

- A new chapter X-A is proposed to be inserted to introduce the General Anti-Avoidance Rule (GAAR) regime for codifying the doctrine of ‘*substance over form*’
- By introduction of the proposed statutory provisions of GAAR the tax authorities shall be empowered by look into the real substance of transaction underlying the legal form of such transaction while applying the taxation laws.
- GAAR shall apply to 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 following four tests.
 - (i) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm’s length.
 - (ii) It results in misuse or abuse of provisions of tax laws.
 - (iii) It lacks commercial substance or is deemed to lack commercial substance.
 - (iv) Is carried out in a manner, which is normally not employed for bonafide purpose.
- Such arrangements shall be declared as an “impermissible avoidance arrangements”.
- The onus of proving that the main purpose of the arrangement is not for obtaining the tax benefit shall lie with the taxpayer.
- An arrangement will be deemed to lack commercial substance in following situations:
 - (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
 - (v) 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.
- It is also provided that certain circumstances like period of time for which the arrangement exists, the fact of payment of taxes under the arrangement, the exit route provided in the arrangement shall not be taken into account while determining ‘lack of commercial substance’ test for an arrangement.
- 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, including but not limited to the following consequences:

- (i) disregarding or combining any step of the arrangement
 - (ii) ignoring the arrangement for the purpose of taxation law
 - (iii) disregarding or combining any party to the arrangement
 - (iv) reallocating expenses and income between the parties to the arrangement
 - (v) 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
 - (vi) considering or looking through the arrangement by disregarding any corporate structure
 - (vii) re-characterizing equity into debt, capital into revenue etc.
- 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.
 - For effective application in cross border transaction and to prevent treaty abuse a limited treaty override is also provided.
 - The procedure for invoking GAAR is proposed to be introduced vide section 144B of the Act, as under:-
 - The Assessing Officer shall make a reference to the Commissioner for invoking GAAR
 - 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.
 - 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
 - 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.
 - The Assessing Officer (AO) will determine consequences of such a positive declaration of arrangement as impermissible avoidance arrangement.
 - 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.
 - The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.
 - The Approving Panel shall:
 - a) be set up by the CBDT and would comprise of officers of rank of Commissioner and above
 - b) The panel will have a minimum of three members.
 - c) The procedure and working of Panel shall be administered through subordinate legislation.

- The CBDT shall prescribe a scheme for regulating the condition and manner of application of these provisions.
- The aforesaid provisions are contained in new sections 95 to 102.

Determination of tax in certain special cases

- It is proposed to amend Section 115A 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).

The specified company shall be an Indian company engaged in the business of –

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

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

To apply w.e.f. July 1, 2012 .

- It is proposed to amend Section 115BBA to provide that ***income arising to a non-citizen, non-resident entertainer (such as theater, radio or television artists and musicians) from performance in India*** shall be taxable at the rate of twenty percent of gross receipts. *To apply w.e.f. July 1, 2012*
- It is also proposed to increase the tax rate, in case of ***non-citizen, non-resident sportsmen and non-resident sports association***, from the present ten percent to twenty percent of the gross receipts. *To apply w.e.f. July 1, 2012*
- Consequential amendments is proposed to section 194E to provide for TDS @ 20% from income payable to non-resident, non-citizen entertainer or sportsmen or sports association/institutions. *To apply w.e.f. July 1, 2012*
- The applicability of the section 115BBD, providing for a ***concessional tax at the rate of fifteen percent on dividend income of Indian companies received from their foreign subsidiaries***, has been proposed to be extended for a year and shall accordingly apply for financial year 2012-13.

Minimum Alternate Tax

- It is proposed to amend section 115JB to provide that in the case of ***insurance, banking, electricity companies which are allowed to prepare their profit and loss account in accordance with the provisions specified in regulatory Acts*** instead of Schedule VI of the Companies Act, the profit and loss account so prepared in shall be taken as the basis of computing the book profit under MAT.
- It is proposed to further amend section 115JB to provide that the ***book profit 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.

Alternate Minimum Tax

- Under the amended provisions of Chapter XII-BA, ***AMT shall apply to partnership firms, sole proprietorship, association of persons, etc.*** who have claimed deduction under any section (other than section 80P) or under section 10AA.
- The ***minimum threshold for applicability of AMT*** provisions to individuals, HUF, AOP, BOI etc. is adjusted total income of Rs. 2,000,000 or more.
- It is proposed that where the regular income tax payable is less than the AMT ***the adjusted total income shall be deemed to be the total income*** of such person and the same shall be taxable at the rate of 18 ½ %
- It is further proposed that ***credit for excess tax paid by a person on account of AMT*** shall be allowed to be carried forward for ten assessment years and shall be eligible to be set off against regular income tax in a year where regular tax is in excess of AMT, but only to the extent of such excess.

Dividend Distribution Tax

- It is proposed to amend section 115-O so as ***to remove the cascading effect of DDT in multi-tier corporate structure*** by providing that in case any company receives, during the year, any dividend from any subsidiary and such subsidiary has paid DDT as payable on such dividend, then, dividend distributed by the holding company in the same year, to that extent, shall not be subject to Dividend Distribution Tax under section 115-O of the Act. *To apply w.e.f. July 1, 2012.*

Tonnage Taxation

- The rates for daily tonnage income as provided under section 115VG, are proposed to be enhance by approximately fifty percent of the existing rates.

Return of income

- A new proviso is proposed to be inserted in Section 139 so as to make ***furnishing of the return of income mandatory for every resident having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India***, irrespective of the fact whether the resident taxpayer has any taxable income or not. *To apply retrospectively w.e.f. assessment year 2012-13.*

Procedures for Assessment and Reassessment

- Sub-section (1D) is proposed to be inserted in section 143 to provide that ***processing of return under section 143(1) shall not be necessary in a case where scrutiny notice under section 143(2) has already been issued***. *To apply prospectively w.e.f 01.07.2012*
- An explanation to section 144C(8) is proposed to be inserted to clarify that the powers of the DRP, are not restricted only to the issues raised in the draft assessment order but also to any new issue relating to the draft order which comes to the notice of the Panel during the course of proceedings. *To apply retrospectively w.e.f 1.10.2009*
- Provisions of sections 147, 148 and 149 are proposed to be amended so as ***to increase the limitation for issue of notice for reopening an assessment, to sixteen years*** from the existing limitation of six years, in cases where the income in relation to any asset, (including financial interest in any entity) located outside India, chargeable to tax, which has escaped assessment. *To apply w.e.f. 1.7.2012.*

It has also been clarified by way of an explanation that the said amended provisions shall also apply in respect of assessment years beginning on or before 1.4.2012.

- Provisions of section 149 are proposed to be amended so as ***to increase the limitation for service of notice on representative of a non-resident assessee*** to six years from the existing limit of 2 years. *To apply w.e.f. 1.7.2012.*

It has also been clarified by way of an explanation that the said amended provisions shall also apply in respect of assessment years beginning on or before 1.4.2012.

- Section 152 and 153B is proposed to be amended so as to extend the ***limitation for completion of assessments and reassessments*** by three months. *To apply w.e.f. 1.7.2012*

Withholding Tax

- Section 193 is proposed to be amended to provide that ***TDS is not required to be made on payments of interest on debentures up to Rs. 5,000*** in a financial year whether issued by a listed or non listed company, in which the public are substantially interested, to a resident individual or Hindu undivided family provided the said interest is paid by account payee cheque. *To apply w.e.f 1.7.2012.*
- Consequent to amendment under section 115BBA, it is proposed to amend the provisions of section 194E, to bring ***non-resident entertainers deriving income from performances in India, within the ambit of withholding tax***. The prescribed rate of TDS shall be 20%. *To apply w.e.f 1.7.2012.*
- Sub-clause (ba) is proposed to be inserted to section 194J, to provide for deduction of taxes at the rate of ten from remuneration paid to a director, the same not being in the nature of salary. *To apply w.e.f 1.7.2012.*
- Section 194LA is proposed to be amended to increase the threshold limit of compensation/ consideration for compulsory acquisition of immovable property other than agricultural land to Rs. 200,000 (existing limit Rs. 100,000) for the purpose of applicability of TDS. *To apply prospectively w.e.f 1.7.2012.*
- A new section 194LAA is proposed to be inserted so as to provide that every ***transferee, being a resident, 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:
 - (i) Rs. 5,000,000 in case such property is situated in a specified urban agglomeration; or
 - (ii) Rs. 2,000,000 in case such property is situated in any other area.

Further in case 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.

To ensure better compliances with the said provisions, it is proposed to provide that a Registrar shall not register the transfer of any immovable property unless the transferee furnishes proof of deduction and payment of TDS, where it is so required.

To reduce the compliance burden on the transferee, a simple one page challan for payment of TDS is proposed to be prescribed. Further, the transferee would not be required to obtain any Tax Deduction and Collection Account Number or to furnish any TDS statement. The transferor would get credit of TDS like any other pre-paid taxes. *To apply w.e.f 1.10.2012.*

- New section 194LC is proposed to be inserted so as to provide that ***interest paid by a specified company to a non-resident in respect of borrowing made in foreign currency*** from sources outside India between 1.7.2012 and 1.7.2015 under an agreement, approved by the Central Government, shall be subjected to TDS at the rate of five percent (plus applicable surcharge and cess). *To apply w.e.f 1.7.2012*
- ***Section 195(1) is proposed to be amended to clarify that obligation to comply with the provisions of sub-section (1) have always applied and extends to all persons***, resident as well as non-resident, irrespective of whether or not the non-resident has a place of business/ business connection or presence in any other manner in India. *To apply retrospectively w.e.f. 1.4.1962.*
- Further it is proposed to insert a new sub-section (7) to section 195; to provide that the CBDT 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 AO for determination, of an appropriate proportion of sum on which tax shall be deductible. *To apply prospectively w.e.f 1.07.2012*
- Section 197A is proposed to be amended in order to make the ***prescribed age for the purpose of availing benefits as senior citizens uniform for all the provisions*** of the Act including the age for availing of the benefits under sections 80D, 80DDB and 197A. The prescribed age for being regarded as a senior citizen shall be sixty years. *To apply w.e.f 1.7.2012*
- It is clarified that ***surcharge shall be levied at a rate of 2% only on tax deductions made from payments to foreign companies, whose total income exceeds or is likely to exceed Rs 10,000,000.*** No surcharge shall be levied on deductions in other cases.
- Education cess and secondary education cess shall continue to be levied at a rate of 2% and 1% respectively, only on deductions made from payments to foreign companies and persons not resident in India.

Collection and Recovery of Tax

- Section 201 is proposed to be amended to provide that where the tax liability by the resident payee in respect of payment of any sum received by him without deduction of tax is discharged by the said payee, the ***payer who fails to deduct whole or a part of the tax on the payment to resident shall not be deemed to be an assessee in default*** in respect of such tax provided 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,
 - (iv) and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

It is further provided that 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 payee and 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. *To apply prospectively w.e.f. 1.7.2012*

- Sub section (3) clause (ii) of section 201(B) has been proposed to be amended to extend the **limitation for passing an order under section 201** from four years to six years. *To apply retrospectively w.e.f 1.4.2010*
- A new clause (iv) is proposed to be inserted in section 204 to provide that the term ‘*person responsible for paying*’ in case of payment made by or on behalf of the Central Government or Government of a State, shall include the Drawing and Disbursing Officer or any other person (by whatever name called) responsible for making payment. *To apply prospectively w.e.f 1.07.2012*

Tax Collection at Source

- It is proposed to insert serial no. (vii) in the Table provided in section 206C(1) to bring **coal, lignite and iron ore within the ambit of TCS**. It is provided that the seller of coal, lignite and/or iron ore, shall be liable to collect tax at the rate of one percent from the buyer of such items, except in cases where-
 - (i) the same are purchased for personal consumption; or
 - (ii) the buyer declares that these minerals are to be utilized for the purposes of manufacturing, processing or producing articles or things.*To apply w.e.f 1.7.2012*
- It is proposed to insert a sub-section (1D) under section 206C, to provide that a **seller of bullion/jewellery shall be liable to collect tax at the rate of 1%** of sale consideration, from every buyer provided the sale is effected in cash and the consideration there of exceeds Rs. 200,000. The said provisions shall apply irrespective of the fact whether the buyer is a manufacturer, trader or that the purchase is for personal use. *To apply w.e.f. 1.7.2012.*

Advance Tax

- Sub- section (2) is proposed to be inserted under section 207 to provided that **resident senior citizens would not be required to pay advance tax** if do not have any income chargeable under the head “Profits and gains of business or profession” and such senior citizen shall be allowed to discharge the tax liability by payment of self assessment tax.
- A proviso is proposed to be inserted in clause (d) of section 209(1) 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.
- Explanation (2) is proposed to be introduced under section 234D relating to payment of **interest on excess refunds** to clarify that the provisions of the aforesaid section would be applicable to any proceeding which is completed on or after June 1, 2003, irrespective of the assessment year to which it pertains and

accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after June 1, 2003 or refund was granted for those years after the said date. *To apply retrospectively w.e.f. 1.6.2003*

- A new section 234E is proposed to be introduced to provide that for ***delay in furnishing of TDS statement a fee of Rs. 200 per day shall be levied***. It is provided that the total amount of fee shall not exceed the amount of tax deductible during the period for which the TDS statement is delayed. *To apply w.e.f. 1.7.2012*

Authority for Advance Ruling

- The ***filing fee for making an application before the AAR*** is proposed to be enhanced to Rs.10,000. *To apply w.e.f. 1.7.2012.*

Appeals and Revisions

- Sections 253 and 254 are proposed to be amended to confer ***power to the Commissioner to file an appeal against the directions of the DRP***. The Commissioner having objections to the directions of the DRP, in pursuance of which the AO passes the final order, shall direct the AO to file an appeal before the Tribunal against the said order so passed. *To apply w.e.f. 1.7.2012*

Penalty & Prosecutions

- Section 271AA is proposed to be amended to provide that where a person, in respect of an international transaction –
 - (i) fails to keep and maintain the prescribed information and documents, or
 - (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 ***imposition of penalty of a sum equal to two percent of the value of each international transaction*** entered into by such person.

- The scope of Section 271AA has been enlarged to provide for ***penalty for failure to keep and maintain information in respect of domestic transactions*** covered under the Transfer Pricing regime. .
- It is proposed that Section 271AAA relating to ***penalty provision in search cases*** will not be applicable for searches conducted on or after 1.7.2012.

- A new section 271AAB is proposed to be introduced which contain ***new penalty provisions in search cases initiated on or after 1.7.12***. The new section provides that subject to fulfillment of certain conditions -
 - (i) If undisclosed income is admitted during the course of search the penalty shall be at the rate of 10% of undisclosed income.
 - (ii) If undisclosed income is not admitted during the course of search but is disclosed in the return of income filed after the search, the penalty shall be at the rate of 20% of undisclosed income.
 - (iii) In cases not covered under (i) and (ii) above, the penalty shall range from 30% to 90% of undisclosed income.

- A new section 271H is proposed to be inserted to provide for levy of ***penalty ranging from Rs. 10,000 to Rs. 1,00,000 for defaults in furnishing correct information in TDS statements within the prescribed time***. This shall be in addition to the fee for not furnishing and furnishing incorrect information in TDS statements within the prescribed time. But no penalty shall be levied for delay if the TDS statements is furnished within one year of the prescribed due date after payment of tax deducted along with applicable interest and fee and if the deductor proves that there was a reasonable cause for the failure. *To apply w.e.f 1.7.2012.*

- Consequential amendment on the line proposed to section 271H is also proposed in section 272A for delay in furnishing TCS statements and furnishing of incorrect information in TCS statements. *To apply w.e.f.1.7.2012.*

- New sections 280A, 280B, 280C and 280D are proposed to be introduced to strengthen the prosecution mechanism.

Provisions for constitution of Special Courts for trial of offences

- New provisions are proposed for setting up of **Special Courts for trails of offenses**.

- Provisions proposed for (a) setting up of Special Courts, (b) applying summon trial for offences, and (c) for appointment of public prosecutors.

- The provisions of section 276C, 276CC, 277, 277A and 278 which deal with ***prosecution for offenses*** are proposed to be amended to increase the threshold limit of amount sought to be evaded to Rs. 25,000,000 in which case the offence shall be punishable with rigorous imprisonment for a term which may extend from six months to seven years and where amounts sought to be evaded is less than Rs. 25,000,000 the offence shall be punishable with rigorous imprisonment for a term which may extend to two years.

Wealth Tax

- At present a *residential house allotted by a company to its employee/officer or whole time director is regarded as a specified asset* for the purpose of levy of wealth tax provided the gross annual salary of such employee etc. is Rs. 500,000. The said threshold limit is proposed to be enhanced to Rs. 1,000,000
- It is proposed to increase *the limitation for issue of notice for reopening a wealth tax assessment in relation to assets held abroad*, to sixteen years as against the present limitation of six years. *To apply w.e.f. 1.7.2012.*

Glossary

Act	The Income Tax Act, 1961 (except as otherwise stated)
AO	Assessing Officer
ALP	Arms Length Price
AMT	Alternate Minimum Tax
AOP	Association Of Persons
APA	Advance Pricing Agreement
AY	Assessment Year
BOI	Body Of Individuals
CBDT	Central Board Of Direct Taxes
DDT	Dividend Distribution Tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
DTC	Direct Tax Code
EPFO	Employee Provident Fund Organization
EPF & MP Act	Employee Provident Funds & Miscellaneous Provision Act, 1952
GAAR	General Anti Avoidance Rules
GDP	Gross Domestic Output
HUF	Hindu Undivided Family
IPR	Intellectual Property Rights
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
NELP	New Exploration Licensing Policy
PE	Permanent Establishment
RBI	Reserve Bank of India
SEBI	Securities and Exchange Board Of India
SEZ	Special Economic Zone
SME	Small & Medium Enterprises
TCS	Tax Collected At Source
TDS	Tax Deducted At Source
TPO	Transfer Pricing Officer

TRC	Tax Residence Certificate
VCC	Venture Capital Company
VCF	Venture Capital Funds
VCU	Venture Capital Undertaking

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