

. Background:

The Finance Minister presented the Budget for the year 2012-13 on 16th March, 2012, and introduced the Finance Bill, 2012, containing 154 clauses. Out of these, 113 clauses relate to 'Direct Taxes' and other 41 clauses relate to 'Indirect Taxes'. There was heated discussion on the various provisions of the Bill which included over 30 amendments in various sections of the Income-tax Act with retrospective effect. There was lot of protest in India and abroad as most of these amendments would affect non-residents and will have adverse effect on global trade. In spite of this protest, the Government could manage to get through the legislation with some changes. The Finance Act, 2012, containing 119 sections relating to Direct Taxes is now passed by both Houses of the Parliament and received the assent of the President on 28-5-2012.

Originally, the existing Income-tax Act was to be replaced by the Direct Taxes Code (DTC) w.e.f. 1-4-2012. Since the implementation of DTC is delayed, we will have to live with the existing Income-tax Act for one more year. Some of the amendments made by the Finance Act, 2012, will give some relief in the computation of Income and Tax. However, some of the amendments, which have retrospective and retroactive effect, will make the life of taxpayers miserable. In particular, the retrospective amendments of some of the sections of the Income-tax Act will increase the tax burden of non-resident assesseees and also increase their compliance cost. In this respect, the tax litigation will also increase in the coming year.

In this article, the amendments made in the Income-tax Act, Wealth-tax Act and Securities Transaction Tax are discussed.

2. Rates of income tax, surcharge and education cess:

2.1 Relief in income tax:

The tax slabs for individuals, HUF, AOP, BOI, etc. have been made more beneficial. The exemption limit for these assesseees have been raised from Rs.1.80 lac to Rs.2 lac. As a result of the revision of the exemption limit and realignment of some of the slabs, tax liability of this category of assesseees for A.Y. 2013-14 will be less by Rs.2,000 in respect of income up to Rs.8 lac. In respect of income above Rs.8 lac the reduction of the tax will be of Rs.22,000. For senior citizens and very senior citizens there is no change in tax payable on income up to Rs.8 lac. If the income is more than Rs.8 lac the reduction in the tax liability in their cases will be of Rs.20,000.

2.2 Rates of income tax:

(i) For individuals, HUF, AOP, BOI and Artificial Juridical person, as stated above, the threshold limit of basic exemption has been increased for A.Y. 2013-14. Individuals above the age of 60 years are treated as 'Senior Citizens' and those above the age of 80 years are treated as 'Very Senior Citizens'. The rates of tax for A.Y. 2012-13 and A.Y. 2013-14 are as under:

(a) Rates in A.Y. 2012-13 (Accounting Year ending 31-3-2012)

<i>Income slab (Rs. in lacs)</i>	<i>Very Senior Citizens (80 years and above) (Residents)</i>	<i>Senior Citizens (60 years and above) (Residents)</i>	<i>Women (Below 60 years) (Residents)</i>	<i>Others</i>
Up to 1.80	Nil	Nil	Nil	Nil
1.80 to 1.90	Nil	Nil	Nil	10%
1.90 to 2.50	Nil	Nil	10%	10%

2.50 to 5.00	Nil	10%	10%	10%
5.00 to 8.00	20%	20%	20%	20%
Above 8.00	30%	30%	30%	30%

(b) Rates in A.Y. 2013-14 (Accounting Year ending 31-3-2013)

<i>Income slab (Rs. in lacs)</i>	<i>Very Senior Citizens (80 years and above) (Residents)</i>	<i>Senior Citizens (60 years and above) (Residents)</i>	<i>Others</i>
Up to 2.00	Nil	Nil	Nil
2.00 to 2.50	Nil	Nil	10%
2.50 to 5.00	Nil	10%	10%
5.00 to 10.00	20%	20%	20%
Above 10.00	30%	30%	30%

No surcharge is payable for A.Y. 2012-13 and 2013-14. However, education cess of 3% (2+1) of the tax is payable for both the years.

(ii) The following table gives comparative figures of tax payable by individuals, HUF, AOP, BOI, etc. in A.Y. 2012-13 and A.Y. 2013-14.

The above tax is to be increased by 3% of tax for education cess.

(iii) *Other assessees:*

There are no changes in the rates of taxes so far as other assessees are concerned. Therefore, they will have to pay income tax, surcharge (if applicable) and education cess in A.Y. 2013-14 at the same rates as applicable in A.Y. 2012-13.

(iv) *Rate of tax u/s.115JB (MAT):*

The rate of tax (i.e. 18.5%) along with surcharge and education cess as applicable in A.Y. 2012-13 will be payable on book profits (MAT) in A.Y. 2013-14.

(v) *Dividend Distribution Tax:*

The rate of tax (15%), surcharge and education cess is the same u/s.115O for F.Y. 2012-13 as in F.Y. 2011-12.

(vi) *Rate of tax on dividends from specified foreign companies:*

(a) Tax payable in A.Y. 2012-13 (Accounting Year ending 31-3-2012)

<i>Income slab (Rs. in lacs)</i>	<i>Very Senior Citizens (80 years and above)</i>	<i>Senior Citizens (60 years and above)</i>	<i>Women (Below 60 years) (Residents) (Tax Rs.)</i>	<i>Others (Tax Rs.)</i>
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	<i>(Residents)</i> <i>(Tax Rs.)</i>	<i>(Residents)</i> <i>(Tax Rs.)</i>		
3.00	Nil	5000	11000	12000
5.00	Nil	25000	31000	32000
8.00	60000	85000	91000	92000
10.00	120000	145000	151000	152000
15.00	270000	295000	301000	302000
25.00	570000	595000	601000	602000

(b) Tax payable in A.Y. 2013-14 (Accounting Year ending 31-3-2013)

<i>Income slab</i> <i>(Rs. in lacs)</i>	<i>Very Senior</i> <i>Citizens (80</i> <i>years and</i> <i>above)</i> <i>(Residents)</i> <i>(Tax Rs.)</i>	<i>Senior Citizens</i> <i>(60 years and</i> <i>above)</i> <i>(Residents)</i> <i>(Tax Rs.)</i>	<i>Others</i> <i>(Tax Rs.)</i>
3.00	Nil	5000	10000
5.00	Nil	25000	30000
8.00	60000	85000	90000
10.00	120000	125000	130000
15.00	250000	275000	280000
25.00	550000	575000	580000

The concessional rate of 15% plus applicable surcharge and education cess which was provided for A.Y. 2012-13 has been continued for A.Y. 2013-14 also.

(vii) Rate of Alternate Minimum Tax (AMT)

The rate of tax 18.5% plus education cess of 3% of tax which was payable as AMT on income of LLP for A.Y. 2012-13 is now payable by all assessee, other than a company, i.e., LLP, firm, individual, HUF, AOB, BOI, etc. in A.Y. 2013-14. No surcharge is payable on AMT.

2.3 Surcharge on income tax:

(i) As in A.Y. 2012-13, no surcharge is payable by non-corporate assesseees i.e., individuals, HUF, AOP, BOI, Firm LLP, co-operative societies, etc. in A.Y. 2013-14. In the case of a company the rate of surcharge, if income exceeds Rs.1 Cr, is 5% of income tax. As regards MAT u/s.115JB, if the book profit exceeds Rs.1 Cr., rate of surcharge is 5%.

(ii) As regards TDS and TCS, no surcharge is required to be added to the rates of TDS or TCS.

(iii) In the case of dividend distribution tax u/s.115O and 115R the rate of surcharge on tax (i.e., 15%) is 5% of the tax.

(iv) In the case of foreign companies, the rate of surcharge on income tax is 2% of tax if the taxable income of the company exceeds Rs.1 Cr. Similarly, the rate of surcharge on tax to be deducted u/s.195 in case of foreign company is 2% of the tax if the income from which tax is deductible at source exceeds Rs.1 Cr.

2.4 Education cess:

As in earlier years, education cess of 3% (including 1% higher education cess) of income tax and surcharge (if applicable) is payable by all assesses (Residents or non-residents). No education cess is applicable on TDS or TCS from payments to all residents (including companies). However, if tax is deducted from payments made to (a) foreign companies, (b) non-residents or (c) on salary payments to residents or non-residents, education cess at 3% of the tax and surcharge (if applicable) is to be deducted.

3. Tax Deduction and Collection at Source (TDS and TCS):

3.1 Section 193:

At present, no tax is required to be deducted at source if interest payable to a resident individual on debentures issued by a listed company does not exceed Rs.2,500 in a year. This limit is increased to Rs.5,000 w.e.f. 1-7-2012. This concession will now apply to debentures issued by unlisted public companies as well as to interest payable to resident HUF. The existing exemption in respect of interest paid on debentures issued by listed companies which are held in Demat Account will continue without any limit. The amendment in this section comes into force on 1-7-2012.

3.2 Section 194J — TDS from fees from professional or technical services:

This section is now amended w.e.f. 1-7-2012. It will now be necessary for a company to deduct tax at source from any remuneration, fees or commission paid or payable to a director, if no tax is deductible u/s.192 under the head salary. The rate for TDS is 10%. It may be noted that the manner in which the section is amended indicates that this deduction is to be made irrespective of the quantum of such payment in the year. As regards professional fees, technical service fees, royalty, etc. to which this section applies it is provided that tax is to be deducted only if payment under each head exceeds Rs.30,000 in the financial year. Therefore, in case of payment of fees to non-executive directors and independent directors as 'Director's Fees', the tax at 10% will be deductible even if the total payment in the F.Y. is less than Rs.30,000 to each of them.

3.3 Section 194LA:

At present TDS from compensation on compulsory acquisition of immovable property at 10% is required to be made if compensation amount exceeds Rs.1 lac. This will now be required to be made if the compensation amount exceeds Rs.2 lac w.e.f. 1-7-2012.

3.4 Section 194LC:

This is a new section inserted in the Income-tax Act w.e.f. 1-7-2012. It provides for deduction of tax at the concessional rate of 5% plus applicable surcharge and education cess, in respect of interest paid to a non-resident, other than a foreign company. This interest should relate to monies borrowed by an Indian company from the nonresident at any time on or after 1-7-2012 and before 1-7-2015 in foreign currency from a source outside India. This borrowing should be (i) under a loan agreement or (ii) by way of issue of long-term infrastructure bonds approved by the Central Government. Further, the rate of such interest should not exceed the rate approved by the Government for this purpose.

3.5 Section 201 — Failure to deduct tax at source:

U/s.201, a person can be deemed to be an assessee in default in respect of non/short deduction of tax at source. The AO can pass order for this purpose within a period of four years from the end of the financial

year in a case where no returns for tax deducted at source have been filed. Section 201 is amended with retrospective effect from 1st April, 2010, to extend the time limit for passing the order u/s.201(1) for non/short deduction of tax from 4 years to 6 years from the end of the F.Y. in which payment is made or credit is given.

3.6 Section 206C — Tax Collection at Source (TCS):

This section provides for collection of tax at source from sale of alcoholic liquor, tendu leaves, timber, forest products, scrap, etc. at the rates ranging from 1% to 5% of the sale price. The scope of this provision for TCS is extended w.e.f. 1-7-2012 as under.

(i) In respect of sale of minerals, being coal or lignite or iron ore, tax is to be collected by the seller at the rate of 1% of the sale price.

(ii) However, such tax is not to be collected if the purchase of such goods listed in section 206C(i) is made by the buyer for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power. For this purpose the buyer of such goods has to give a declaration in Form No. 37C.

(iii) In order to reduce the quantum of cash transactions in bullion or jewellery sector and for curbing the flow of unaccounted money in the trading system, it is now provided that the seller of bullion or jewellery shall collect from the buyer tax at the rate of 1% of the sale consideration. For this purpose it is provided that the collection of the above tax of 1% shall be made if the sale price in cash exceeds the following amounts:

(a) For bullion, if the sale price exceeds Rs.2 lac. It may be noted that for this purpose definition of 'Bullion' does not include coin or any other article weighing ten grams or less.

(b) For jewellery, if the sale price exceeds Rs.5 lac.

It may be noted that this tax will be collected from the buyer even if the buyer has purchased bullion or jewellery for personal use or for manufacture or processing the same for his business. Further, it appears that persons who purchase bullion or jewellery for personal use will not be able to get credit for the tax collected at source because there will be no corresponding income from sale of bullion or jewellery in respect of which such credit for tax can be claimed. Further, the person making such payment for purchase of bullion or jewellery in cash will have to prove the source from which such cash is paid.

(iv) There are certain consequential amendments made in section 206C on the same lines as in section 201. According to these amendments, if the seller, who is required to collect tax under this section fails to do so, he will not be deemed to be in default if he can establish that the buyer has filed his return u/s.139 and paid tax on his income after considering the goods purchased by him. Consequential provision for reduction in the period for which interest is payable u/s.206C is also made.

3.7 No Advance tax payable by senior citizens u/s.207:

This section provides for payment of Advance Tax in instalments. It is now provided, w.e.f. 1-4-2012, that a senior citizen who has no income from business or profession will not be required to pay any Advance Tax.

4. Exemptions and deductions:

4.1 Charitable trust:

Section 2(15) provides that if the object of advancement of general public utility involves carrying on of any activity in the nature of trade, commerce or business, etc. and the aggregate value of the receipts from such activity exceeds Rs.25 lac, the trust will not be considered as charitable trust. New s.s (8) has been inserted in section 13 and a proviso has been added in section 10(23C), with retrospective effect from A.Y. 2009-10, to provide that the trust or institution will not be granted exemption only for the year in which such receipts exceed Rs.25 lac. Such loss of exemption in that year will not affect the

registration of the trust or institution u/s.12AA. The exemption can be claimed in subsequent years when such receipts do not exceed Rs.25 lac.

4.2 Section 10(10D) – Deduction of life insurance premium:

At present, any sum received under a life insurance policy, including bonus, but excluding amount received under Keyman Insurance policy, is exempt, provided the premium amount does not exceed 20% of the actual capital sum assured in any year during the policy period. Now, this limit is reduced to 10% in the case of an insurance policy issued on or after 1st April, 2012. Similar amendment is made u/s.80C, whereby it is provided that deduction in respect of life insurance premium, etc. in the case of insurance policies issued on or after 1st April, 2012 shall be available only in respect of premium not exceeding 10% of the actual capital sum assured. It may be noted that in respect of life insurance premium paid on policies issued before 31-3-2012, the old limit of 20% of actual capital sum assured will apply.

'Actual capital sum assured' is also defined to mean the minimum amount assured under the policy on happening of the specified event at any time during the term of the policy, and excluding the value of any premiums agreed to be returned and benefit of bonus or otherwise over and above the sum actually assured. This is done to ensure that life insurance products are not designed to circumvent the prescribed limit by varying the capital sum assured from year to year. This amendment comes into force from A.Y. 2013-14 (Accounting Year ending on 31-3-2013).

4.3 Section 10(23FB) – Venture Capital Company (VCC) and Venture Capital Funds (VCF):

(i) This section has been amended w.e.f. A.Y. 2013-14. Simultaneously, section 115U has also been amended. Section 10(23FB) provides that a VCC or VCF registered with SEBI and deriving income from investment in a Venture Capital Undertaking (VCU) is exempt from tax. VCU is presently defined to mean such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in any one of the nine specified businesses. VCC and VCF registered with SEBI are granted a pass-through status and the income in the hands of the investor is taxed in the like manner and to the same extent as if the investment was directly made by the investor in the VCU.

(ii) The sectoral restriction that the VCU should be engaged in only the nine specified businesses is now removed. The definition of VCU is now amended to cover any undertaking referred to in SEBI (Venture Capital Funds) Regulations, 1996. As such VCC and VCF will be exempt from tax, irrespective of the nature of business carried out by the VCU, as long as it satisfies the conditions imposed by SEBI.

(iii) At present, the income received by any VCC/ VCF from VCU, is taxed on receipt basis in the hands of the investor and hence could result in deferral of taxation till the income is distributed to the investor. It is now provided that the income accruing to VCC/ VCF will be taxable in the hands of the investor on accrual basis.

4.4 Section 10(23BBH):

This new section is inserted w.e.f. 1-4-2013 to provide for exemption from tax in the case of income of the Prasar Bharati (Broadcasting Corporation of India) from A.Y. 2013-14.

4.5 Section 10(48):

This is a new provision made w.e.f. A.Y. 2012-13 (1-4-2011 to 31-3-2012). This section provides 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. This is subject to the conditions that (i) the receipt of money is under an agreement which is entered into by the Central Government or approved by it, (ii) the foreign company, and the arrangement or agreement has been notified by the Central Government and (iii) the receipt of the money is the only activity carried out by the foreign company in India. This provision is introduced in view of the mechanism devised by the Government to make payment to certain foreign companies in Indian currency for import of crude oil (e.g., from Iran).

4.6 Section 40(a)(ia):

This section provides for disallowance of payment to a resident if tax required to be deducted there from has not been deducted by the assessee. By amendment of this section it is provided that if the assessee establishes that the resident payee (deductee) has paid tax on this income before furnishing his return of income, the expenditure shall not be disallowed under this section. This amendment is made from A.Y. 2013-14 (Accounting Year 2012-13). Consequential amendment is made in section 201 to provide, w.e.f. 1-7-2012, that the payer shall not be deemed to be in default if he can prove that the payee has furnished his return u/s.139 and paid tax on such amount. However, the payer will have to pay interest from the due date till the date of filing return by the payee. This being a beneficial provision, it should be made applicable to earlier years also. This will reduce litigation on this issue. It will be possible to argue that the above beneficial amendment will have retrospective effect in view of decision of *CIT v. Virgin Creations*, ITA No. 302 of 2011 (Calcutta High Court) in respect of similar amendment in the section by the Finance Act, 2010.

4.7 Section 80C:

As discussed in Para 4.2 above, section 80C is amended to provide that the deduction of LIP in respect of life policy taken out on or after 1-4-2012 shall be restricted to 10% of the capital value assured.

4.8 Section 80CCG:

This is a new section inserted w.e.f. A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013) and provides as under:

(i) The deduction under this section can be claimed by an Individual who is a resident, if he acquires listed equity shares in accordance with the scheme to be notified by the Government. The assessee will be allowed deduction of 50% of the amount invested subject to the limit of deduction of Rs.25,000 in the computation of income for the year of investment. It may be noted that this deduction is not allowable to an HUF.

(ii) The above deduction is subject to the following conditions:

(a) The gross total income of the assessee for the relevant assessment year should not exceed Rs.10 lac.

(b) The assessee should make the above investment in retail category specified in the scheme.

(c) The above investment should be in listed equity shares as specified under the scheme.

(d) There will be locking period of 3 years for such investment.

(iii) If the assessee fails to comply with any of the above conditions in any year, the amount of deduction allowed in earlier years will be taxable in that year.

4.9 Section 80D:

Under this section deduction up to Rs.15,000 is allowed to an assessee (individual or HUF) for premium paid on mediclaim insurance policy. For senior citizens the limit for deduction is Rs.20,000. Now it is provided that, effective from Accounting Year 2012-13, if the assessee makes payment up to Rs.5,000 in a year for preventive health checkup, deduction will be allowed within the above ceiling limit. Further, age limit for senior citizens is reduced from 65 years to 60 years. It is suggested that this deduction upto Rs.5,000 should have been allowed over and above the existing ceiling limit of Rs.15,000 or Rs.20,000. The limits of Rs.15,000/20,000 were fixed in the year 2000 and deserve to be enhanced due to increase in medical cost and consequential increase in insurance premium.

4.10 Sections 80G and 80GGA:

Deduction for donation of Rs.10000 or more under these sections will not be allowed if the same is paid in cash. This provision will apply to donations made in the Accounting Year 2012-13 onwards.

4.11 Section 80IA(4)(iv):

Under this section an industrial undertaking engaged in the business of generation and distribution of power and allied activities is entitled to tax holiday for 10 years if such undertaking begins its activities on or before 31-3-2012. This date is now extended to 31-3-2013.

4.12 *Interest from bank exempt u/s.80TTA:*

This is a new section which has been introduced effective from A.Y. 2013-14 (accounting year ending 31-3-2013). Under this section, in the case an individual or HUF, interest from savings bank account with a bank, co-operative bank or post office bank up to Rs.10000 will not be taxable. This provision will not apply to interest on fixed deposit with banks.

4.13 *Section 115-O:*

At present, dividend distributed by a company out of the dividend received from its subsidiary company, which has paid Dividend Distribution Tax, is not liable to Dividend Distribution Tax once again. For this purpose, the dividend receiving company should not be a subsidiary of any other company.

By amendment of this section, effective from 1-7-2012, the condition that "the company is not a subsidiary of any other company" has now been removed. Therefore, any domestic company (whether it is a holding company or a subsidiary company) receiving dividend from its subsidiary or step down subsidiary company and declaring dividend in the same year out of such dividend amount will be allowed to reduce the amount of such dividend for determining the liability to Dividend Distribution Tax if the subsidiary or step down subsidiary company has paid Dividend Distribution Tax that is payable.

5. Income from business or profession:

5.1 *Section 32(1)(ia):*

At present, an assessee engaged in the business of manufacture or production of any article or thing is entitled to additional depreciation of 20% of the cost of the new plant and machinery in the year of acquisition. From A.Y. 2013-14, this benefit is now extended to an assessee engaged in the business of generation or generation and distribution of power.

5.2 *Section 35(2AB):*

According to the existing provisions of section 35 (2AB) weighted deduction at 200% of expenditure on approved in-house research and development by a company engaged in the business of biotechnology or in the manufacture of specified articles is allowable up to 31-3-2012. This benefit is now extended up to 31-3-2017.

5.3 *Section 35AD:*

(i) Investment-linked deduction of 100% of capital expenditure (excluding expenditure incurred for land, goodwill or financial instrument) is allowed for certain specified businesses. In the list of specified businesses, there are at present 8 types of businesses. With effect from 1-4-2012, 3 new businesses have been added to this list. These 3 businesses relate to setting up and operating (a) inland container depot, or container freight station, (b) warehousing facility for storage of sugar and (c) bee-keeping and production of honey beeswax which commence operations on or after 1-4-2012.

(ii) Further, the above investment-linked deduction is now enhanced to 150% of the capital expenditure incurred on or after 1st April, 2012 in respect of certain specified businesses which commence operations on or after 1-4-2012. These specified businesses are setting up and operating (a) cold-chain facility, (b) warehousing facility for agricultural produce, (c) building and operating a hospital with at least 100 beds, (d) developing and building affordable housing project and (e) production of fertiliser in India.

(iii) Further, it is provided that an assessee who builds a hotel of two-star or above category as classified by the Central Government and subsequently, continuing to own the hotel, transfers the operation thereof, the assessee shall be deemed to be engaged in specified business and will be eligible to claim deduction u/s.35AD. This amendment has been made with effect from A.Y. 2011-12.

5.4 *New sections 35CCC and 35CCD:*

These two new sections are inserted effective from A.Y. 2013-14. They provide as under:

(i) Section 35CCC provides that when an assessee incurs any capital or revenue expenditure for agricultural extension project notified by the CBDT, he will be allowed deduction of 150% of such expenditure.

(ii) Section 35CCD provides that where a company incurs expenditure (other than expenditure on any land or building) on any skill development project notified by the CBDT, it will be allowed deduction of 150% of such expenditure.

5.5 *Presumptive taxation:*

Section 44AD provides for presumptive taxation in respect of non-corporate assessee carrying on specified businesses and having a total turnover of less than Rs.60 lac. Under this section 8% of the total turnover is deemed to be the income from business subject to certain conditions. It is now provided that this section will not apply to a person having income from (i) a profession, (ii) commission or brokerage or (iii) any agency business. This amendment is made effective A.Y. 2011-12. Further, the limit of Rs.60 lac for total turnover is increased to Rs.1 crore w.e.f. A.Y. 2013-14 (Accounting Year 2012-13).

5.6 Section 44AB:

The limit of turnover/gross receipts for tax audit u/s.44AB has also been increased for business to Rs.1 Cr. And for profession to Rs.25 lac w.e.f. A.Y. 2013-14 as discussed in Para 17.2 below:

6. *Capital gains:*

6.1 *Section 47(vii):*

This section is amended w.e.f. A.Y. 2013-14. It is now provided that when a subsidiary company amalgamates with a holding company, the requirement of the issue of shares of the amalgamated company on amalgamation will not apply.

6.2 *Section 49:*

At present, there is no provision to treat the cost of assets of a proprietary concern, converted into a company, or a firm converted into a company as the cost of the assets in the case of the company. It is now provided, w.e.f. A.Y. 1999-2000, that the cost of assets on conversion of a proprietary concern or a firm into a company u/s.47(xiii), or 47 (xiv), in the hands of the company shall be the same as in the hands of the converting enterprise. Similarly, when an unlisted company is converted into LLP u/s.47(xiiib), the cost assets in the case of the company shall be treated as cost in the case of the LLP.

6.3 *Section 50D:*

This is a new section inserted w.e.f. A.Y. 2013-14. It provides that where the consideration received or accrued for transfer of a capital asset is not ascertainable or cannot be determined, then the fair market value of the said asset shall be deemed to be the full value of the consideration on the date of transfer for computing the capital gain. This situation may arise in a case where the capital asset is transferred in exchange of another capital asset.

6.4 *Section 54B:*

At present, the benefit of exemption from capital gain on sale of agricultural land is available to the assessee on reinvestment of such capital gain for purchase of another new agricultural land within two years. One of the conditions is that the land should have been used by the assessee or his parent for agricultural purposes. This provision is amended, w.e.f. A.Y. 2013-14, to provide that even if such land was used by the HUF, in which the assessee or his parent was a member, this exemption can be claimed.

6.5 *Section 54GB:*

This is a new section which is inserted w.e.f. A.Y. 2013-14 to provide that if an Individual or HUF makes capital gains on sale of a residential house or plot, he can claim exemption from Capital Gains Tax if he invests the net consideration in equity shares of a new SME company. Such SME company is required to

invest this amount in purchase of new plant and machinery. This exemption can be claimed subject to the following conditions.

- (i) The investee company should qualify as a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006. (SME).
- (ii) The company should be engaged in the business of manufacture of an article or a thing.
- (iii) SME company should be incorporated within the period from 1st of April of the year in which capital gain arises to the assessee and before the due date for filing the return by the assessee u/s.139(1).
- (iv) The assessee should hold more than 50% of the share capital or the voting right after the subscription in the shares of a SME company.
- (v) The assessee will not be able to transfer the above shares for a period of 5 years.
- (vi) The company will have to utilise the amount invested by the assessee in the purchase of new plant and machinery. If the entire amount is not so invested before the due date of filing the return of income by the assessee u/s.139, then the company will have to deposit the amount in the scheme to be notified by the Central Government.
- (vii) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years.
- (viii) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31-3-2017.

The above conditions prescribed in the new section are very harsh. This section should have allowed the investment in existing SME company for the purpose of exemption. Further, investment in LLP, which satisfies the condition of SME enterprises, should also be permitted. The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it should have been provided that the SME company should be allowed to make such investment in new plant and machinery within a period of 18 months from the date on which the assessee makes the investment in its equity shares. The period of 5 years for retaining the equity shares is too long and should have been reduced to 3 years. Similarly, lock-in-period for plant and machinery acquired by the SME company should be reduced from 5 years to 3 years.

6.6 *Section 55A — Reference to Valuation Officer:*

This section is amended w.e.f. 1-7-2012. Under this section, the AO can make a reference to the Valuation Officer with a view to ascertain the fair market value of the capital asset. At present, such reference can be made when the AO is of the view that the value disclosed by the assessee is less than the fair market value. In some cases it is held that when the assessee exercises his option to substitute fair market value of the capital asset as on 1-4-1981, for the cost of the asset, and if the AO is of the view that such market value as declared by the assessee was more, he cannot make a reference to the Valuation Officer. To overcome this position, this amendment provides that w.e.f. 1-7-2012 the AO can make such reference to the Valuation Officer. This amended provision will apply w.e.f. 1-7-2012 but will have retroactive effect, inasmuch as, the AO can make such a reference to the Valuation Officer in respect of all pending assessments of earlier years.

6.7 *Securities Transaction Tax (STT):*

(i) Section 98 of the Finance (No. 2) Act, 2004, providing for rates of STT has been amended w.e.f. 1-7-2012. The revised rates of STT in Cash Delivery Segment are reduced from 0.125% to 0.1%. Therefore, in the case of delivery-based transaction relating to equity shares of a company or units of equity oriented fund of a mutual fund entered into through a recognised Stock Exchange, the STT payable by

- (a) a purchaser is reduced from 0.125% to 0.1% and
- (b) a seller is reduced from 0.125% to 0.1% w.e.f. 1-7-2012.

(ii) In order to encourage unlisted companies to get them listed in recognised Stock Exchange, it is now provided that sale of unlisted equity shares by any holder of such shares, under an offer for sale to the public included in an Initial Public Offer (IPO), if subsequently such shares are listed on the recognised Stock Exchange, will be liable for payment of STT at 0.2%. If such STT is paid, long-term capital gain on such sales will be exempt from tax and tax on short-term capital gain will be payable at concessional rate of 15% u/s.111A.

7. Income from other sources:

7.1 Section 56(2)(vii):

Under this section any gift exceeding Rs.50,000 in any year received by an Individual or HUF on or after 1-10-2009 is taxable as income from other sources, subject to certain exceptions. One of the exceptions is about gift received from relatives of the individual as defined. Similar exemption is not given in respect of gifts from members of HUF. It is now provided, w.e.f. 1-10-2009, that gifts received by HUF from its members will be exempt. However, if such a gift is given by a member to such HUF, income from the property gifted will be clubbed with the income of the member u/s.64(2). In order to mitigate hardship experienced in practical life it is suggested that the following relationship should have been covered in the definition of relatives.

(i) Gifts by HUF to its members

(ii) Gifts to an Individual by any lineal descendant of a brother or sister of the Individual or his/ her spouse (i.e., gift by a nephew or niece to an uncle or aunt). Similar provision is made in section 314(214)(h) of DTC Bill, 2010.

7.2 Section 56(2)(viib):

This is a new provision inserted from the A.Y. 2013-14. It is now provided that where a closely held company issues shares to a resident, for amount received in excess of the fair market value of the shares, it will be deemed to be the income of the company under the head 'Income from other Sources'. The fair market value for this purpose is the higher of the value arrived at on the basis of the method to be prescribed or the value as substantiated by the company to the satisfaction of the Assessing Officer. The company can substantiate the value based on the value of the tangible and intangible assets and various types of commercial rights as stated in the section.

This provision will not apply to amounts received by a venture capital undertaking from a venture capital fund or a venture capital company. Further, this provision will not apply to amount received from a non-resident, a foreign company or from a class of persons as may be notified by the Government. The provision appears to have been made with a view to ensure that excessive amount, representing revenue payment, is not received in the form of share premium and does not escape taxation.

7.3 Section 68:

This section deals with taxation of cash credits. The section is amended w.e.f. A.Y. 2013-14. This section now provides that in the case of a closely held company, if the amount credited in the name of a resident is by way of share application money, share capital, share premium or any such amount, by whatever name called, and the explanation offered for the credit is not considered to be satisfactory, such amount will be considered as income of the company. However, if the person (being a resident) in whose name the amount is credited offers explanation about the source and nature of the amount credited and such explanation is found to be satisfactory by the Assessing Officer this Section shall not apply. In the event of failure to do so, the entire amount credited will be taxed at the rate of 30% plus applicable surcharge and Education cess in the hands of the company.

This provision does not apply to amount received from a venture capital fund or a venture capital company. It will also not apply to the amount received from a non-resident or a foreign company.

7.4 Section 115BBD:

At present, this section provides that rate of tax, for dividend received by an Indian company from a foreign company in which it has share holding of 26% or more, is 15% for A.Y. 2012-13. This concession has been extended for one more year i.e., A.Y. 2013-14.

7.5 Section 115BBE:

This is a new section inserted from A.Y. 2013-14. The section provides that unexplained amounts treated as income (i) u/s.68 cash credits, (ii) u/s.69 unexplained investment, (iii) u/s.69A unexplained money, bullion, jewellery or other valuable articles, (iv) u/s.69B amount of investments, expenditure on jewellery, bullion or other valuable articles not fully disclosed in books, (v) u/s.69C — Unexplained expenditure, and (vi) u/s.69D — Amount borrowed or repaid on a Hundi in cash, will now be taxed at a flat rate of 30% plus applicable surcharge and education cess. No deduction for any expenditure or allowance will be allowed against such income.

8. Minimum Alternate Tax (MAT) (section 115JB):

8.1 Section 115JB is amended w.e.f. 1-4-2001 (A.Y. 2001-02) to provide that in the case of the income arising from life insurance business the tax under this section will not be payable. In other words, MAT provisions will not apply from A.Y. 2001-02 onwards in respect of income from life insurance business.

8.2 (i) The section is amended w.e.f. A.Y. 2013-14 to provide that in the case of a company, such as insurance, banking, electricity company, etc., for which the Form of Profit & Loss A/c. and Balance Sheet is prescribed in the Act governing such companies, the book profit shall be determined on the basis of the Form of Profit & Loss A/c. prescribed under that Act. Further, it is provided that in respect of companies to which the Companies Act applies, the book profit will be computed on the basis of the revised format of Schedule VI.

(ii) By another amendment of this section effective from A.Y. 2013-14, it is now provided that the book profit will be increased by the amount standing to the credit of revaluation reserve relating to revalued asset which has been discarded or disposed of, if the same is not credited to the Profit & Loss A/c. This amendment is in order to cover cases in which revaluation reserve is directly transferred to general reserve on disposal of asset resulting in the gain that is not being included in the computation of book profits up to now.

9. Alternate Minimum Tax (AMT)

9.1 Sections 115JC to 115JE for levy of AMT on adjusted total income of LLP have now been extended to other non-corporate assesseees such as individual, HUF, AOP, BOI, Firm, etc. w.e.f. A.Y. 2013-14. New section 115JEE has also been added from A.Y. 2013-14.

9.2 Provision for AMT was made last year for income of LLP w.e.f. A.Y. 2012-13 in sections 115JC to 115JE. Now section 115JC is replaced by a new section and other sections 115JD to 115JE have been amended w.e.f. A.Y. 2013-14. A new section 115JEE is also inserted. The effect of these amendments is as under.

(i) The provisions of section 115JC will now apply to LLP and all other non-corporate assesseees i.e., individual, HUF, AOP, BOI, Firm, etc. As provided in section 115JC the assesseees will have to obtain audit report in the prescribed form before the due date.

(ii) In the case of an individual, HUF, AOP, BOI or Artificial Juridical person, AMT will not be payable if the adjusted total income does not exceed Rs.20 lac. (section 115JEE)

(iii) AMT is payable at 18.5% plus applicable surcharge and education cess of the adjusted total income if the amount of such tax is more than the tax payable on the total income computed under other provisions of the Income-tax Act.

(iv) Adjusted total income is defined to mean the total income computed under the Income-tax Act increased by (a) deductions claimed under Chapter VIA (section C) i.e., 80HH to 80 RRB (other than section 80P) and (b) deduction claimed u/s.10AA (SEZ income).

(v) Other provisions of sections (a) section 115JD for tax credit for AMT paid for 10 years, (b) Section 115JE applicability of other sections of the Income-tax Act and (c) Section 115JF — Definitions will continue to apply to LLP and also to other non-corporate assessees to whom sections 115JC and 115JEE for payment of AMT apply.

10. Specified domestic transactions:

Section 40A(2) of the Income-tax Act empowers the AO to disallow payment to a related person for expenditure, if he considers that such expenditure is excessive or unreasonable, having regard to the fair market value of the goods, services or facilities for which such payment is made and claimed as a deduction in the computation of income. Similarly, sections 10AA, 80A, 80IA, 80IB, etc. provide that if there are any transactions of purchases, sales, etc. between two related persons, the AO can apply the test of fair market value and make adjustments in the computation of income. In all these sections, the concept of 'fair market value' has not been specifically explained. Therefore, the Supreme Court in the case of *CIT v. Glaxo Smithkline Asia (P) Ltd.*, 195 Taxman 35 (SC) observed that in order to reduce litigation, sections 40A(2) and 80IA(10) need to be amended to empower the AO to make adjustments to the income declared by the assessee, having regard to the market value of the transactions between related parties, by applying any of the generally accepted methods for determination of Arm's-Length Price (ALP), including methods provided under Transfer Pricing Regulations. In view of the above, amendments are made in sections 40A(2), 10AA, 80A and 80IA to provide that the 'Specified domestic transactions' will now be subject to Transfer Pricing Regulations contained in sections 92, 92BA to 92F — from A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013). In brief, the effect of these provisions, from A.Y. 2013-14 (1-4-2012 to 31-3-2013) onwards will be as under.

10.1 The term 'specified domestic transaction' is defined in new section 92BA to mean the following transactions, other than the international transactions:

- (a) Any expenditure in respect of which payment has been made or to be made to a person referred to in section 40A(2)(b). This will include remuneration, commission, rent, interest, etc. paid to a related person as well as purchases made from such person.
- (b) Any transaction referred to in section 80A.
- (c) Any transfer of goods or services referred to in section 80IA(8).
- (d) Any business transacted between the assessee and other person as referred to in section 80IA(10).
- (e) Any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sections 80IA(8) or 80IA (10) are applicable.
- (f) Any other transaction as may be prescribed by Rules by the CBDT.

10.2 It is also provided that the Transfer Pricing provisions will not apply if the aggregate amount relating to the above transactions entered into by the assessee, in the relevant accounting year, does not exceed Rs.5 crore. It is not clear from the wording of the above section whether such aggregate amount is to be worked out by considering the amount of expenditure, purchases, sales, etc. under all the above sections taken together or whether the aggregate amount under each section i.e., 40A(2), 80A, 80IA, 10AA, etc. is to be separately worked out in order to determine the limit of Rs.5 crore provided in the section.

10.3 Section 40A(2):

This section provides for disallowance of revenue expenditure incurred by the assessee. The section does not apply to any revenue or capital receipt or to capital expenditure. Further, the section does not apply to any revenue expenditure which is capitalised. Under this section, if any payment is made or to be made for any revenue expenditure to any 'Related Person', the AO can disallow that part of the expenditure which he considers to be excessive or unreasonable, having regard to the fair market value of the goods, services or facilities for which such payment is made and claimed as a deduction in computing the income. This section applies to the computation of 'Income from Business or Profession' and 'Income from other Sources'. This section is now amended to provide that the fair market value for

any payment to which the concept of specified domestic transaction applies shall be determined on the basis of arm's-length price concept as provided in sections 92C and 92F(ii).

10.4 **Section 80A:**

Section 80A(6) refers to transfer of any goods or services held for the purposes of the undertaking, unit, enterprise, or eligible business to any other business carried on by the assessee. It also refers to transfer of goods or services held for the purposes of any other business of the assessee to the undertaking, unit, enterprise or eligible business. If the consideration for such transfer is not at the market value, then the AO can substitute the market value of the goods or services for such transfer. The expression 'Market Value' is defined in the Explanation to mean the price that such goods or services would fetch, if they were sold in the open market, subject to statutory or regulatory restrictions. This Explanation is now amended w.e.f. A.Y. 2013-14 to provide that the expression 'Market Value' in relation to specified domestic transactions shall now mean, in relation to any goods or services sold, supplied or acquired, the 'Arm's-length price' as defined in section 92F(ii). It may be noted that this section applies to transfer of goods or services from one undertaking, unit or business owned by the assessee to another undertaking, unit or business owned by the same assessee.

10.5 **Section 80IA:**

S.s (8) and s.s (10) of this section are amended w.e.f. A.Y. 2013-14 as under.

(i) *Section 80IA(8):*

This provision refers to transfer of goods or services held for the purposes of the eligible business to any other business of the assessee. The section also refers to transfer of goods or services from any other business of the assessee to any eligible business. For this purpose, the expression 'eligible business' means business carried on by any industrial undertaking owned by the assessee carrying on business of infrastructure development, generation of power, telecommunication services, etc. as listed in section 80IA(4), for which 100% deduction is given u/s.80IA. Section 80IA(8) provides that transfer of goods or services between eligible business undertaking and other undertakings of the assessee shall be at market value. Now, it is provided that such transfers should be made at arm's-length price as defined by the provisions of section 92F(ii).

(ii) *Section 80IA(10):*

This section provides that where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business and any other person, the course of business between them is so arranged that the profits of the eligible business for which 100% deduction is allowed u/s.80IA is shown at a figure higher than the ordinary profits in such business, the AO can recompute the profits of the eligible business for deduction u/s.80IA. The section is now amended to provide that, if the above arrangement between closely related parties involves specified domestic transactions, the AO shall compute the profit of the eligible business having regard to the arm's-length price concept as defined in section 92F(ii).

(iii) *Other sections:*

It may be noted that the provisions of section 80IA(8) and 80IA(10) apply to certain other sections of the Income-tax Act also. These sections provide for deduction of income derived from various specified activities. In respect of transactions with related parties for claiming deduction from income, the above concept of arm's-length price as applicable to specified domestic transactions will apply. 10.6 Since the concept of arm's-length price is now extended to section 80IA(8) and 80IA(10), this concept will apply to transactions between related parties in computing income under the following sections:

- *Section 10AA:* Income from newly established units in SEZ.
- *Section 80IAB:* Income of an undertaking or enterprise engaged in the development of SEZ.
- *Section 80IB:* Income from certain industrial undertakings and housing projects, etc. (other than infrastructure development undertakings).

- *Section 80IC:* Income from certain undertakings set up in certain States such as Sikkim, Himachal Pradesh, Uttarakhand, North-Eastern States, etc.
- *Section 80ID:* Income from hotels and convention centres set up in National Capital Territory of Delhi, and Districts of Faridabad, Gurgaon, Gautam Buddha Nagar and Ghaziabad and other specified districts having 'World Heritage Site'.
- *Section 80IE:* Income from eligible business undertakings in North-Eastern States.

10.7 Other transactions:

The CBDT has been given power to prescribe, by Rules, other domestic transactions to which the above provisions will apply.

10.8 Effect of application of arm's-length price concept:

As stated above, the concept of arm's-length price (ALP) is now to be applied to certain domestic transactions. In view of this, the assessee who enters into specified domestic transactions will have to comply with the following sections w.e.f. A.Y. 2013-14.

(i) *Section 92:* This section deals with computation of income from international transactions. It is now extended, w.e.f. A.Y. 2013-14, to specified domestic transactions. Therefore, the concept of ALP which was applicable to international transactions up to now will now apply to specified domestic transactions also. S.s (2A) inserted in this section now provides that any allowance for an expenditure or interest or allocation of any cost, expense or income in relation to specified domestic transactions shall be computed having regard to the ALP.

(ii) *Section 92C:* This section deals with computation of ALP in relation to international transactions. As stated above, this concept is now extended to specified domestic transactions. The section provides for six alternate methods for determination of ALP.

(iii) *Section 92CA:* This section provides for reference by AO to the Transfer Pricing Officer (TPO). Such reference is to be made if the aggregate value of international transactions exceed Rs.5 cr. The TPO is given wide powers. The order passed by the TPO is binding on the AO and the AO has to complete the assessment in conformity with the order of the TPO. This section has now been amended and it is now provided that such reference is to be made by the AO to the TPO even in cases where the assessee has entered into specified domestic transactions. Since section 92BA states that transactions with related parties aggregating Rs.5 Cr. or more will be considered as specified domestic transactions, all cases in which these transactions are involved will have to be referred to the TPO.

(iv) *Section 92D:* This section provides for maintenance and keeping of information and documents by persons entering into international transactions. This section is made applicable to specified domestic transactions. Therefore, all assessee who enter into specified domestic transactions, as stated above, will have to maintain the information and documents specified in this section. It may be noted that these records and documents will have to be maintained w.e.f. 1-4-2012, in the manner prescribed in Rule 10D.

(v) *Section 92E:* This section requires that an assessee entering into international transactions has to obtain report from a Chartered Accountant in the prescribed form No. 3CEB before the due date for filing the return of income. This requirement is now extended to specified domestic transactions from the A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013).

(vi) *Section 92F:* This section gives definition of certain terms. The following definitions are relevant in the context of specified domestic transactions.

(a) '*Arm's-length price*': This term means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

(b) '*Transaction*': This term includes an arrangement, understanding or action in concert, whether or not it is formal or in writing or whether or not it is intended to be enforceable by legal proceedings.

(vii) *Penalty u/s.271 and 271AA*: By amendment of Explanation 7 of section 271, it is now provided that penalty under that section will be leviable in respect of amount disallowed out of the above specified domestic transactions u/s.92C(4). Similarly, penalty @ 2% of the amount can also be levied u/s.271AA for not maintaining records u/s.92D or not reporting such transactions u/s.92E or furnishing incorrect information.

11. Taxation of non-residents:

Some of the sections dealing with taxation of nonresidents have been amended with retrospective effect. These amendments will have far reaching effect. While presenting the Budget the Finance Minister has not made any mention about these far-reaching changes affecting non-residents in his Budget Speech. However, in the Explanatory Memorandum attached to the Finance Bill, 2012, the reasons for these retrospective amendments have been explained.

The effect of these amendments with retrospective effect will be that cases of many assesses may be reopened and they may be required to pay tax, interest or penalty for last 16 years. It appears that these amendments provide for taxing gain on sale of shares in foreign countries and therefore, the time limit of 16 years for reopening the assessments will apply to such transactions. It is, therefore, necessary that a specific provision should have been made that no interest or penalty will be payable if tax levied as a result this retrospective amendment is paid by the assessee. It may be noted that when sections 28 and 80HHC were amended by the Taxation Laws (amendment) Act, 2005, with retrospective effect, CBDT issued a Circular No. 2/2005 on 17-1-2006. In this Circular the tax authorities were directed not to levy any interest or penalty if tax levied due to these retrospective amendments was paid. The Circular also provided that the tax due as a result of the retrospective amendment can be paid in five equal yearly instalments. No interest was payable on such instalments. Let us hope that the CBDT issues similar Circular in respect of the tax payable as a result of these retrospective amendments made by the Finance Act, 2012.

11.3 Section 2(14):

This section defines that term 'Capital asset' to mean 'Property' of any kind held by an assessee, whether or not connected with his business or profession. However, assets in the nature of stock-in-trade, personal effects, agricultural land, etc. are excluded from this definition. Now, Explanation has been added w.e.f. 1-4-1962 to clarify that 'property' shall include and shall be deemed to have always included any rights in or in relation to an Indian company, including right of management or control or any other rights. This will mean that the term, 'Capital asset' shall now include a tangible as well as intangible property.

11.4 Section 2(47):

This section defines the word 'Transfer' in relation to a capital asset. This is an inclusive definition and includes transfer of a capital asset by way of sale, exchange, relinquishment, or extinguishment of rights in the asset, compulsory acquisition of the asset, etc. Now a new Explanation is added w.e.f. 1-4-1962 to clarify that the word 'Transfer' shall include, and shall be deemed to have always included, disposing of, parting with an asset or any interest therein, or creating any interest in any asset, directly, indirectly, absolutely, conditionally, voluntarily or involuntarily. Such transfer may be by agreement made in India or outside India. This is irrespective of the fact that such transfer has been characterised as being effected, dependent upon or following from the transfer of shares of an Indian or foreign company. This will show that if any interest is created in the shares of an Indian or foreign company by agreement or even an action, it will be considered as a 'transfer' of capital asset u/s.2(47).

11.5 Section 9:

This section explains when income is deemed to accrue or arise in India in the case of a non-resident. The scope of this section is widened by addition of Explanation 4 and 5 below section 9(1)(i) w.e.f. 1-4-1962 as under:

(i) In section 9(1)(i) it is stated that any income shall be deemed to accrue or arise if it accrues or arises, directly or indirectly 'Through' or 'From' (a) any business connection in India, (b) any property in India (c)

any asset or source of Income in India or (d) the transfer of a capital asset situated in India. Now, it is clarified in Explanation 4 that the word 'Through' in the above section shall mean and include (w.e.f. 1-4-1962) — 'by means of', 'in consequence of' or 'by reason of'. This explanation appears to have been introduced with retrospective effect to counter the decision of the Supreme Court in 'Vodafone' case which was against the Income-tax Department.

(ii) Similarly, Explanation 5 clarifies with retrospective effect from 1-4-1962 that an asset or capital asset being any share or interest in a foreign company shall be deemed to be situated in India if such share or interest derives, directly or indirectly, its value substantially from the assets located in India. It may be noted that the concept of holding interest in substantial value of assets located in India has not been explained or defined in this Explanation. This concept is explained in various other sections in the Income tax in different manner. This will be evident from reference to substantial interest in the following sections.

(a) Section 2(32): While defining 'person having substantial interest in the company' it is stated that if a person holds 20% or more of voting power it is considered as substantial interest.

(b) Section 40A(2): Under this section the provisions of transfer pricing are now made applicable in respect of domestic transactions. In the definition of related party, the concept of substantial interest in a company is to be determined by applying the test of 20% or more voting power.

(c) Section 79: For carry forward and set-off of losses of a closely held company, the concept of holding at least 50% holding of shares by shareholders who were shareholders on the last day of the year in which loss was incurred has been provided.

In view of the above, for determination of the tax liability on transfer of shares in a foreign company the concept of holding substantial interest in the value of assets located in India should have been clearly defined. Further, the section refers to share or interest in a foreign company which derives (directly or indirectly) its value substantially from the assets located in India. The word 'value' is also required to be defined otherwise there will be confusion as to whether the word 'value' refers to 'book value' or 'market value'.

11.6 Section 9(1)(vi) — Royalty:

This Section provides that income by way of royalty earned by a non-resident is deemed to be income accruing or arising in India under the circumstances explained in this section. The concept of royalty for this purpose is now expanded, with retrospective effect from 1-6-1976 as under:

(i) New Explanation 4 is now added to provide that the transfer of any rights in respect of any right, property or information includes all or any right for use or right to use computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

(ii) New Explanation 5 now provides that 'Royalty' includes consideration in respect of any right, property or information, whether or not (a) the possession or control of such right, etc. is with the payer, (b) such right, etc. is used directly by the payer, or (c) the location of such right, etc. is in India.

(iii) New Explanation 6 now provides that the expression 'Process' used in section 9(1)(vi), includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic-fiber or by any other similar technology. This is irrespective of the fact whether such process is a secret process or otherwise. It appears that this provision has been made to over rule the decision of the Delhi High Court in the case of *Aasia Satellite Telecommunication Co. Ltd. v. DIT*, 332 ITR 340 (Del.).

The above amendments with retrospective effect from 1-6-1976 will create lot of practical difficulties. It is possible that the Tax Department may consider part of purchase consideration for software paid to a non-resident as royalty payment. This amendment, read with amendment of section 195, with retrospective effect from 1-4-1962, will create greater hardship to tax payers, as it will be impossible to comply with TDS provisions in respect of such payments made to non-residents in earlier years. It is also possible that the AO may invoke provisions of section 40(a)(i) and disallow such payment made to a non-residential and claimed as revenue expenditure by the assessee in the earlier years.

It may, however, be noted that if any such payment is made to a non-resident in a country with which there is DTAA, the provisions in DTAA, if favourable, will apply in preference to the above provision.

11.7 Sections 90 and 90A:

Section 90 empowers the Central Government to enter into agreements with any foreign country or a specified territory for Double Taxation Relief (DTAA). Section 90A empowers the Government to enter into similar agreements with certain specified/notified association in specified territories. Both these sections are amended as under:

(i) New s.s (2A) is inserted w.e.f. 1-4-2013 (A.Y. 2013-14) in section 90 to provide that the provisions of new sections 95 to 102 dealing with General Anti-Avoidance Rule (GAAR) will be applicable even if the provisions of DTAA are more favourable to the assessee. In other words, where GAAR is invoked, the assessee cannot seek protection of beneficial provisions of DTAA. Similar amendment is made in section 90A also.

(ii) New s.s (4) is inserted in section 90 w.e.f. 1-4-2013 (A.Y. 2013-2014) to provide that a non-resident cannot claim benefit of DTAA unless a certificate in the Form prescribed by the CBDT is obtained from the foreign country with which the Indian Government has entered into the DTAA. In this certificate such foreign country will have to certify the place of residence of the non-resident and such other particulars which the Indian Tax Department may require to decide whether the benefit claimed under a particular DTAA is available to the non-resident assessee. Similar amendment is made in section 90A.

(iii) New Explanation 3 is inserted in section 90 w.e.f. 1-10-2009 to provide that any meaning assigned through Notification u/s.90(3) to a term used in DTAA shall be effective from the date of coming into force of the applicable DTAA. Similar amendment is made in section 90A w.e.f. 1-6-2006.

11.8 Section 195:

(i) This section provides for deduction of tax at source (TDS) in the case of payments made to nonresidents. This section is now amended with retrospective effect from 1-4-1962. By this amendment it is provided in the new Explanation-2 that the obligation to comply with TDS provisions will apply, with retrospective effect, to all persons whether resident or non-resident. So far section 195 was understood to put the obligation for TDS on residents and nonresidents who have a permanent establishment in India and who make payments to non-residents of Income taxable under the Income-tax Act. Now, w.e.f. 1-4-1962, the obligation is extended to a nonresident person who has (a) residence or place of business or business connection in India, or (b) any other presence in any manner whatsoever in India. It may be noted that the obligation for deducting tax at source (TDS) is never made under Chapter XVII of the Income-tax Act (sections 192 to 194, 194A to 194CC and 195) with retrospective effect. All these provisions for TDS, whenever introduced or amended, are from prospective dates to enable the payer to comply with the same. Even in the Finance Act, 2012, such provisions for TDS or amendments are made in sections 193, 194E, 194J, 194LA, 194LC and 195(7) only w.e.f. 1-7-2012. However, only Explanation 2 has been inserted in section 195(1) with retrospective effect from 1-4-1962. By putting such obligation to deduct tax on certain non-residents who were not covered by the section earlier will create practical difficulties for them. It may not be possible to deduct tax from payments covered by section 195 for earlier years and they may be saddled with huge Interest liabilities and other penal consequences under the Income-tax Act. TDS provisions in Chapter XVII puts an obligation on the payer of any amount to collect tax due by the payee and pay to the Government. This obligation is in the nature of vicarious liability. It is a well-settled principle of law that such vicarious liability cannot be saddled on a person with retrospective effect.

(ii) New s.s (7) has been inserted in section 195 w.e.f. 1-7-2012. By this amendment it is provided that the CBDT may, by Notification specify a class of persons or cases where the person responsible for paying to a non-resident, any sum, whether, chargeable to tax or not, can make an application to the AO to determine the appropriate proportion of sum chargeable to tax. On such determination tax will be

deductible u/s.195(1) on that portion of the amount. Such determination by the AO may be by a general order applicable to all similar payments or may be specific order applicable to one specific transaction.

11.9 *Section 163:*

This section provides for liability of an 'Agent' of a non-resident to pay the tax or meet with obligations of a non-resident for whom he is recognised as an agent under this section. For this purpose (a) an employee of the non-resident, (b) a person who has any business connection with the nonresident, (c) a person from or through whom the non-resident receives any income, (d) a person who is the trustee of the non-resident or (e) a person (resident or non-resident) who has acquired by way of transfer a capital asset in India. The section provides for certain limitations on the vicarious liability of the agent. Section 149 provides that AO has to give notice to the person whom he wants to treat as agent of a non-resident. The time limit for giving such notice was 2 years from the end of the assessment year for which he wants to treat that person as agent u/s.163. This time limit is now extended to 4 years w.e.f. 1-7-2012. It is also provided, by this amendment, that such notice can be given for any assessment year prior to A.Y. 2012-13. In other words, the AO can give such notice to any person to treat him as agent of a non-resident in respect of income assessable in the case of a nonresident for A.Y. 2008-09, after 1-7-2012 but before 31-3-2013. This amendment appears to have been made to recover tax from Vodafone by treating it as agent of the non-resident company in respect of capital gain alleged to have been made on transfer of shares of a non-resident company to another nonresident company. This tax is now proposed to be levied in respect of such transactions as a result of retrospective amendments of sections 2(14), 2(47), 9 and 195 as discussed above.

11.10 *Section 119 of the Finance Act, 2012:*

This section provides for validation of demands raised under the Income-tax Act in certain cases in respect of income accruing or arising, through or from a transfer of capital asset situated in India, in consequence of the transfer of shares of a foreign company or in consequence of an agreement or otherwise in a foreign country. This section also states that any notice sent or taxes levied, demanded, assessed, imposed, collected or recovered during any period prior to 1-4-2012 shall be deemed to have been validly made. Such notice or levy of tax, etc. shall not be called in question on the ground that the tax was not chargeable. This cannot be challenged even on the ground that it is a tax on capital gains arising out of transactions which have taken place in a foreign country. This section will operate notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or any Authority. It appears that this section is inserted in the Finance Act to ensure that taxes collected in the Vodafone case or other similar cases are not required to be refunded. A question may arise about validity of such a provision for retention of taxes collected from certain assesses by the Government when any Court judgment or decree directs that such tax should be refunded to the assessee. Another question will arise whether the Government will be liable to pay interest on such amount retained under the validation provision if ultimately the Government has to refund the amount after some years of litigation.

11.11 *Section 115A:*

This section is amended with effect from 1-7-2012. It is provided that the rate at which Income tax shall be payable in the case of a non-resident, other than a foreign company, in respect of interest received from an Indian company engaged in specified infrastructure activities, in respect of loan given in foreign currency under an agreement approved by the Government between 1-7-2012 to 30-6-2015, shall be taxable @ 5%. This tax shall be subject to deduction at source u/s.194LC w.e.f. 1-7-2012.

11.12 *Section 115BBA:*

This section is amended effective from A.Y. 2013-14 to provide that a non-resident, entertainer, such as a theatre, radio, television artist and musician, from performance in India will be taxable at 20% of gross receipts. It is also provided that in the case of a non-resident sports association, tax will be payable at 20% of gross receipts instead of 10% which is the existing rate. Consequential amendments have also been made for the purpose of TDS on these payments u/s.194E w.e.f. 1-7-2012.

11.13 *Tax on long-term capital gain:*

Section 112 has been amended from A.Y. 2013-14 to provide that, in the case of a non-resident or a foreign company, capital gains tax payable on transfer of a long-term capital asset, being shares or securities which are not listed on the Stock Exchange shall be 10%. For this purpose the long-term capital gain is to be computed without indexation or without taking advantage of foreign currency rate differences provided in section 48.

12. Transfer pricing provisions:

In order to widen the scope of transfer pricing provisions and to clarify certain issues, the following sections are amended. Some of these amendments have retrospective effect.

12.1 Section 92B:

This section gives the meaning of 'International Transaction'. This section is now amended with retrospective effect from 1-4-2002. By this amendment, it is provided that the expression 'International Transaction' shall include —

- (i) the purchase, sale, transfer, lease or use of tangible property, including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity and any other article or thing.
- (ii) the purchase, sale, transfer, lease or use of intangible property, including transfer of ownership or the provision for use of rights regarding land, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any business or commercial rights of similar nature.
- (iii) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment receivable or any other debt arising during the course of business.
- (iv) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service.
- (v) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has a bearing on the profit, income, losses, or assets of such enterprise at the time of the transaction or at future date. Further, the expression 'Intangible Property' has also been defined w.e.f. 1-4-2002 to include 12 items listed in the amended section. This refers to various types of intangible properties related to marketing, technology, artistic, data processing, engineering, customer, control, human capital, location, goodwill and similar items which derive their value from intellectual content rather than physical attributes.

12.2 Section 92C:

(i) This section deals with computation of arm's length price. In section 92C(1) six methods are provided for determination of ALP. Section 92C(2) states that the most appropriate method for this purpose shall be determined as provided in the Rules 10B and 10C framed by the CBDT. The second proviso to this section is now amended w.e.f. A.Y. 2013-14 to provide that if the variation between the ALP determined under the section and the price at which the international transaction has actually been undertaken does not exceed such percentage not exceeding 3% of the latter, as may be notified by the Government. Earlier this margin was $\pm 5\%$ which has now been restricted to $\pm 3\%$.

(ii) Further, section 92C is amended by insertion of s.s (2A) with retrospective effect from 1-4-2002. The amendment is stated to be of a clarificatory nature. The effect of this amendment is that, in respect of first proviso to section 92C(2), as it stood before its substitution by the Finance (No. 2) Act, 2009, the tolerance band of 5% is not to be taken as a standard deduction while computing ALP. However, it is also clarified that already concluded assessment proceedings should not be reopened or rectified on the ground of retrospective amendment.

(iii) Section 92C(2) is also amended with retrospective effect from 1-10-2009. This amendment clarifies that the second proviso to section 92C(2) shall also be applicable to all proceedings which were

pending as on 1-10-2009 i.e., the date on which the second proviso, as inserted by the Finance (No. 2) Act, 2009, came into force.

(iv) It may be noted that, as stated above, section 92C now applies to specified domestic transactions also from A.Y. 2013-14.

12.3 Section 92CA:

(i) This section deals with reference by the AO to the Transfer Pricing Officer (TPO) in specified cases involving Transfer Pricing issues. S.s (2B) has now been inserted with retrospective effect from 1-6-2002. It is provided by this amendment that if the assessee has not furnished the audit report u/s.92E in respect of an international transaction and such transaction comes to the notice of the TPO, during the course of proceedings before him, it will be possible for the TPO to consider this transaction as if it has been referred to him by the AO. It is also provided in new sub-section (2C) that the AO shall not have power to reopen or rectify any assessment proceedings which have been completed before 1-7-2012.

(ii) As stated above, this section is now applicable to specified domestic transactions from A.Y. 2013-14. This will mean that assesses who have entered into specified domestic transaction exceeding Rs.5 Cr. in the accounting year 2012-13 onwards will have to appear before the AO as well as the TPO.

13. Advance Pricing Agreement:

Advance Pricing Agreement (APA) mechanism is introduced by new sections 92CC and 92CD inserted in the Income-tax Act, w.e.f. 1-7-2012. This provision is similar to Clause 118 of the DTC Bill, 2010. This provision is introduced to provide certainty to the international transactions and will reduce litigation relating to transfer pricing issues. Section 92CC gives power to the CBDT to enter into an APA, with any person, determining arm's-length price. 13.1 In brief, the provisions of section 92CC are as under:

(i) The CBDT, with the approval of the Central Government, can enter into an APA with any person (assessee) determining the arm's-length price or specifying the manner in which such ALP is to be determined. This APA will relate to an international transaction to be entered into by that person.

(ii) The manner in which ALP is to be determined in the above APA may include any of the methods referred to in section 92C(1) or any other method, with such adjustments or variations, as the assessee and the CBDT agree upon.

(iii) Once APA is entered into by the CBDT with the assessee, the ALP for the international transaction, stated in APA, will be determined on that basis and the AO cannot invoke the provisions of sections 92C and 92CA.

(iv) APA referred to above shall be valid for such period not exceeding 5 years as specified in the APA.

(v) The above APA shall be binding on (a) the person in whose case and in respect of the transaction stated in the APA and (b) the Income tax Authorities in respect of the party to the APA for the transaction specified therein.

(vi) The above APA shall not be binding if there is change in the law or facts relating to the APA.

(vii) The CBDT, with the approval of the Government, can declare the APA as void abinitio, if it finds that the APA has been obtained by the assessee by fraud or misrepresentation of facts.

(viii) If the APA is declared as void by the CBDT, all the provisions of the Act shall apply as if such agreement was not entered into. For the purpose of taking any action against the assessee, in view of the cancellation of APA, the period from the date of the APA to the date of its cancellation will not be counted for determining the limitation period.

(ix) The CBDT will prescribe a scheme for the procedure to be followed for entering into the APA.

13.2 The effect of the APA entered into by an assessee is explained in the new section 92CD as under:

(i) Where APA has been entered into by an assessee, the Income-tax return which pertains to a previous year covered under the above agreement and is already filed, the assessee has to file a modified return

of income u/s.139 in accordance with and limited to the APA. This modified return has to be filed within 3 months from the end of the month in which APA is entered into.

(ii) Once the modified return of income is filed, the AO will have to assess, reassess or recompute the income, irrespective of the fact whether the assessment/reassessment proceedings are over or not, in accordance with the APA.

(iii) Where the assessment proceedings are completed, the reassessment proceedings are to be completed within one year from the end of the financial year in which modified return of income is filed. If the assessment proceedings are pending, the period of limitation for completion of these proceedings will be extended by 12 months.

13.3 Considering the wording of sections 92CC and 92CD and the intention of the legislation, it will be possible for any assessee, who has already entered into international transactions in the earlier years, to approach the CBDT after 1-7-2012 to enter into APA in respect of such transactions already entered into in the past. This will enable the assessee to apply to the AO that the pending assessments may be completed on the basis of APA. It appears that even if any appeals are pending for any of the earlier years, the assessee will be entitled to withdraw the appeals and approach the AO to make reassessment or recomputation of income for those years in accordance with APA. For this purpose, the assessee should ensure that the APA covers all the earlier years for which disputes are pending.

13.4 Since the transfer pricing provisions have now been extended to 'Specified Domestic Transactions' also, it will be in the interest of the assessee and the Tax Department that the above provisions for Advance Pricing Agreement are extended to 'Specified Domestic Transactions' also. This will reduce litigation on the question of determination of arm's length pricing issues which will arise in relation to such domestic transactions.

14. General Anti-Avoidance Rule (GAAR):

14.1 This is a new concept introduced in the Income-tax Act by the Finance Act, 2012. Very wide powers are given to the Tax Authorities by these provisions. In new Chapter X-A, sections 95 to 102 have been inserted. In para 154 of the Budget Speech, while introducing the Finance Bill, 2012, the Finance Minister has stated that "I propose to introduce a General Anti-Avoidance Rule (GAAR) in order to counter aggressive tax avoidance schemes, while ensuring that it is used only in appropriate cases, enabling review by a GAAR panel.

14.2 The reasons for introducing GAAR provisions in the Income-tax Act are explained in the Explanatory Notes attached to the Finance Bill, 2012.

14.3 There was large-scale opposition to the introduction of this provision in the form suggested in the Finance Bill, 2012, and the DTC Bill, 2010, pending consideration of the Parliament. This opposition was voiced by various trade and industry bodies in India and abroad. The Finance Minister responded to the various suggestions made by members of the Parliament and various trade and industry bodies while replying to the debate in the Parliament on 7th May 2012.

14.4 GAAR provisions:

For the reasons stated by the Finance Minister, special provisions relating to GAAR have been made in sections 95 to 102 in the Income-tax Act from A.Y. 2014-15 (Accounting Year ending 31-3-2014) and onwards. These provisions apply to all assesses (residents or non-resident) in respect of their transactions in India as well as abroad. Very wide powers are given to the tax authorities to disregard any agreement, arrangement or any claim for expenditure, deduction or relief. These provisions, broadly stated are discussed below.

14.5 Section 95:

This section provides that an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement. The tax arising from such declaration by the tax authorities, will be determined subject to provisions of sections 96 to 102. It is also stated in this section that the

provisions of sections 96 to 102 may be applied to any step, or a part of the arrangement as they are applicable to the entire arrangement.

14.6 *Impermissible Avoidance Arrangement (section 96):*

(i) Section 96 explains the meaning of Impermissible Avoidance Arrangement to mean an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and it —

(a) Creates rights or obligations which would not ordinarily be created between persons dealing at arm's length.

(b) Results, directly or indirectly, in misuse or abuse of the provisions of the Income-tax Act.

(c) Lacks commercial substance, or is deemed to lack commercial substance u/s.97, or

(d) is entered into or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

(ii) The Finance Bill, 2012, provided in the section that an arrangement whereby there is any tax benefit to the assessee shall be presumed to have been entered into or carried out for the main purpose of obtaining tax benefits, unless the assessee proved otherwise. It will be noticed that this was a very heavy burden cast on the assessee. However, this requirement has now been deleted and, as declared by the Finance Minister, the onus of proof is now on the Department who has to establish that the arrangement is to avoid tax before initiating the proceedings under these provisions.

14.7 *Lack of commercial substance (section 97):*

(i) Section 97 explains the concept of lack of commercial substance in an arrangement entered into by the assessee. It states that an arrangement shall be deemed to lack commercial substance if —

(a) The substance or effect of the arrangement, as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part of such steps.

(b) It involves or includes

— Round-trip financing

— An accommodation party,

— Elements that have the effect of offsetting or canceling each other, or

— A transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction, or

(c) It involves the location of an asset or a transaction or the place of residence of any party which is without any substantial commercial purpose. In other words, the particular location is disclosed only to obtain tax benefit for a party.

(ii) For the above purpose, it is provided that round-trip financing includes any arrangement in which through a series of transactions —

(a) Funds are transferred among the parties to the arrangement, and

(b) Such transactions do not have any substantial commercial purpose other than obtaining tax benefit.

(iii) It is further stated that the above view will be taken by the Tax Authorities without having regard to the following.

(a) Whether or not the funds involved in the round-trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement,

(b) The time or sequence in which the funds involved in the round trip financing are transferred or received, or

(c) The means by, manner in, or mode through which funds involved in the round-trip financing are transferred or received.

(iv) The party to such an arrangement shall be treated as 'Accommodating Party' whether or not such party is connected with the other parties to the arrangement, if the main purpose of, direct or indirect, participation of such party with the arrangement is to obtain, direct or indirect, tax benefit under the Income-tax Act.

(v) It is clarified in the section that the following factor shall not be taken into consideration for determining whether there is commercial substance in the arrangement:

(a) The period or time for which the arrangement exists.

(b) The fact of payment of taxes, directly or indirectly, under the arrangement.

(c) The fact that an exist route, including transfer of any activity, business or operations, is provided by the arrangement.

14.8 *Consequence of impermissible avoidance arrangement (section 98):*

Under the newly inserted section 144BA, the Commissioner has been empowered to declare any arrangement as an impermissible avoidance arrangement. Section 98 states that if any arrangement is declared as impermissible, then the consequences, in relation to tax or the arrangement shall be determined in such manner as is deemed appropriate in the circumstances of the case. This will include denial of tax benefit or any benefit under applicableDTAA. The following is the illustrative list of consequences and it is provided that the same will not be limited to the list:

(i) Disregarding, combining or re-characterising any step in, or part or whole of the impermissible avoidance arrangement;

(ii) Treating, the impermissible avoidance arrangement as if it had not been entered into or carried out;

(iii) Disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(iv) Deeming persons who are connected persons in relation to each other to be one and the same person;

(v) Re-allocating between the parties to the arrangement, (a) any accrual or receipt of a capital or revenue nature or (b) any expenditure, deduction, relief or rebate;

(vi) Treating (a) the place of residence of any party to the arrangement or (b) situs of an asset or of a transaction at a place other than the place or location of the transaction stated under the arrangement.

(vii) Considering or looking thorough any arrangement by disregarding any corporate structure.

(viii) It is also clarified that for the above purpose that Tax Authorities may re-characterise (a) any equity into debt or any debt into equity, (b) any accrual or receipt of capital nature may be treated as of revenue nature or vice versa or (c) any expenditure, deduction, relief or rebate may be recharacterised.

14.9 *Section 99:*

This section provides for treatment of connected person and accommodating party. The section provides that for the purposes of sections 95 to 102, for determining whether a tax benefit exists —

(i) The parties who are connected person, in relation to each other, may be treated as one and the same person.

(ii) Any accommodating party may be disregarded.

(iii) Such accommodating party and any other party may be treated as one and the same person.

(iv) The arrangement may be considered or looked through by disregarding any corporate structure.

14.10 It is further provided in section 100 that the provisions of sections 95 to 102 shall apply in addition to, or in lieu of, any other basis for determination of tax liability. Section 101 gives power to the CBDT to prescribe the guidelines and lay down conditions for application of sections 95 to 102 relating to the General Anti-Avoidance Rules (GAAR). Let us hope that these guidelines will specify the type of arrangements and transactions in relation to which alone the Tax Authorities have to invoke the provision of GAAR. Further, it is necessary to specify that if the tax benefit sought to be obtained by any arrangement is say Rs.5 crore or more in a year, then only the Tax Authorities will invoke these powers.

14.11 **Section 102:**

This section defines words or expressions used in sections 95 to 102 as stated above.

14.12 **Section 144BA:**

Procedure for declaring an arrangement as impermissible u/s.95 to u/s.102 is given in this section. This section will come into force from A.Y. 2014-15.

- (i) The Assessing Officer can make a reference to the Commissioner for invoking GAAR and on receipt of reference the Commissioner shall hear the taxpayer. If he is not satisfied by the submissions of taxpayer and is of the opinion that GAAR provisions are to be invoked, he has to refer the matter to an 'Approving Panel'. In case the assessee does not object or reply, the Commissioner shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.
- (ii) The Approving Panel has to dispose of the reference within a period of six months from the end of the month in which the reference was received from the Commissioner.
- (iii) The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made. It can issue such directions as it thinks fit. It can also decide the year or years for which such an arrangement will be considered as impermissible. It has to give hearing to the assessee before taking any decision in the matter.
- (iv) The Assessing Officer will determine consequences of such a positive declaration of arrangement as impermissible avoidance arrangement.
- (v) The final order, in case any consequences of GAAR is determined, shall be passed by the AO only after approval by the Commissioner and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.
- (vi) The period taken by the proceedings before the Commissioner and the Approving Panel shall be excluded from time limitation for completion of assessment.
- (vii) The CBDT has to constitute an 'Approving Panel' consisting of not less than three members. Out of these three members, two members shall be of the rank of Commissioners of Income-tax and one member shall be an officer of the Indian Legal Service of the rank of Joint Secretary or above to the Central Government. It is not clear from these provisions whether the CBDT will appoint only one Approving Panel for the whole of the country or there will be separate Panels in each State. Considering the work load and considering the convenience of the assesseees it is necessary to have one such Panel in each State.
- (viii) In addition to the above, it is provided that the CBDT has to prescribe a scheme for efficient functioning of the Approving Panel and expeditious disposal of the references made to it.
- (ix) Appeal against order of assessment passed under the GAAR provisions after approval by the appropriate authority is to be filed directly with the ITA Tribunal and not before the CIT(A). Section 144C relating to reference before DRT does not apply to this assessment order and, therefore, no reference can be made to DRT when GAAR provisions are invoked.

14.13 The above GAAR provisions will have farreaching consequences for assesseees engaged in the business with Indian or foreign parties. GAAR is not restricted to only business transactions. Therefore, all other assesseees who are engaged in business or profession or who have no income from business or

profession will be affected by these provisions. It appears that any assessee having any arrangement, agreement, or transaction with an associated person will have to take care that the same is at arm's length consideration. In particular, an assessee will have to consider the implications of GAAR while (a) executing a will or trust, (b) entering into partnership or forming LLP, (c) taking controlling interest in a company, (d) carrying out amalgamation of two or more companies, (e) effecting demerger of a company, (f) entering into a consortium or joint venture, (g) entering into foreign collaboration, or (h) acquiring an Indian or foreign company. It may be noted that this is only an illustrative list and there may be other transactions which may attract GAAR provisions.

14.14 From the wording of the above provisions of sections 95 to 102 and 144BA it appears that the provisions of GAAR can be invoked in respect of an arrangement made prior to 1-4-2013. The CIT or the Approving Panel can hold any such arrangement entered into prior to 1-4-2013 as impermissible and direct the AO to make adjustments in the computation of income or tax in the A.Y. 2014-15 or any year thereafter. As stated in para 15.15 of the report of the Standing Committee on Finance on the DTC Bill, 2010, it would be fair to apply GAAR provisions prospectively, so that it is not made applicable to existing arrangements/transactions. It may be noted that no such provision is made in sections 95 to 102 and 144BA and, therefore, it can be presumed that the above GAAR provisions will have retroactive effect.

14.15 In section 101 it is stated that the CBDT will issue guidelines to provide for the circumstances under which GAAR should be invoked. Let us hope that these guidelines will specify that GAAR provisions will apply to all arrangements or transactions entered into after 1-4-2013 and also the type of arrangements or transactions to which GAAR will apply. It is also necessary to specify that GAAR provisions will be invoked if the tax sought to be avoided is more than Rs.5 crore, in any one year. This is also suggested by the Standing Committee on Finance in their report on the DTC Bill, 2010. As regards the procedure for invoking GAAR, section 144BA(4) provides that if the CIT agrees with the view of the AO to invoke GAAR, he should refer the matter to an Approving Panel. U/s.144BA(14) it is provided that the CBDT will appoint an Approving Panel consisting of two members of the level of Commissioners and one Law Officer. As suggested by the above Standing Committee in their report on the DTC Bill, 2010, such Panel should consist of a Chief Commissioner and two independent technical persons.

15. *Assessment, reassessment and appeals:*

15.1 *Section 139 – Return of income:*

(i) This section is amended from A.Y. 2012-13 (Accounting Year ending 31-3-2012). The amendment now requires that a resident and ordinarily resident, who is otherwise not required to furnish a return of income, will be required to furnish his return of income before the due date for filing the return in the following cases:

(a) If the person has any asset located outside India. This will mean that if the person owns any immovable property outside India, any shares in a foreign company, any bank account or other assets outside India, he will have to file return even if the total income is below the taxable limit.

(b) If the person has any financial interest in any entity in a foreign country. This will mean that if the person is a beneficiary in any specific or any discretionary foreign trust, he will have to file his return of income whether he has received any benefit from the trust or not.

(c) If the person has signing authority in any account located outside India.

(ii) The above provision applies to a company, firm, individual, HUF or any non-corporate entity who is a resident and ordinarily resident. Such person will have to file return of income for the accounting year 1-4-2011 to 31-3-2012 (A.Y. 2012-13) and onwards. It may be noted that in a case where the person (whether resident or non-resident) has taxable income in India, he will have to give information about the above items in the form of return of income prescribed for A.Y. 2012-13.

(iii) At present, the due date for furnishing the return of income in the case of an assessee, being a company is required to file Transfer Pricing Report u/s.92E, is 30th November. It is now provided that the

extended time limit up to 30th November will apply to all assessees who are required to file Transfer Pricing Report u/s.92E. This amendment will come into force from A.Y. 2012-13.

15.2 *Section 143 – Procedure for assessment:*

At present, the return is required to be processed u/s.143(1) even if the case is selected for scrutiny. The section is now amended, effective from 1-7-2012, to provide that if the case is selected for scrutiny, the AO is not required to process the return of income u/s.143(1). This will mean that if the person has claimed refund in the return of income and his case is taken up for scrutiny, the refund if due, will be issued only after completion of assessment u/s.143(3).

15.3 *Section 144C – Reference to DRP:*

(i) This section is amended with retrospective effect from 1-10-2009. Under this section when the AO wants to make a variation in the income or loss, as a result of order passed by a Transfer Pricing Officer u/s.92CA(3), he has to pass a draft assessment order. If the assessee objects to the variation, he has to refer the matter to the Dispute Resolution Panel (DRP) u/s.144C. The DRP has power to confirm, reduce or enhance the assessment. There was a controversy as to whether this power of enhancement includes power to consider any other matter arising out of the assessment proceedings relating to the draft assessment order. To clarify this doubt, this section is now amended w.e.f. 1-10-2009 to provide that the DRP can consider any other matter relating to the draft assessment order while enhancing the variation. It may be noted that this amendment does not clarify whether the DRP can consider any other matter brought to its notice by the assessee which has the effect of reducing the income or increasing the loss.

(ii) Further, it is also clarified that the enhancement in time limit for computation of assessment, provided in this section 144C(13), will apply to time limit provided u/s.153 as well as u/s.153B w.e.f. 1-10- 2009.

(iii) It may be noted that from A.Y. 2013-14, cases in which specified domestic transactions are there will now be referred to TPO. Therefore, the above procedure of making draft order and reference to DRP will apply in such cases also.

15.4 *Sections 147 and 149 – Reassessment of income:*

These two sections dealing with income-escaping assessment and time limit for reopening assessment have been amended w.e.f. 1-7-2012. These amendments will apply to any assessment year beginning on or before 1-4-2012. The effect of these amendments is as shown in Table.

Table: Time Limits for Completing Assessments

<i>Proceedings under sections</i>	<i>Present time limit for completion of assessment (Months)</i>	<i>Revised time limit w.e.f 1-7-2012 (Months)</i>
143	21 from end of A.Y.	24 months
143 read with 92CA	33 from end of A.Y.	36 months
148	9 from end of F.Y. in which notice is issued	12 months
148 read with 92CA	21 from end of F.Y. in which notice issued	24 months
250, 254 or 263	9 from end of F.Y. in which order is passed	12 months

250, 254 or 263 read with 92CA	21 months from end of F.Y. in which order is passed	24 months
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(i) At present, the time limit for reopening assessments is 6 years. In a case where assessment is made u/s.143(3) and the income-escaping assessment is not due to failure of the assessee to disclose fully and truly all material facts necessary for assessment for that year, the time limit for reopening is 4 years. This time limit is now enhanced in specified cases.

(ii) It is now provided that if the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any year, the time limit for reopening the assessment shall be 16 years. For this purpose, where a person is found to have any asset or any financial interest in any entity located outside India, shall be deemed to be a case where income chargeable to tax has escaped assessment. This provision will apply to a resident or a nonresident. In the coming years, this provision will have far-reaching implications.

(iii) It is now provided that if a person has failed to furnish the Transfer Pricing Report u/s.92E in respect of any international transaction, income shall be deemed to have escaped assessment. In such a case the AO can send notice for reopening assessment within the prescribed period.

(iv) Similar amendments are made in the Wealth Tax Act also.

(v) Reading the above provisions, it appears that in a transaction similar to the case of the famous VODAFONE the assessments of a foreign company which has made taxable capital gains or other income can be reopened for 16 years instead of 6 years as in such cases some assets will be located outside India.

15.5 Sections 153 and 153B — Time limit for completion of assessments:

These sections are amended w.e.f. 1-7-2012. At present, the time limit for completion of assessment or reassessment proceedings is 21 months. In a case where reference is made to the Transfer Pricing Officer, the time limit for completion of assessment is 33 months. This time limit is extended as under:

15.6 Sections 153A and 153C — Assessment in case of search or requisition:

These sections are amended w.e.f. 1-7-2012. Sections 153A and 153C of the Act lay down the procedure for assessment/reassessment in case of search or requisition. Presently, the notice for filing of returns of income and assessment thereof has to be given for six assessment years preceding the previous year in which the search was conducted or requisition made.

It is now provided that the Central Government can notify cases or class of cases where the Assessing Officer shall not be required to issue notice for initiation of assessment/reassessment proceedings for six preceding assessment years and proceedings may only be taken up for the assessment year relevant to the year of search or requisition.

15.7 Sections 154 and 156:

(i) These sections have been amended w.e.f. 1-7-2012. A statement of tax deduction at source is processed u/s.200A and an intimation is sent to the deductor as provided u/s.200A(1). At present, there is no provision for rectification or appeal against the said intimation.

(ii) It is now provided that any mistake apparent from the record in the intimation issued u/s.200A shall be rectifiable u/s.154. It is also provided that the intimation issued u/s.200A shall also be deemed to be a notice of demand u/s.156 and an appeal can be filed with the Commissioner of Income-tax (Appeals) u/s.246A.

(iii) In actual practice there is considerable delay in passing order u/s.154 for rectification of mistake in any order passed by the AO. It is, therefore, suggested that section 246A should be amended to provide that if rectification order is not passed by the AO within 6 months of filing such application the assessee

will have a right to file appeal to the CIT(A). It may be noted that similar provision is made in clause 178 of the DTC Bill, 2010.

15.8 Section 245C — Settlement Commission:

Sections 245C dealing with application for settlement of cases has been amended w.e.f. 1-7-2012. At present, an application can be filed before the Settlement Commission u/s.245C by a related person who has substantial interest of more than 20% of the profits of the business at any time during the previous year. Now, it is provided that the substantial interest should exist on the date of search and not at any time during the previous year.

15.9 Section 245N: Authority for Advance Ruling (AAR)

This Section is amended w.e.f. 1-4-2013 (A.Y. 2013-14). By this amendment it is provided that an assessee can approach the AAR for determination or decision whether an arrangement which is proposed to be undertaken by any person (resident or non-resident) is an impermissible arrangement as provided in sections 95 to 102. This will enable the person entering into an arrangement to get an Advance Ruling from AAR if he apprehends that the AO may invoke GAAR provisions during assessment proceedings. As suggested earlier, this provision should be made available to persons entering into specified domestic transactions u/s.92BA.

15.10 Section 245Q — Fees for filing application for Advance Ruling:

Fees for filing an application before the Authority for Advance Ruling is increased from Rs.2500 to Rs.10000 w.e.f. 1-7-2012. The CBDT is now given power to increase or reduce the amount of fees from time to time by prescribing the necessary rule for this purpose.

15.11 Section 246A — Appealable orders before CIT(A):

The list of orders against which appeals can be filed before the CIT(A) has now been expanded. Now appeals can be filed before the CIT(A) against the following orders:

- (i) The tax deductor can file appeal on after 1-7-2012 against the intimation issued u/s.200A relating to short deduction of tax at source.
- (ii) The assessee can file appeal against the order passed by the AO u/s.153A in search cases if such order is not passed in pursuance of the directions of the DRP. This will be effective from 1-10-2009.
- (iii) The assessee can file appeal against the order of assessment or reassessment passed under new section 92CD(2) after furnishing the modified return based on the Advance Pricing Agreement as provided in the new section 92CC. This is effective from 1-7-2012.
- (iv) Penalty order passed under new section 271 AAB where search has been initiated. This is effective from 1-7-2012.

15.12 Section 253 — Appeals before ITA Tribunal:

- (i) The following amendment is made w.e.f. 1-4-2013:

Any order passed by the AO u/s.143(3), 147, 153A or 153C in pursuance of the order passed by the CIT u/s.144BA(12) in accordance with the directions by the Approving Panel or the CIT, declaring any arrangement as impermissible avoidance arrangement, is appealable directly to the ITA Tribunal.

- (ii) The following amendments are made with reference to DRP cases:

- (a) The directions given by the DRP in the case of a foreign company or any person in whose case variation in the income arises due to order of the Transfer Pricing Officer are binding on the Assessing Officer. It is now provided that the Assessing Officer can also file an appeal before the ITA Tribunal against an order passed in pursuance of directions of the DRP in respect of objections filed on or after 1st July, 2012.

(b) The Assessing Officer or the assessee is entitled to file memorandum of cross objections on receipt of notice that an appeal has been filed by the other party.

(c) Any order passed u/s.153A or 153C in pursuance of directions of the DRP shall be directly appealable to the ITA Tribunal w.e.f. 1st October, 2009. Presently, such appeals are being filed with the Commissioner (Appeals).

15.13 Section 292CC — Authorisation and assessment in case of search or requisition:

This is a new section inserted w.e.f. 1-4-1976 to clarify the procedure for authorisation and assessment in certain cases of search or requisition. In the case of CIT v. Smt. Vandana Verma, 330 ITR 533 (All.) it was held that if search warrant is in the name of more than one person, then assessment cannot be made individually in the absence of any search warrant in the individual name. To overcome this judgment, it is now provided in this new section, with retrospective effect from 1-4-1976, that where a search warrant has been issued mentioning names of more than one persons, the assessment/reassessment can be made separately in the name of each of the persons mentioned in such search warrant.

16. Penalties and prosecution:

16.1 Section 234E — Fees for delay in furnishing TDS/TCS statement:

This is a new section which has been inserted w.e.f. 1-7-2012. At present, section 272A provides for penalty of Rs.100 per day for delay in furnishing TDS/TCS statement within the time prescribed in section 200(3) or 206C(3). Newly inserted section 234E now provides for levy of fees of Rs.200 for every day of the delay in furnishing TDS/TCS statements. However, the total fee shall not be more than the amount of tax deductible/collectable for the quarter for which the TDS/TCS statement is delayed. The fee is to be paid before the delivery of the TDS/TCS statements. Consequently levy or penalty provided in section 272A(2)(k) is deleted. However, new section 271H has been added to levy of penalty under certain circumstances as discussed in Para 16.5 below. It may be noted that no appeal against levy of fees payable u/s.234E is provided in section 246A.

16.2 Section 271 — Penalty for concealment — Amendment w.e.f. 1-4-2013:

The transfer pricing regulations are extended to specified domestic transactions entered into by domestic related parties. If any amount is added or disallowed, based on the arm's-length price determined by the Assessing Officer, it is now provided that such addition/disallowance shall be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished as provided in Explanation 7 to section 271(1) and it is liable to penalty accordingly.

16.3 Section 271AA — Penalty for failure to report, etc. of International and specified domestic transactions:

(i) Amendment w.e.f. 1-7-2012

At present, there is no penalty for non-reporting of an international transaction in the report filed u/s.92E or maintaining or furnishing or incorrect information of documents.

Therefore, a levy of penalty at the rate of 2% of the value of the international transaction is provided, if the taxpayer

- (a) fails to keep and maintain prescribed information and documents u/s.92D(1) or (2)
- (b) fails to report any international transaction u/s.92E, or
- (c) maintains or furnishes any incorrect information or documents.

(ii) Amendment w.e.f. 1-4-2013

The above provision for levy of penalty u/s.271AA will apply if there is failure to comply with the above requirements in the case of domestic transactions also from A.Y. 2013-14.

16.4 Section 271G — Penalty for failure to furnish information or documents u/s.92D

— w.e.f. 1-4-2013:

At present, section 271G provides for levy of penalty at 2% of the value of transaction for failure to furnish information or documents u/s.92D which requires maintenance of certain information and documents in the prescribed proforma by the persons entering into an international transaction. This penal provision will now apply to persons entering into specified domestic transactions for such failure effective from A.Y. 2013-14.

16.5 Section 271H: Penalty for failure to furnish TDS/TCS statements:

This is a new section which has been inserted w.e.f. 1-7-2012. In addition to fees payable under the newly inserted section 234E, section 271H also provides for penalty for not furnishing quarterly TDS statements within the prescribed time limit or penalty for furnishing incorrect information such as PAN of the deductee or amount of TDS deducted, etc. in the statements to be filed u/s.200 (3) or 206C(3). A penalty ranging from Rs.10,000 to Rs.1,00,000 is leviable for these failures. No appeal against the levy of this penalty is provided u/s.246A.

It is also provided that no such penalty will be levied if the deductor delivers the statement within a year from the due date and the person has paid the tax along with fees and interest before delivering the statement.

16.6 Sections 271AAA and 271AAB — Penalty on undisclosed income found in the course of search:

(i) At present, penalty in the case of search initiated on or after 1st June, 2007 is not livable u/s.271AAA subject to certain conditions, such as:

- (a) the assessee admits the undisclosed income in a statement u/s.132(4) recorded during the search,
- (b) he specifies the manner in which such income has been derived, and
- (c) he pays the tax together with interest, if any, in respect of such income.

Now, section 271AAA will not apply to search initiated on or after 1st July, 2012.

(ii) Newly inserted section 271 AAB now provides for levy of penalty on undisclosed income of specified previous years where search has been initiated on or after 1st July, 2012 as under:

- (a) If the assessee admits undisclosed income during the course of search in a statement u/s.132(4), specifies the manner in which such income has been derived, pays the tax with interest on such income and furnishes return of income declaring such income, penalty shall be 10% of undisclosed income.
- (b) If undisclosed income is not so admitted during the course of search, but disclosed in the return of income filed after the search and he pays the tax with interest, penalty shall be 20% of undisclosed income.
- (c) In other cases, the minimum penalty shall be 30% subject to maximum of 90% of the undisclosed income.

16.7 Prosecution provisions — Sections 276C, 276CC, 277, 277A, 278 and 280A to 280D:

The effect of these amendments w.e.f. 1-7-2012 shall be as under:

(i) *Section 276C — Wilful attempt to evade tax:*

At present, if the amount of tax sought to be evaded exceeds Rs.1 lac, the punishment is rigorous imprisonment for minimum of 6 months and maximum of 7 years. The limit of Rs.1 lac is now raised to Rs.25 lac.

In other cases, the rigorous imprisonment period is 3 months minimum and 3 years maximum. The period of 3 years is now reduced to 2 years.

(ii) Section 276CC — Failure to furnish Returns of Income:

In this section also amendments similar to amendments in section 276C as stated in para (i) above are made.

(iii) Section 277 — False Statement in Verification:

In this section also amendments similar to amendments in section 276C as stated in para (i) above are made.

(iv) Section 277A — Falsification of Books of Accounts or Documents:

In this section the maximum term of imprisonment has been reduced from 3 years to 2 years.

(v) Section 278 — Abetment of False Return of Income and Statements:

In this section also amendments similar to amendments in section 276C as stated in (i) above are made.

(vi) Sections 280A to 280D:

These new sections have been inserted w.e.f. 1-7-2012 with a view to appoint Special Courts to try specified offences under the Income-tax Act. It appears that these new provisions are made to strengthen the prosecution mechanism and expedite the disposal of prosecution cases under the Income-tax Act. In brief these provisions deal with the following matters:

- (a) Providing for constitution of Special Courts for trial of offences under the Act.
- (b) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in summons trial are simpler and less time consuming. The provision for summons trials will apply to offences where the maximum term of Imprisonment does not exceed 2 years.
- (c) Providing for appointment of public prosecutors.

17. Other amendments:

17.1 Senior citizens:

In various sections of the Income-tax Act the age limit for senior citizens was fixed at 65 years. This has now been reduced to 60 years w.e.f. A.Y. 2013-14 (Accounting Year 2012-13).

17.2 Tax audit:

Section 40AB provides that an assessee carrying on business or profession has to get the accounts audited by a Chartered Accountant if the turnover or gross receipts exceed Rs.60 lac in the case of business or exceeds Rs.15 lac in the case of profession. The limit of turnover or gross receipts for this purpose has now been increased to Rs.1 crore in the case of business or Rs.25 lac in the case of profession. Further, date for obtaining tax audit report which is 30th September has been changed to the due date of filing return of income u/s.139(1) as applicable to the assessee. The amendment increasing the limit for turnover/gross receipts will come into force from A.Y. 2013-14 (Accounting Year 2012-13).

17.3 Section 115VG — Computation of daily tonnage income for shipping companies:

This section is amended w.e.f. A.Y. 2013-14. The Tonnage Tax Scheme for shipping companies was introduced by the Finance Act, 2005. This section provides for taxation of income of a shipping company on presumptive basis. Under this scheme, the operating profit of a shipping company is determined on the basis of tonnage capacity of its ships. The rates of daily tonnage income specified in the section have not been changed since 2005. By this amendment these rates are enhanced as under:

<i>Qualifying ship having net tonnage</i>	<i>Existing amount of daily tonnage income</i>	<i>New rates from A.Y. 2013-14 of daily tonnage income</i>
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Up to 1000 Tons	Rs.46 for each 100 Tons	Rs.70 for each 100 Tons
1001 to 10000 Tons	Rs.35 for each 100 Tons in excess of 1000 Tons	Rs.53 for each 100 Tons in excess of 1000 Tons
10001 to 25000 Tons	Rs.28 for each 100 Tons in excess of 10000 Tons	Rs.42 for each 100 Tons in excess of 10000 Tons
Exceeding 25000 Tons	Rs.19 for each 100 Tons in excess of 25000 Tons	Rs.29 for each 100 Tons in excess of 25000 Tons

17.4 **Section 209 — Advance tax calculation:**

At present, for the purpose of calculation of advance tax liability, tax deductible or collectable at source was required to be reduced even though the tax was actually not deducted. Therefore, in such cases, there was no interest liability. Now it is provided that unless such tax is actually deducted, the same should not be considered while computing the advance tax liability. Similarly, it is provided that unless such tax is actually collected u/s.206C, the same should not be considered while computing the advance tax liability. This amendment is made w.e.f. 1-4-2012.

17.5 **Section 234D — Interest on excess refund:**

This section is amended w.e.f. 1-6-2003. This section was inserted by the Finance Act, 2003, w.e.f. 1-6-2003 to enable the Government to recover amount of excessive refund granted u/s.143(1). The section provides for levy of simple interest at the rate of ½% for every month or part thereof on the excess amount of refund granted u/s.143(1) if, on regular assessment, it is found to be excessive. Interest is payable for the period starting from the date of refund to the date of regular assessment.

The Delhi High Court in DIT v. Jacobs Civil Incorporated, (2011) 330 ITR 578 held that this provision will apply from the A.Y. 2004-05 and no interest is payable for the earlier assessment years. To overcome this decision, it is now provided that interest shall be payable u/s.234D on excess refund for any earlier assessment years if the proceedings in respect of such assessment are completed after 1-6-2003.

18. **Wealth Tax Act :**

(i) *Section 2(ea) — Definition of 'Assets':*

At present, any residential unit allotted to officers, employees or whole-time directors is exempt from wealth tax if the gross annual salary of such person is less than Rs.5 lac. This limit of gross annual salary is increased to Rs.10 lac. This amendment is effective from A.Y. 2013-14.

(ii) *Section 17 — Wealth-escaping assessment:*

This section is amended w.e.f. 1-7-2012 — It is now provided in this section that if any person is found to have any asset or financial interest in any entity located outside India, it will be deemed to be a case where net wealth chargeable to tax has escaped assessment. In such cases the wealth tax assessment can be reopened by the AO within 16 years.

(iii) *Section 17A — Time limit for completion of assessment and reassessment:*

This section is amended w.e.f. 1-7-2012. As discussed earlier, while considering the amendments in sections 153 and 153B of the Income tax, this amendment has the effect of increasing the time limit by 3 months for completion of assessment/reassessment proceedings.

(iv) *Section 45:*

This section provides for exemption from wealth tax to section 25 companies, co-operative societies, social clubs, recognised political parties, mutual funds, etc. This list is now expanded to provide that the 'Reserve Bank of India' will not be liable to pay wealth tax w.e.f. 1-4-1957.

19. To sum up:

19.1 From the above discussion, it will be evident that the amendments made in the Income-tax Act by this Budget are the most controversial. In particular, the amendments affecting non-residents which have retrospective and retroactive effect will affect our relationship with many foreign countries and will affect our global trade. The Finance Minister has quoted in his Budget Speech Shakespeare's immortal words "I must be cruel only to be kind". Reading the provisions relating to amendments in the Income-tax Act, one can say that this year he has been 'Cruel' with the non-resident taxpayers. Hopefully he may become 'kind' next year.

19.2 In his Budget speech, the Finance Minister has stated that his proposals relating the Direct Taxes will result in a net revenue loss of Rs.4,500 Cr. in the year and the proposals relating to Indirect Taxes will yield net revenue gain of Rs.45940 Cr. However, from his post-budget speeches before various trade bodies indicate that retrospective amendments in the Income-tax Act itself will yield revenue of about Rs.40000 Cr. Considering the stakes involved, it is evident that in the coming years we will witness a long-drawn tax litigation relating to interpretation of the retrospective amendments in the Income-tax Act.

19.3 Another provision which is likely to create lot of hardship to resident as well as non-resident taxpayer is about GAAR. It is true that the implementation of GAAR has been postponed to next year, there is apprehension that the Tax Department may hold arrangements made prior to 1-4-2013 as impermissible and make adjustments in the income for the year 1-4-2013 to 31-3-2014 and subsequent years. In other words, GAAR provisions may have retroactive effect. From the wording of GAAR provisions it is evident that it will now be difficult for resident as well as non-resident tax-payers to take any major decisions about the structure of any business transaction. Even the tax consultants will find it difficult to advise their clients about structuring or restructuring any business transaction. If the Government does not come out with a taxpayerfriendly Guidance Note, taking into consideration the business realities, the fear above invocation of GAAR will continue in the minds of all taxpayers and their tax consultants.

19.4 Another controversial provision which has been made this year relates to specified domestic transactions. By extending the scope of Transfer pricing provisions to these transactions, the compliance cost of the assessee will increase. At present no adequate data about domestic comparable prices is available in our country, and therefore, it will be difficult for assesses to maintain transfer pricing records and documents for this purpose. Since the provisions have been made effective from 1-4-2012, many assesses may not be well equipped to maintain these records in this year. Since every case in which specified domestic transactions are entered into will be referred to the TPO, the entire assessment proceedings will become lengthy and time consuming. This will also increase compliance cost.

19.5 It is true that the tax burden of individuals, HUF, etc. has been reduced and some beneficial provisions have been introduced to remove some practical difficulties. But, it can be stated that these efforts are only half-hearted and there are many areas in which the taxpayers will have to face many practical difficulties.

19.6 The DTC Bill, 2010, is pending before the Parliament. The report of the Standing Committee on Finance is also laid before the Parliament. This Bill was to be implemented from 1-4-2012. However, due to the delay in the legislative process it is stated that DTC will now be passed in the next session of the Parliament and will be made effective from 1-4-2013. In view of this, it is not clear why such controversial amendments are made this year in the last year of the life of the present Income-tax Act. By the time the taxpayers grasp the implications of these amendments, the new provisions of DTC will come into force from next year. When it became evident in the beginning of this year that DTC may be

postponed by one year, it was felt that in this Budget some minimal amendments will be made in the Income-tax Act as and by way of parting gift to the taxpayer. But, after reading the controversial amendments in the Income-tax Act in this Budget, the taxpayers have felt that this Act has given a parting kick to the taxpayers in the last year of its existence