

Suggestions of ICAI in its Post Budget Memorandum-2012 considered in the amendments to Finance Bill, 2012 as passed by the Lok Sabha

Clause in Bill No.11C of 2012 as passed by Lok Sabha	Section	Proposed Amendment	Suggestion Given in Post-Budget Memorandum, 2012	Suggestions considered
3	Section 2(24)(xvi) read with section 56(2)	<p>The Finance Bill, 2012 proposed to insert clause (viib) in section 56(2) to provide that if the consideration for shares is in excess of the fair value of the shares, the aggregate consideration received in excess of the fair value determined as per method prescribed or substantiated by the company to the Assessing Officer based on the value of its assets, would be taxable as the income of a closely held company.</p> <p>However, no consequential amendment was made in section 2(24) to include the same in the definition of income.</p>	<p>The definition of income under section 2(24) should be amended to include any sum of money referred to in section 56(2)(viib).</p>	<p>This suggestion has been considered by inserting sub-clause (xvi) in section 2(24) to include, in the definition of income, any consideration received for issue of shares as exceeds the fair market value.</p>

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25	Section 80CCG	<p>As per para 35 of page 7 of the Speech of the Finance Minister, a new scheme called Rajiv Gandhi Equity Savings Scheme was proposed to be introduced. New retail investors, who invest Rs.50,000 directly in equities and whose annual income is below Rs.10 lakhs, would be entitled for deduction of 50% of their investment.</p> <p>However, there was no clause in the Finance Bill, 2012 to give effect to this proposal.</p>	A clause may be incorporated in the Finance Bill, 2012 to give effect to the above proposal.	Section 80CCG has been inserted to give effect to the announcement made by the Finance Minister.
41	Chapter X-A General Anti-	1.) Under the GAAR Provisions, as proposed by the Finance Bill, 2012, the onus of proof that the transaction does not invoke	<p>It was suggested that:</p> <p>1. The constitution of the Approval Panel may include members from judiciary bodies,</p>	a) The Finance Bill, 2012, as passed by the Lok Sabha, has deleted section 96(2) which cast onus onus on the assessee to

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	Avoidance Rule Section 96(2) and section 144BA	GAAR was on the assessee. 2) The Finance Bill, 2012 also provided for constitution of an Approving Panel, comprising of officers of rank of Commissioner and above, by the Board 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.	independent of the Income Tax Department. 2. The initial burden of proof must be placed on the Revenue Authorities, to prima facie make out a case for invoking GAAR.	prove that a particular case does not invoke the provisions of GAAR. b) The Finance Bill, 2012, as passed by the Lok Sabha, provides for constitution of an Approving Panel consisting of not less than three members comprising of income tax authorities not below the rank of Commissioner and an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.
57	Section 115U	Sub-section (4) of section 115U providing for exemption from dividend distribution tax and tax deduction at source in the hands of the Venture Capital Company	Section 115U may be suitably amended to clarify the correct intention of law as laid down in the Explanatory Memorandum i.e. taxability of income in the hands of	Section 115U(4) which provided for exemption from DDT and TDS in the hands of the VCC/VCF is proposed to be retained, which implies that the VCC/VCF will

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		<p>and Venture Capital Fund was proposed to be substituted. The intention as spelt out in the Explanatory Memorandum was to tax income on accrual basis in the hands of the investor and provide for deduction of tax at source by the VCC/VCF.</p> <p>However, it is possible that the amended language of law may lead to an interpretation that dividend distribution tax is attracted on such payment, since the specific exemption given by sub-section (4) is proposed to be removed, in which event there would be no question of deduction of tax at source since the last proviso to section 194 specifically excludes from its</p>	<p>the investor and deduction of tax at source from such income by the VCC/VCF and non-applicability of dividend distribution tax in the hands of the VCC/VCF.</p>	<p>continue to be exempt from the applicability of DDT. The suggestion of ICAI in this regard has been accepted. In addition, the VCC/VCF have also been exempt from the responsibility of deducting tax at source.</p>

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		scope, dividends referred to in section 115-O. This seemed to be an inadvertent drafting error requiring rectification.		
		The Finance Bill, 2012 contained certain amendments to clarify the intent of law which were proposed to be given effect to retrospectively. For example, the amendments in section 2(14), 9, 195 etc. to bring to tax indirect transfers of capital assets, where the underlying assets are located in India.	The Institute has suggested in its introductory portion that retrospective amendments should not affect completed assessments.	The Finance Minister, in his speech on 7.5.2012, clarified that the retrospective clarificatory amendments now under consideration of Parliament will not be used to reopen any cases where assessment orders have already been finalized. The Central Board of Direct taxes would issue a policy circular to clearly state this position after the passage of the Finance Bill.