

The amendments discussed below are generally effective from 1 April 2012 (i.e. FY 2012-13), except as provided otherwise.

INCOME TAX

Individuals and HUFs

Deduction in respect of payment of Life Insurance Premium [section 80C]	Deduction for life insurance premium as regards insurance policies issued on or after 1 April 2012 shall be available only if premium payable does not exceed 10% of actual capital sum assured. (reduced from 20 %)
Receipt of Sum under a Life Insurance Policy [section 10(10D)]	Any sum received under a life insurance policy issued on or after 1 April 2012 shall be exempted only if the premium for the policy does not exceed 10% of the actual capital sum assured. (reduced from 20%)
Deduction in respect of any payment on account of preventive health check-up [section 80D]	The deduction granted under section 80D also extended to cover any payment made, by any mode, on account of preventive health check-up of self, spouse, dependent children or parent (however, such payment shall not exceed in the aggregate INR 5,000)
Deduction in respect of interest on deposits in savings accounts [Section 80TTA]	A deduction up to an extent of INR 10,000 in aggregate shall be allowed to an assessee being individual and HUF in respect of any income by way of the interest on deposits on saving account with § a banking company, § a co-operative society § a post office

Senior Citizen

Amendment	<u>Reduction of the eligible age for senior citizens for certain tax reliefs</u> For the purposes of section 80D [deduction in respect of health insurance premia] and section 80DDB [deduction in respect of medical treatment, etc.], age for defining a senior citizen has been reduced from 65 years to 60 years.
	<u>Section 197A – No deduction of tax at source in certain cases</u> For the purpose of this section qualifying age for an individual resident has been reduced from sixty-five years to sixty years, this will be effective from 1 July 2012. <u>Exemption for Senior Citizens from payment of advance tax</u> A resident senior citizen, not having any income chargeable under the head “Profits and gains of business or profession shall not be liable to pay advance tax. This is proposed to be effective retrospectively from AY 2012-13.

Relief from Long-term Capital Gains Tax on Transfer of Residential Property if Invested in a Manufacturing Small or Medium Enterprise [section 54GB]

Amendment	• If the assessee (being individual and HUF) utilizes the net consideration from the transfer of long term capital asset, being a residential property (a house or a plot of land), for subscription in the equity shares of an eligible company • Such company within one year from the date of subscription in equity shares by the assessee shall utilize this amount for purchase of new asset (plant and machinery) then, the capital gain arising from such transfer of share shall be taxable proportionately. • Amount to the extent not utilized by the company shall be deposited under such specified bank or financial institution and shall be utilized in manner notified by the Central Government. • Amount already utilized for the acquisition of the asset along with the amount deposited shall be deemed to be cost of new asset. • Amount not utilized by the company for the purchase of the new capital asset within one year then same shall be chargeable to tax. • If the equity shares of the company or the new capital asset acquired by the company are sold or otherwise transferred within five years from date of acquisition then capital gain arising from transfer of residential property which was not charged for taxation shall be deemed to be the capital gain of the assessee along with taxability of the gain arising out of sale of shares or new capital asset.
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Corporates

Investment-linked tax benefit for specified business [section 35 AD]

Amendment	• Section 35AD, which allows 100% deduction in respect of any capital expenditure incurred to the specified businesses is extended to business of setting up an inland container depot or container freight station, bee keeping and production of honey and beeswax and setting up and operating a warehousing facility for storage of sugar. • Quantum of deduction has been increased from 100% to 150% to certain businesses (which have commenced operations on or after 1 April 2012), like, cold chain facility, warehousing facility for agricultural produce, hospitals, certain notified housing projects and the business of production of fertilizer.
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Extension of Sunset Clause for Tax Holiday for Power Sector [section 80-IA (4)(iv)]

Amendment	The terminal date of availing deduction for the undertaking engaged in business of generation and distribution of power, transmission and distribution of power by laying network of transmission and distribution lines, undertaking renovation or modernization of existing distribution lines is extended to 31 March 2013 from 30 March 2012.
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Minimum Alternate Tax [section 115 JB]

Amendment	• Every assessee, (a) being a company, other than a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of the said section, prepare its profits and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956; or (b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 is applicable, shall, for the purposes of said section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of that Act governing such company (electricity, banking and insurance company, etc.). • Book profit shall be increased by the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset, if not credited to the profit and loss account.
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VTPA's Comments	- As per section 115JB, every company is required to prepare its accounts as per Schedule VI of the Companies Act, 1956. However, as per the provisions of the Companies Act, 1956, certain companies, e.g. insurance, banking or electricity company, etc. are allowed to prepare their profit and loss account in accordance with the provisions specified in their regulatory Acts. In order to align the provisions of Income-tax Act with the Companies Act, 1956, it is proposed to amend section 115JB to provide that the companies which are not required under section 211 of the Companies Act to prepare their profit and loss account in accordance with the Schedule VI of the Companies Act, 1956, profit and loss account prepared in accordance with the provisions of their regulatory Acts shall be taken as a basis for computing the book profit under section 115JB. - At times the amount standing in the revaluation reserve is taken directly to general reserve on disposal of a revalued asset. Thus, the gains attributable to revaluation of the asset are not subject to MAT liability. In the case of ITO v. Galaxy Saws Pvt. Ltd., (132 ITD 236) (Mum)(Trib.), it has been held that the amount on account of revaluation of assets sold and taken to the balance sheet as revaluation reserved cannot be added to book profits. It is, therefore, proposed to amend section 115JB to provide that the book profit for the purpose of section 115JB shall be increased by the amount standing in the revaluation reserve relating to the revalued asset which has been retired or disposed if the same is not credited to the profit and loss account.
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Dividend Distribution Tax [section 115-O]

Amendment	- In case the domestic company receives during the year any dividend from any of its subsidiary and the subsidiary has paid dividend distribution tax, which is payable, on such dividend, then the said amount, if it is distributed as dividend by the domestic company being the holding company in the same year, shall not be subject to dividend distribution tax. - Such domestic company can now be a subsidiary of any other company.
VTPA's Comments	This will remove the cascading effect of DDT in multi-tier corporate structure. This amendment will take with effect from 1 July 2012.

Taxation of Dividend received by Indian Company from its Foreign Subsidiary [section 115BBD]

Amendment	• Concessional rate of 15% tax on gross dividends received by an Indian company from its foreign subsidiary (wherein the Indian company holds 26% or above of the nominal value of share capital) is extended for AY 2013-14.
VTPA's Comments	• This amendment aims to attract foreign subsidiary's of Indian companies to declare dividend so as to encourage the flow of funds to India, as the rate of tax would be 50% of the normal rate. • However, it seems difficult to get the lower rate of tax if the Indian Company is governed by the provisions of MAT.

Amalgamation and Demerger between Holding and Subsidiary [sections 2(19AA) and 47(vii)]

Amendment	• Under the provisions of section 47(vii) any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company is not regarded as a transfer if, (a) any transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and (b) the amalgamated company is an Indian company. However, in a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions at (a) above, i.e. that the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself. Therefore, it is proposed to amend the provisions of section 47(vii) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company. However, the amalgamated company will continue to be required to issue shares to the other shareholders of the amalgamating company.
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	- Similarly, in the case of a demerger, there is a requirement under section 2(19AA)(iv) that the resulting company has to issue its shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company. - Therefore, it is proposed to amend the provisions of section 2(19AA) so as to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. The requirement of issuing shares would still have to be met by the resulting company in case of other shareholders of the demerged company.
VTPA's Comments	The resulting company/amalgamated company cannot issue shares to itself and hence the welcome amendment.

Transfer Pricing [Sections 92 to 92F]

Amendment	<u>Extension of transfer pricing provisions to specified domestic transactions</u> - The scope of transfer pricing regulations to be extended to the transactions entered into by domestic related parties or by resident sister undertakings for the purposes of section 10AA, 40A, 80A, 80-IA and Chapter VI-A. - For instance, the regulations will now cover- - o Expenditure incurred by a company in respect of which the payment has been made to its director or his relative or to a person having substantial interest (20 % voting power) or to a sister concern - o Related party transactions providing profit linked deductions to an assessee / undertakings, etc. - This amendment will be applicable only if the aggregate amount of all such specified domestic transactions exceeds INR 5 crores. - It will be effective from AY 2013-14.
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VTPA's Comments	Extending the transfer pricing requirements to domestic related party transactions will put tremendous compliance burden on the assessee. The amendment is clearly an outcome of the Honourable Supreme Court judgment in the case of CIT v Glaxo SmithKline Asia (P) Ltd. (236 CTR 113) wherein it was suggested by the Supreme Court that the Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to certain related party domestic transactions.
Amendment	<u>Introduction of Advance Pricing Agreement (APA) in India</u> • This amendment empowers CBDT to enter into an advance pricing agreement with any person undertaking an international transaction. • It is proposed that the agreement will determine arm's length price (ALP) of the taxpayer's prospective international transaction or specify the manner in which ALP is to be determined. • It seeks to provide assurance of certainty and unanimity in transfer pricing approach that will be followed by the tax authorities in case of the international transactions covered by the agreement. • Other salient provisions are as follows: - o CBDT may use existing prescribed methodologies with necessary adjustments / variations or any other method for determining the ALP. - o The APA will be valid upto 5 years. - o It will be binding on the taxpayer and the CIT unless there is a change in the law or facts of the case. - o Approval of the Central Government will be necessary for CBDT to go ahead with such agreement. - o Once the taxpayer makes an application to enter into the agreement, the proceedings will be deemed to be pending. - o The amendment will be effective from 1 July 2012.

VTPA's Comments	The government proposes to introduce unilateral APA mechanism in India. At present, Indian income-tax law contains a parallel mechanism for advance ruling in the form of 'Authority for Advance Rulings (AAR)' which is empowered to examine a contract of a resident taxpayer with a non-resident. The main difference between AAR and APA programme is that under APA programme, the revenue authorities can determine / quantify the value of the international transaction / profits whereas AAR does not tread this area. Although introduction of APA is a step in the right direction, one will have to wait till CBDT prescribes a detailed scheme providing a manner, form and various procedures in this regard.
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Amendment	<u>Terms “international transaction” and “intangible property” clarified</u> • Amendment seeks to broaden the existing definition of the term “international transaction” and make it all inclusive. • Some of the prominent transactions that are now specifically included in the aforesaid definition are: - o Capital financing including Guarantee, - o Any type of advance payments or deferred payments, - o Receivables, - o Transaction of business restructuring or reorganization with the AE irrespective of whether it has a bearing on profit, income, losses or assets, etc. • It has now been clarified that the expression “intangible property” shall include the following, among the other items: - o Customer lists, - o Customer contracts, - o Customer relationship, - o Human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts, - o Methods, surveys, forecasts, estimates, etc. • The amendment will take effect retrospectively from 1 April 2002 i.e. from AY 2002-03.
VTPA’s Comments	The legislature has tried to expand the existing concise definition of ‘international transaction’, and also explains the term ‘intangible property’ in detail. However, specific inclusion of certain terms such as customer relationships, human capital related intangible assets, etc. within the ambit of ‘intangible property’ may now give rise to new areas of litigation.

Amendment	<u>Proposal of upper limit and other clarifications in relation to the tolerance range</u> • The Finance Bill seeks to put a ceiling of 3% in respect of power of the Central Government to notify the tolerance range for determination of ALP. • This amendment will take effect from 1 April 2013 and will, accordingly, apply in relation to the AY 2013-14 and subsequent assessment years. • Further it is clarified by way of an Explanation that the second proviso to the section 92C(2) as amended w.e.f. 1 October 2009 which stated that the erstwhile tolerance range of 5% shall be applicable to any assessment or reassessment proceedings, if pending as on 1 October 2009 before an AO. • It is also clarified that the tolerance range does not tantamount to a standard deduction even as per the provision as it stood before 1 October 2009 and the same shall be applicable retrospectively i.e. AY 2002-03 onwards.
VTPA's Comments	• As per the Finance Act, 2011 the Central Government was to notify the tolerance level of variation between the ALP and value of international transaction for AY 2012-13 and subsequent years. However, till date no notification has been issued in this regard. On the other hand, now there is an upper limit specified for AY 2013-14 onwards. As a corollary, there is no tolerance level of variation available to the assessee for the AY 2012-13 as of today. • Further, the controversy as regards whether the tolerance range as it stood before the amendment on 1 October 2009 is a standard deduction available to the assessee, will now be litigated due to the proposed retrospective amendment. Also whether the amendment after 1 October 2009 is prospective or not will be litigated due to the proposed change. Both the above amendments are against the decisions of various tribunals.

Amendment	<u>Enhancement of the TPO's Powers</u> • It is proposed to empower Transfer Pricing Officer (TPO) to determine ALP of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the AO, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the ITA. • The aforesaid amendment will take effect retrospectively from 1 June 2002. • It is also proposed to provide an explanation to effect that due to retrospective nature of the amendment no reopening of any proceeding would be undertaken only on account of such an amendment.
Amendment	<u>Other salient amendments related to Transfer Pricing</u> • Extended due date of filing the return of income (30 November of the assessment year) now applicable even to the non-corporate tax payers which are required to file accountant's report. The same will be applicable w.e.f. AY 2012-13. • It is proposed to amend section 271AA to provide levy of a penalty at the rate of 2% of the value of the international transaction, if the taxpayer fails to report any international transaction which is required to be reported, or maintains or furnishes any incorrect information or documents. This penalty would be in addition to penalties in sections 271BA and 271G (This amendment will take effect from 1 July 2012).

Non- Residents

Indirect transfer of Assets by a Non-Resident [section 9]

Amendment	• It is clarified that the expression ‘through’ used in section 9(1)(i) shall mean and include and shall be deemed to have always meant and included “by means of”, “in consequence of” or “by reason of”. • It is clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India for the purpose of section 9(1)(i) if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. • It is clarified that the expression ‘property’ used in section 2(14) 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. • It is clarified that section 2(47) defines the expression ‘transfer’ to include 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.
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VTPA's Comments	• Section 9 (1)(i) provides a set of circumstances in which income accruing or arising, directly or indirectly, to a non-resident is taxable 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. • In the case of Vodafone International Holdings B.V. v. Union Of India & Anr (Civil Appeal No. 733 of 2012), the Supreme Court held that the transfer of shares of a foreign company, a special purpose vehicle, which holds underlying assets in India, by a non-resident to another non-resident would not be liable to tax in India. This decision also underlines the doctrine that the situs of shares is where the company is incorporated, where its shares can be transferred and where the register of members is maintained, and not the place where the underlying economic interests of such shares lies.
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- In order to overcome the above Supreme Court ruling, this amendment is proposed with retrospective effect from AY 1962-63 to clarify that the legislative intent of section 9(1)(i) is to widen the application as it covers incomes, which are accruing or arising directly or indirectly. It has been explained that the section 9 codifies source rule of taxation wherein the state, where the actual economic nexus of income is situated, has a right to tax the income irrespective of the place of residence of the entity deriving the income. It has been further explained that where the corporate structure is created to route funds, the actual gain or income arises only in consequence of the investment made in the activity to which such gains are attributable and not the mode through which such gains are realized and internationally this principle is recognized by several countries.
- In the Memorandum explaining the finance bill, it is proposed to provide for validation of demands raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from transfer of a capital asset situate in India, in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of agreement or otherwise outside India. It is proposed to provide through the validation clause that any notice sent or purporting to have been sent, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause shall be deemed to have been validly made and such notice or levy of tax shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India. The validating clause shall operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority. This validation shall take effect from coming into force of the Finance Act, 2012.
- The above proposed amendment is most likely to be challenged in the Courts of law as regards the constitutional validity of such retrospective amendment [nullifying the effect of the Supreme Court's decision in the case of **Vodafone International Holdings B.V. (supra)**], whether the legislature has the power under the ITA to tax income which accrues and arises outside India, consideration is received outside India, transaction is completed outside India and has no nexus to India. Further, the proposed amendment is also not clear as to how such capital gains income is to be computed under the provisions of the ITA.

Royalty Income [section 9(1)(vi)]

Amendment	• It is clarified that for the purpose of royalty the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred. • It is further clarified that royalty includes and has always included consideration in respect of any right, property or information, whether or not— § the possession or control of such right, property or information is with the payer; § such right, property or information is used directly by the payer; § the location of such right, property or information is in India. • Further, it is clarified that the term “process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.
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VTPA's Comments	• Section 9(1)(vi) provides that any income payable by way of royalty in respect of any right, property or information is deemed to be accruing or arising in India. The term “royalty” has been defined in Explanation 2 which means consideration received or receivable for transfer of all or any right in respect of certain rights, property or information. • Some of the judicial decisions have interpreted this definition in the context of taxability of “shrink-wrapped”/ “off-the-shelf” software, sale of software and license software wherein they found a distinction between “use of copyright” and “use of a copyrighted article” and held that use of a copyrighted article is not royalty. [Tata Consultancy Services v State of AP (271 ITR 401 (SC), CIT v. Samsung Electronics Co. Ltd. (203 Taxman 477) (Karn)(Against), Velankani Mauritius Ltd. v. DCIT (132 TTJ 124) (Bang.)(Trib.), Gracemac Corp. (42 SOT 550) (Del)(Trib.) (Against) and ADIT v. TII Team Telecom International (P) Ltd. (140 TTJ 649) (Mum.)(Trib.)]. • The Courts have also analysed whether the right, property or information has to be used directly by the payer or is to be located in India or control or possession of it has to be with the payer, etc.
	• Further in the case of Asia Satellite Telecommunication Co. Ltd. v. DIT (332 ITR 340)(Del) it has been held that the payment for use of transponder capacity for up-linking / down-linking data would not constitute royalty income. • In order to overcome the above limitations, this amendment is proposed with retrospective effect from 1 June 1976 to restate the legislative intent by clarifying the definition of royalty. • However, the above amendment to the ITA may not nullify the provisions of the DTAA signed by India.

Tax Exempt – Sale of Crude Oil in India by a Foreign Company [section 10(48)]

Amendment	Any income received in India company in Indian currency by a foreign company on account of sale of crude oil to any person in India is exempt subject to the following conditions: § The receipt of money is under an agreement or an arrangement which is either entered into by the Central Government or approved by it. § The foreign company, and the arrangement or agreement has been notified by the Central Government having regard to the national interest in this behalf. § The receipt of the money is the only activity carried out by the foreign company in India.
VTPA's Comments	- It has been explained that in the national interest, a mechanism has been devised to make payment to certain foreign companies in India in Indian currency for import of crude oil. The current provisions of the ITA would render such payment taxable in India because payment is being received by these foreign companies in India in Indian currency. This would not be justified when such payment is based on national interest and particularly when no other activity is being carried out in India by these foreign companies except receipt of payment in Indian currency. - It is, therefore, proposed to insert new section 10 (48) with retrospective effect from AY 2012-13 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 certain conditions.

Double Tax Avoidance Agreement (DTAA) [sections 90 and 90A]

Amendment	• A non-resident shall be entitled to claim any relief under a DTAA that India has entered into a country or specified territory of which he is a resident, provided he obtains a tax residency certificate (TRC) from the Government of that country or specified territory. • General Anti Avoidance Rule shall apply to a taxpayer, even if some of the provisions of such rule are not beneficial to him as compared to those provided in DTAA. • Where any term is used in any DTAA that India has entered into with a country or specified territory; or in any agreement that any specified association in India has entered into with any specified association in the specified territory outside India and such term is not defined under the said DTAA or agreement or the Act, but is assigned a meaning to it in the notification issued under section 90(3)/90A(3) then, the meaning assigned to such term shall be deemed to have effect from the date on which the said DTAA or agreement came into force.
VTPA's Comments	• Central Government is empowered to enter into DTAAs with different countries and have adopted agreements between specified associations for relief of double taxation. The scheme of interplay of treaty and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the treaty, is entitled to claim applicability of beneficial provisions either of treaty or of the domestic law. It has been explained that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits. Therefore, it is proposed to amend sections 90 and 90A to make submission of TRC as a necessary for availing benefits of the agreements referred to in these sections.

	This is in line with the circular no. 789 dated 13.04.2000 issued by the CBDT with reference to India-Mauritius DTAA and the Supreme Court decision in the case of Union Of India and Another v. Azadi Bachao Andolan and Another (263 ITR 706) which has confirmed the validity of the said circular. However, it has been explained in the Memorandum explaining the finance bill that it is not sufficient condition for availing the benefit under the DTAA. The Memorandum tends to hint that the Assessing Officer can go beyond the TRC and verify whether the taxpayer is a tax resident of that country applying the substance theory.
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Interest on Long-Term Low Cost Borrowing [section 115A]

Amendment	- Any interest paid by a specified company to a non-resident in respect of borrowing made in foreign currency from sources outside India between 1 July 2012 and 1 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 - § construction of dam, § operation of Aircraft, § manufacture or production of fertilizers, § construction of port including inland port, § construction of road, toll road or bridge; § generation, distribution of transmission of power § construction of ships in a shipyard; or § developing and building an affordable housing project as is presently referred to in section 35AD(8)(c)(vii).
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VTPA's Comments	• As per section 115A of the ITA, 20% withholding tax is prescribed while making payment of interest by the Government or Indian concern to a non-resident. In order to augment long-term low cost funds from abroad for the infrastructure sector, it is proposed to provide tax incentives for funding certain infrastructure sectors from borrowings made abroad subject to certain conditions. • This is a welcome amendment and would be useful in attracting foreign lenders for the purpose of raising the external commercial borrowings for certain infrastructure projects as the rate of withholding tax is very competitive as compared to one provided under DTAA's.
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Taxation of a Non-Resident Entertainer and Sports Person [section 115BBA]

Amendment	• The scope of taxation in the case of income arising to a non-resident sportsmen or sports association under section 115BBA is extended to income arising to a non-citizen, non-resident entertainer from performance in India. • The rate of tax of 10% of gross receipts shall be increased to 20%
VTPA's Comments	• It is proposed to amend section 115BBA to provide that income arising to a non-citizen, non-resident entertainer (the term 'entertainer' has not been defined; however as per Memorandum explaining the finance bill entertainer means theatre, radio or television artists and musicians) from performance in India shall be taxable at the rate of 20% of gross receipts. • It is also proposed to increase the taxation rate, in case of non-citizen, non-resident sportsmen and non-resident sports association, from 10% to 20% of the gross receipts. • Consequential amendment is proposed in section 194E to provide for withholding of tax at the rate of 20% from income payable to non-resident, non-citizen, entertainer, or sportsmen or sports association or institution. This amendment will take effect from 1 July 2012.

Withholding Tax Obligation on Payment Made to a Non-Resident [section 195]

Amendment	- It is clarified that obligation to comply with section 195(1) and to withhold tax there under 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 residence or place of business or business connection in India; or § any other presence in any manner whatsoever in India. - Board may, by notification , 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 Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under section 195(1) on that proportion of the sum which is so chargeable.
VTPA's Comments	As per section 195(1) of the ITA, any person responsible for paying to a non-resident any sum, which is chargeable to tax, is liable to withhold tax thereon. The Supreme Court in the case of Vodafone International Holdings B.V. (<i>supra</i>) held that section 195 would apply only if payments made from a resident to another non-resident and not between two non residents situated outside India. In order to overcome this limitation, this amendment is proposed with retrospective effect from AY 1962-63, whereby it is clarified that any person includes a non-resident. Therefore, a non-resident is also held responsible to withhold tax while making any payment to another non-resident, if such payment is liable to tax in India.

	As mentioned above, the provisions of section 195(1) would be triggered only in the case where the remittance made outside India is liable to tax under the Act. Further, at present, a payer has an option to obtain a withholding tax certificate determining the appropriate rate of tax either from an Assessing Officer or a Chartered Accountant. However, it is proposed that it is compulsory for certain class of persons or cases, where the person (other than a company) responsible for paying to a non-resident any sum, whether or not chargeable under the Act, to make an application to the Assessing Officer to determine tax liability on such payment.
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Other Amendments

General Anti-Avoidance Rule (GAAR) [sections 95 to 102 and 144BA]

Amendment	- The powers to invoke GAAR are bestowed upon the Commissioner of Income tax (CIT) and Approving Panel. - Any arrangement entered with the main objective to gain tax benefit and create rights and obligations; or misuse of or abuse of the tax laws or lacks commercial substance or non-bonafide purpose would be treated as an impermissible avoidance arrangement. - The avoidance arrangement includes cases of round trip financing, accommodating party, elements that have effect of offsetting or cancelling each other, a transaction 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, etc. - 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. - The onus is on the taxpayer to prove that the availability of tax benefit was not the main objective of the arrangement. - An arrangement when declared as an impermissible avoidance arrangement by the CIT, it may be disregarded, relocate the place of management, look through, or re-characterize.
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VTPA's Comments	• New Chapter X-A is proposed to introduce provisions in relation to GAAR. • The provisions in relation to GAAR are in line with the DTC. • At present, there are no specific regulations that have been legislated to deal with Anti-Avoidance Regulations. The question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context, judicial decisions have varied. It has been explained by the Memorandum explaining the provisions of finance bill that some courts in certain circumstances had held that legal form of transactions can be dispensed with and the real substance of transaction can be considered while applying the taxation laws [McDowell (154 ITR 148) (SC)/ Nat West Bank(220 ITR 377)(AAR)], whereas others have held that the form is to be given sanctity [Vodafone International Holdings B.V. v. Union Of India & Anr (Civil Appeal No. 733 of 2012), Union Of India and Another v. Azadi Bachao Andolan and Another (263 ITR 706)].
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	• It has been explained that in view the aggressive tax planning with the use of sophisticated structures, there is a need for statutory provisions so as to codify the doctrine of “substance over form” where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. • This provision would allow Revenue Authorities to restrict the benefits of taxation only to bona fide arrangements. This provision would enable the Revenue Authorities to examine the real nature of the transaction and would have the right to restrict tax benefits to the genuine taxpayers. • The insertion of these provisions is consistent with the international trend. Many countries like Singapore, Canada and United States have already incorporated general anti avoidance rule in their domestic laws that allow examination of the real nature of the transaction and a limitation of benefit to convoluted transactions. • However, it needs to be seen how legitimate tax planning is distinguished from tax avoidance while implementing these provisions as there is a thin line between planning and avoidance.
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Assets Located Outside India [sections 139 and 147]

Amendment	• Furnishing of return of income under section 139 is mandatory for every resident (irrespective of the fact whether the resident taxpayer has taxable income or not) having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India. • Time limit has been increased under section 149 for issue of notice for reopening an assessment to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. • For the purpose of section 147, income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.
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VTPA's Comments	• Mandatory reporting of assets held by a person, other than company and firm, abroad and re-opening of income tax return filings up to 16 years are among the steps being proposed by the Government to tackle the menace of black money.
	• The Government has been constantly trying to strengthen the legislative frame work to control generation of black money in the country as well as control the flight of such illicit fund to foreign shores. • In pursuance of this : § 82 DTAA's and 17 Tax Information Exchange Agreements (TIEA) have been finalised and information regarding bank accounts and assets held by Indians abroad has started flowing in. § Dedicated exchange of information cell for speedy exchange of tax information with treaty countries is fully functional in CBDT § India became the 33rd signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters; and § Directorate of Income Tax Criminal Investigation has been established in CBDT. • The Hon'ble Finance Minister in his Budget Speech has proposed to lay on the table of the House a white paper on Black Money in the current session of Parliament. • Corresponding amendments are also proposed to be made to the provisions of section 17 of the Wealth-tax Act. • As per the Memorandum explaining the finance bill, the amendment in relation to reporting of assets located outside India will take effect retrospectively from AY 2012-13 and the provisions in relation to reopening of assessment will take effect from 1 July 2012.

Disallowance of Payment in case of Non-Deduction of Tax At Source – [section 40(a)(ia)]

Amendment	Where payer fails to deduct the whole or any part of the tax on the payment made to a resident and he is not deemed to be an assessee in default under section 201 (where the payee has paid the tax on such payment), such payment will be allowed as a deduction.
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Fair Market Value to be full value of consideration actual consideration is not determinable [section 50D]

Amendment	Where consideration for the transfer of capital assets is not attributable or determinable then for purpose of computing income chargeable to tax as gains, the fair market value of the asset shall be taken to be the full value of consideration.
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Income From Other Sources [section 56]

Amendment	- The term “relative” in the context of HUF shall also include its members apart from the persons referred to in the Explanation to clause (vi) of sub-section (2) of the said section. This amendment will take effect retrospectively from 1 October 2009. - Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax. This 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. However, the company receiving the consideration shall be provided an opportunity to substantiate its claim regarding the fair market value of the shares.
VTPA’s Comments	The proposal tends to tax a capital receipt as income and hence, it may lead to litigation.

Turnover or gross receipts for audit of accounts and presumptive taxation [section 44AD]

Audit of accounts of certain persons carrying on business or profession (section 44AB)

Amendment	<u>Tax Audit – 44AB</u> • For a person carrying on business, tax Audit limit has been enhanced from INR 60 lakhs to INR 1 crore. • For a person carrying of profession, tax Audit limit has been enhanced from INR 15 lakhs to INR 25 lakhs. <u>Presumptive taxation – 44AD</u> • Limit of total turnover or gross receipts would be increased from INR 60 lakhs to INR 1 crores. • This would not be applicable to professionals and the person engaged in commission and broking activity or agency business.
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Liability to pay advance tax in case of non-deduction of tax [sections 209, 234B and 234C]

Amendment	A person who receives any income without deduction or collection of tax, shall be liable to pay advance tax in respect of such income. In such a case, he will be liable to pay interest under sections 234B and 234C on default of payment of advance tax.
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Alternate Minimum Tax (AMT) Payable by Persons other than a Company [sections 115JC to 115JF]	• Where the tax payable by a person other than a Company under the normal provisions is less than 18.5% of adjusted total income, then the said person shall be liable to pay tax at the rate of 18.5% of such adjusted total income. • For this purpose, the adjusted total income means total income after adding the amount of deductions claimed under Chapter VI-A under the heading “C- Deduction in respect of certain incomes” (other than section 80P) and section 10AA of the ITA. • The said person would be required to obtain an Accountant’s Report certifying that computation of adjusted total income and alternate minimum tax. • The credit for tax paid by the said person under this provision, to the extent of difference between the tax paid under this provision and regular income tax payable, will be allowed as tax credit as and when the said person pays the tax under the normal provisions. In the year of such set off of tax credit, such tax credit would not exceed the difference between the regular tax and tax payable under this provision for that year. • Such tax credit can be carried forward only for ten assessment years. • It is provided that the provision 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 section 2(31)(vii) if the adjusted total income of such person does not exceed INR 20 lakhs. • All provisions of the Act shall continue to apply to the said persons. • Consequential amendments are made in the provisions relating to the charging interest under sections 234A, 234B and 234C.
Additional Depreciation [section 32]	It is proposed to allow deduction of additional depreciation namely (a further sum equal to 20 per cent. of actual cost) of any new machinery or plant (other than ships and aircraft) acquired and installed after 31 March 2012, to an assessee engaged in the business of generation or generation and distribution of power.

Venture Capital Fund (VCF)/Company (VCC) [section 10(23FB)/115U]	• Section 10(23FB) provides that income of a SEBI regulated VCF or VCC, derived from investment in a domestic company i.e. Venture Capital Undertaking (VCU), is exempt from taxation, provided the VCU is engaged in only nine specified businesses. The working of VCF, VCC or VCU are regulated by SEBI and RBI. In order to avoid multiplicity of conditions in different regulations for the same entities, the sectoral restriction on business of VCU is removed from ITA and such VCU is to be allowed to be governed by conditions imposed by SEBI and RBI. • The provisions of section 115U currently allow an opportunity of indefinite deferral of taxation in the hands of investor. With a view to rationalize the above position and to align it with the true intent of a pass-through status, it is proposed to amend section 10(23FB) and section 115U to provide that.- § The venture Capital undertaking shall have same meaning as provided in relevant SEBI regulations and there would be no sectoral restriction. § Income accruing to VCF/ VCC shall be taxable in the hands of investor on accrual basis with no deferral. § The exemption from applicability of TDS provisions on income credited or paid by VCF/ VCC to investors shall be withdrawn.
Appeal [section 246A/253]	• Appeal can be filed by the person responsible for deduction of tax against the intimation/order passed in respect of TDS returns. • Department can file an appeal against the order of the Dispute Resolution Panel (DRP) with the tribunal. • Order under newly inserted section 144BA [for GAAR] is made appealable to the tribunal.
Dispute Resolution Panel [section 144C]	Power of the DRP to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.
143/153/153B	It is proposed that processing of return is not necessary where a notice for scrutiny assessment is issued under section 143(2) Time limit for completing assessment or reassessment is increased.

Tax rates

Income Tax Rates

1.1. For Individuals, Hindu Undivided Families, Association of Persons and Body of Individuals.

Existing		Proposed	
Income (INR)	Rate (%)	Income (INR)	Rate (%)
0 – 1,80,000	Nil	0 – 2,00,000 [#]	Nil
1,80,001 – 5,00,000	10	2,00,001 – 5,00,000	10
5,00,001 – 8,00,000	20	5,00,001 – 10,00,000	20
8,00,001 and above	30	10,00,001 and above	30

@ Education cess of 3% is leviable on the amount of income-tax.

The basic exemption limit is INR 2,00,000 in case of every individual below the age of 60 years , INR 2,50,000 in case of resident individuals of the age of 60 years or more and INR 5,00,000 for ‘Very Senior Citizen’ in case of resident individuals of age 80 years and above

1.2. For Others

Description	Existing Rate (%)	Proposed Rate (%)
A) Domestic company		
Regular tax	32.445* [@]	32.445* [@]
MAT	20.008 (of book profits)*	20.008 (of book profits)*
DDT	16.225*	16.225*
Dividend Received from Foreign subsidiary company	16.225*	16.225*
B) Foreign company		
Regular tax	42.024 ^{\$#}	42.024 ^{\$#}
C) Firm and LLP		
Regular tax	30.90	30.90
Alternate Minimum Tax(AMT)	19.055	19.055

* Inclusive of surcharge @ of 5 % and education cess of 3 %.

@ 30.90% where the total income is equal to or less than INR 10 million.

\$ Inclusive of surcharge @ of 2% and education cess of 3%.

41.20% where the total income is equal to or less than INR 10 million

TDS Rates

Sr.No.	Section	Nature of Payment	Existing Rate of Deduction (%)	Proposed Rate of Deduction (%)
1	194LLA	Payment on transfer of certain immovable property other than agricultural land (applicable only if amount exceeds : (a) INR 50 lakhs in case such property is situated in a specified urban agglomeration; or(b) INR 20 lakhs in case such property is situated in any other area) (Effective from 1 October 2012)	NA	1
2	194J(1)(ba)	Any remuneration or commission paid to director of the company (Effective from 1 July 2012)	NA	10
1	194LA	Compulsory acquisition of immovable property	1,00,000	2,00,000
2	193	Interest on debenture	2,500	5,000
The above limits will be effective from July 1, 2012				

TCS Rates

Sr.No.	Section	Nature of Goods	Existing Rate of Deduction (%)	Proposed Rate of Deduction (%)
1	206C(1)(vii)	Minerals, being coal or lignite or iron ore	NA	1
2	206C (1D)	Bullion or jewellery (if the sale consideration is paid in cash exceeding INR 2 lakhs)	NA	1
The above limits will be effective from July 1, 2012				

GLOSSARY OF TERMS

Abbreviation	Meaning
AMT	Alternate Minimum Tax
AO	Assessing Officer

AY	Assessment Year
CBDT	Central Board of Direct Taxes
DDT	Dividend Distribution Tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreements
FEMA	Foreign Exchange Management Act
FY	Financial Year
GAAR	General Anti Avoidance Rule
HUF	Hindu Undivided Family
ITA	Income-tax Act, 1961 as amended from time-to-time
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
TPO	Transfer Pricing Officer
TRC	Tax Residency Certificate
VCC	Venture Capital Company
VCF	Venture Capital Fund
VCU	Venture Capital Undertaking

Disclaimer

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