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# AMENDMENTS

## [MADE BY FINANCE ACT 2012]

***Applicable to***

## CA-IPC and

## CS-EXECUTIVE

## *in* 2013 EXAM

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# DIRECT TAXES

## A. INCOME TAX

### 1. Tax Rate Highlights— Normal Rates

**1.1. In case of Individual, HUF, AOP, BOI etc.:** Amendments in tax rates are as under—

**1.1—*a*. Senior citizens:** In the case of every individual, *being a resident in India, who is of the age of 60 years* or more but less than 80 years on the last day of the previous year,—

| *Total income* | *Amount of tax* | *E. Cess* | *S.H.E. Cess* |
|---|---|---|---|
| Upto Rs. 2,50,000 | *Nil* | *Nil* | *Nil* |
| Exceeding Rs. 2,50,000 but upto Rs. 5,00,000 | 10% of (total income *less* Rs. 2,50,000) | 2% of income tax. | 1% of income tax. |
| Exceeding Rs. 5,00,000 but upto Rs. 10,00,000 | Rs. 25,000 + 20% of (total income *less* Rs. 5,00,000) | 2% of income tax. | 1% of income tax. |
| In excess of Rs. 10,00,000 | Rs. 1,25,000 + 30% of (total income *less* Rs. 10,00,000) | 2% of income tax. | 1% of income tax. |

**1.1—*b*. Very senior citizens:** In the case of every individual, *being a resident in India, who is of the age of 80 years* or more at any time during the previous year,—

| *Total income* | *Amount of tax* | *E. Cess* | *S.H.E. Cess* |
|---|---|---|---|
| Upto Rs. 5,00,000 | *Nil* | *Nil* | *Nil* |
| Exceeding Rs. 5,00,000 but upto Rs. 10,00,000 | 20% of (total income *less* Rs. 5,00,000) | 2% of income tax. | 1% of income tax. |
| In excess of Rs. 10,00,000 | Rs. 1,00,000 + 30% of (total income *less* Rs. 10,00,000) | 2% of income tax. | 1% of income tax. |

**1.1—*c*. Other cases (including woman):** In the case of every individual other than the individual referred to in items *a.* and *b.* above or HUF or AOP or BOI, or every artificial juridical person—

| *Total income* | *Amount of tax* | *E. Cess* | *S.H.E. Cess* |
|---|---|---|---|
| Upto Rs. 2,00,000 | *Nil* | *Nil* | *Nil* |
| Exceeding Rs. 2,00,000 but upto Rs. 5,00,000 | 10% of (total income *less* Rs. 2,00,000) | 2% of income tax. | 1% of income tax. |
| Exceeding Rs. 5,00,000 but upto Rs. 10,00,000 | Rs. 30,000 + 20% of (total income *less* Rs. 5,00,000) | 2% of income tax. | 1% of income tax. |
| In excess of Rs. 10,00,000 | Rs. 1,30,000 + 30% of (total income *less* Rs. 10,00,000) | 2% of income tax. | 1% of income tax. |

**1.2 Rates for other persons:** In case of co-operative societies, firm & local authorities and companies, the rate will continue to be the same as that specified for the assessment year 2012-13.

### 1.3 Tax Rate Highlights— Rates of Alternate Minimum Tax (AMT) [Section 115JC to 115JF]

1.3—*a*. Under the existing provisions of the Income-tax Act, Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) are levied on companies and limited liability partnerships (LLPs) respectively. However, no such tax is levied on the other form of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base *vis-a-vis* profit linked deductions, amendments have been in provisions of AMT (contained in Chapter XII-BA in the Income-tax Act) so as to provide that a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C – Deductions in respect of certain incomes" [*i.e.* Section 80-H to 80RRB] or under section 10AA, shall be liable to pay AMT.

1.3—*b. Applicability of AMT*: As per the amendments, where the regular income-tax payable for a previous year by a person (other than a company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of **19.055%** (*i.e.* 18.5% +EC+SHEC).

1.3—*c*. For the purpose of the above "adjusted total income" shall be calculated as under—

| | (*Rs.*) |
|---|---|
| Total income before giving effect to provisions of sections 115JC to 115JF | ×××××× |
| *Add*: Deduction claimed under section 80-H to 80RRB and 10AA (other than deduction under section 80P) | ×××××× |
| Adjusted total income | ×××××× |

1.3—*d. Non-applicability of AMT*: The provisions of AMT shall not apply to an individual or a HUF or AOP or BOI or an artificial juridical person if the adjusted total income of such person does not exceed Rs. 20,00,000.

1.3—*e. Tax credit of AMT*: It is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed as under—

| | (*Rs.*) |
|---|---|
| AMT [*i.e.* Adjusted total income × 19.055%] | ×××××× |
| *Less:* Regular income tax | ×××××× |
| AMT credit | ×××××× |

This tax credit shall be allowed to be carried forward up to the $10^{th}$ assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT to the extent of the excess of the regular income-tax over the AMT.

## 2. Residential status and tax incidence

### 2.1 Amendment to section 9(1)(*i*) [By Finance Act, 2012 *w.r.e.f.* 1.4.1962]

**Section 9** of the Income Tax provides cases of income, which are deemed to accrue or arise in India. This is a legal fiction created to tax income, which may or may not arise in India and would not have been taxable but for the deeming provision created by this section. Sub-section (1)(*i*) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. One of the limbs of clause (*i*) is income accruing or arising directly or indirectly through the transfer of a capital asset situate in India. The legislative intent of this clause is to widen the application as it covers incomes, which are accruing or arising directly or indirectly. The section codifies source rule of taxation wherein the state where the actual economic nexus of income is situated has a right to tax the income irrespective of the place of residence of the entity deriving the income. Where corporate structure is created to route funds, the actual gain or income arises only in consequence of the investment made in the activity to which such gains are attributable and not the mode through which such gains are realized. Internationally this principle is recognized by several countries, which provide that the source country has taxation right on the gains derived of offshore transactions where the value is attributable to the underlying assets.

**However,** the Supreme Court in case of *Vodafone International Holdings B.V.* v. *UOI* [2012] 204 Taxman 408, held (*vide* para 71 and 165) as under—

> Section 9 covers only income arising from a transfer of a capital asset situated in India; it does not purport to cover income arising from the indirect transfer of capital asset in India. If the word indirect is read into Section 9(1)(*i*), it would render the express statutory requirement of the 4th sub-clause in Section 9(1)(*i*) nugatory.
>
> The word 'directly or indirectly' would go only with the term 'income' and not with the term 'transfer of capital asset'. Thus, 'Indirect arsing of income is charged to tax and not income arsing from the indirect transfer'

To supersede the aforesaid ruling **Explanation 4** has been inserted to clarify the expression 'through' as under—

**'***For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of"*

**Also,** the Supreme Court in the said case, has held (*vide* para 82 and 127) that—

> The situs of shares situates at the place where the company is incorporated and not at the place where the shares can be dealt with by way of transfers. In the instant case, the transfer took place in respect of shares of CGP. CGP is a company incorporated in Cayman Island and the transfer also took place outside India. Therefore, the situs of shares of CGP is not in India.

To supersede the aforesaid ruling **Explanation 5** has been inserted to clarify as under—

*For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India;*

These amendments will take effect retrospectively from 1st April, 1962 and will accordingly apply in relation to the assessment year 1962-63 and subsequent assessment years.

### 2.2 Amendment to section 9(1)(*vi*) [By Finance Act, 2012 *w.r.e.f.* 1.4.1962]

**Section 9(1)(*vi*)** provides that any income payable by way of royalty in respect of any right, property or information is deemed to be accruing or arising in India. The term "royalty" has been defined in *Explanation 2* which means consideration received or receivable for transfer of all or any right in respect of certain rights, property or information. Some judicial decisions have interpreted this definition in a manner which has raised doubts as to whether consideration for use of computer software is royalty or not; whether the right, property or information has to be used directly by the payer or is to be located in India or control or possession of it has to be with the payer. Similarly, doubts have been raised regarding the meaning of the term processed.

Considering the conflicting decisions of various courts in respect of income in nature of royalty and to restate the legislative intent, it is further proposed to amend the Income Tax Act in following manner:-

*1.* To amend section 9(1)(*vi*) to clarify that the consideration for use or right to use of computer software is royalty by clarifying that transfer of all or any rights in respect of any right, property or information as mentioned in *Explanation 2*, includes transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

2. To amend section 9(1)(*vi*) to clarify that royalty includes consideration in respect of any right, property or information, whether or not

   (*a*) the possession or control of such right, property or information is with the payer;

   (*b*) such right, property or information is used directly by the payer;

   (*c*) the location of such right, property or information is in India.

3. To amend section 9(1)(*vi*) to clarify that the term "process" includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

These amendments will take effect retrospectively from June 1, 1976 and will accordingly apply in relation to the assessment year 1977-78 and subsequent assessment years.

**2.3 Amendment to section 68 [By Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**
The existing provisions of section 68 provide that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year. Two new provisos have been inserted in section 68.

**The first proviso** provides that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless—

*a.* the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

*b.* such explanation in the opinion of Assessing Officer has been found to be satisfactory.

**The second proviso** provides that provisions contained in the first proviso shall not apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (*23FB*) of section 10.

## 3. Incomes exempt from taxation

**3.1 Amendment to section 10(*10D*) [By Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**: The existing provisions of clause (*10D*) of section 10 provide that any sum received under a life insurance policy (including the sum allocated by way of bonus on such policy) shall be exempt if premium amount thereof does not exceeds 20% of the actual capital sum assured.

Amendments have been to this clause so as to provide that the threshold limit of premium is reduced from existing 20% to 10%.

**3.2 Insertion of new clause (*23BBH*) to section 10 [By Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**: This new clause (*23BBH*) is inserted in section 10 so as to exempt income of Prasar Bharati (Broadcasting Corporation of India).

**3.3 Amendment to section 10(*23C*) [Amendments by Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**: Section 10(*23C*) has been amended so as to provide that the 'charitable purpose' [*i.e.*

advancement of any other object of general public utility referred to clause in (*e*) of section 2(15)] will be denied **for the previous year** during which such trust/institution receives any fee or consideration exceeding Rs. 25,00,000, from any activity/service in the nature of trade, commerce or business. And this will be even if the approval granted or notification issued (if any) in respect of such trust or institution has not been withdrawn or rescinded.

**3.4 Insertion of new clause (*48*) to section 10 [By Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**: This new clause (*48*) is inserted in section 10 so as to exempt the income of any foreign company if the following conditions are satisfied—

- ♦ The foreign company has any income on account of sale of crude oil to any person in India;
- ♦ Such income should be received by it in India in Indian currency;
- ♦ Such income is in pursuance of its agreement/arrangement with Central Government or approved by the Central Government.
- ♦ The foreign company and the agreement/arrangement are notified by the Central Government.
- ♦ Such foreign company is not engaged in any activity in India (other than receipt of such income).

## 4. Profit and gains of business or profession (PGBP)

**4.1—Amendment to section 32(*1*)(*iia*) [*w.e.f.* A.Y. 2013-14]**: Benefit of initial depreciation @ 20% of actual cost of new machinery or plant acquired and installed in the year extended to new machinery or plant of power sector undertakings.

**4.2—Amendment to section 32(2AB) [*w.e.f.* A.Y. 2013-14]**: Weighted deduction for in-house scientific research and development extended for a further period of 5 years *i.e.* upto 31st March 2017. Earlier it was till March 2012.

**4.3—Extension of section 35AD [*w.e.f.* A.Y. 2013-14]**: Scope of definition of "specified business" to qualify for investment-linked tax deduction expanded to include (*i*) setting up and operating an inland container depot or a container freight station [*see Type-9*], (*ii*) beekeeping [*see Type-10*] and (*iii*) warehousing facility for storage of sugar [*see Type-11*].

Also the amount of deduction is amended as under—

| *Type* | *Nature of specified business* | *Amount of deduction BEFORE amendment (% of qualifying expenditure)* | *Amount of deduction AFTER amendment (% of qualifying expenditure)* |
|---|---|---|---|
| *Type-1* | Setting up and operating a cold chain facility | 100% | **150% *** |
| *Type-2* | Setting up and operating a warehousing facility | 100% | **150% *** |
| *Type-3* | Laying and operating a cross-country natural gas/crude/petroleum pipeline | 100% | 100% |
| *Type-4* | Building and operating a new hotel of two-star or above category, anywhere in India | 100% | 100% |
| *Type-5* | Building and operating of a new hospital anywhere in India with at least 100 beds for patients. | 100% | **150% *** |
| *Type-6* | Developing and building a notified housing project under a scheme for slum redevelopment or rehabilitation framed by the CG/SG | 100% | 100% |

| | | | |
|---|---|---|---|
| *Type-7* | Business in the nature of developing and building a notified housing project under a scheme for affordable housing framed by the CG/SG | 100% | **150% *** |
| *Type-8* | Capital expenditure for a new plant or newly installed capacity in any existing plant for production of fertilisers | 100% | **150% *** |
| *Type-9* | **Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962 [*w.e.f.* A.Y. 2013-14]** | - | **100%** |
| *Type-10* | **Business of bee-keeping and production of honey and beeswax. [*w.e.f.* A.Y. 2013-14]** | - | **100%** |
| *Type-11* | **Business of setting up and operating a warehousing facility for storage of sugar. [*w.e.f.* A.Y. 2013-14]** | - | **100%** |

* Deduction of 150% of qualifying expenditure will be available if such business is commenced on or after 1.04.2012.

**4.4—Amendment to section 40(a)(*ia*) [*w.e.f.* A.Y. 2013-14]**: Finance Act, 2012, has inserted 2nd proviso to this section which provides relief from disallowance of any of such sum even if assessee fails to deduct tax thereon (wholly or partly). Conditions for such relief are as under—

| | |
|---|---|
| *Condition 1* | Tax is deductible on such sum but is not deducted by the payer (wholly or partly); [*i.e.* "*non-deduction case*"] |
| *Condition 2* | The payer is not deemed to be an assessee in default as per 1st proviso to section 201(1). [*see* below] |

Thus, if the above conditions are satisfied, then for the purpose of section 40(*a*)(*ia*), it shall be deemed that the payer has deducted and *paid the tax on such amount on the date of furnishing of return of income* by the resident payee.

**4.5— Amendment to section 40(A)(2) [*w.e.f.* A.Y. 2013-14]**: In respect of specified domestic transaction (referred to in section 92BA) disallowance on basis of section 40(A)(2) cannot be made if such transaction is at arm's length price as is defined under section 92F(*ii*).

The Supreme Court in the case of *CIT* v. *Glaxo SmithKline Asia (P) Ltd.* [2010] 195 Taxman 35, in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.

Thus, based on the recommendations of Apex Court, a new section 92BA has been inserted by Finance Act, 2012, to extend the transfer pricing provisions to specified domestic transactions also. As per section 92BA, an expenditure will be treated as 'specified domestic transaction' if all the following conditions are satisfied—

*Condition 1:* Payment in respect of such expenditure has been or is to be made to a person referred to in section 40A(2);
*Condition 2:* Aggregate amount of such expenditure in the previous year exceeds Rs. 5 crore;
*Condition 3:* Such transaction is not an 'international transaction'

**4.6 The turnover limit for tax audit of accounts as well as for presumptive taxation is increased [Amendment to section 44AB and 44AD *w.e.f.* A.Y. 2013-14]**

4.6—*a.* In order to reduce the compliance burden on small businesses and on professionals, section 44AB is amended so as to increase the threshold limit of total sales, turnover or gross receipts for getting accounts audited, from existing 60 lakh rupees to 1 crore rupees in the case of persons carrying on business and from existing 15 lakh rupees to 25 lakh rupees in the case of persons carrying on profession.

4.6— *b*. The threshold limit of total turnover or gross receipts of presumptive taxation referred to in section 44AD, is increased from existing 60 lakh rupees to 1 crore rupees. Also, it is clarified that this presumptive scheme is not applicable to (*i*) to any person carrying on profession; (*ii*) person earning income in the nature of commission or brokerage (*iii*) person carrying on agency business.

## 5. Insertion of new sections under the head PGBP [*w.e.f.* A.Y. 2013-14]

**5.1— Expenditure on agriculture extension project [New section 35CCC]:** Conditions for allowability of this new section—

| | |
|---|---|
| *Condition 1* | During the previous year, assessee has incurred any expenditure on agricultural extension project. |
| *Condition 2* | Such project is notified by CBDT in accordance with the guidelines as may be prescribed. |

**Amount of deduction:** On fulfillment of above conditions, assessee shall be allowed a deduction of a sum equal to 150% of such expenditure.

**No deduction under any other provision:** if deduction under this section is claimed and allowed in respect of such expenditure for any assessment year, then no deduction shall be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

**5.2— Expenditure on skill development project [New section 35CCD]:** Conditions for allowability of this new section—

| | |
|---|---|
| *Condition 1* | During the previous year, assessee being a company has incurred any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project. |
| *Condition 2* | Such project is notified by CBDT in accordance with the guidelines as may be prescribed. |

**Amount of deduction:** On fulfillment of above conditions, assessee being a company shall be allowed a deduction of a sum equal to 150% of such expenditure.

**No deduction under any other provision:** if deduction under this section is claimed and allowed in respect of such expenditure for any assessment year, then no deduction shall be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

## 6. Increase in tonnage income [Amendment to section 115VG] [*w.e.f.* A.Y. 2013-14]:

Daily tonnage income of Shipping Companies calculated on presumptive basis is increased as under—

| *Qualifying ship having net tonnage* | *Existing amount of daily tonnage income* | *Amended amount of daily tonnage income* |
|---|---|---|
| Up to 1,000 | Rs. 46 for each 100 tons | Rs. 70 for each 100 tons |
| Exceeding 1,000 but not more than 10,000 | Rs. 460 *plus* Rs. 35 for each 100 tons exceeding 1,000 tons | Rs. 700 *plus* Rs. 53 for each 100 tons exceeding 1,000 tons |
| Exceeding 10,000 but not more than 25,000 | Rs. 3,610 *plus* Rs. 28 for each 100 tons exceeding 10,000 tons | Rs. 5,470 *plus* Rs. 42 for each 100 tons exceeding 10,000 tons |
| Exceeding 25,000 | Rs. 7,810 *plus* Rs. 19 for each 100 tons exceeding 25,000 tons | Rs. 11,770 *plus* Rs. 29 for each 100 tons exceeding 25,000 tons |

## 7. Amendments of capital gains head

**7.1— Insertion of explanation to section 2(14) [*w.r.e.f.* 1.4.1962]:** An Explanation is inserted to section 2(14) to clarify the term "property". As per this explanation, "property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

This explanation is inserted to supersede the ruling of Supreme Court in case of *Vodafone International Holdings B.V.* v. *UOI* [2012] 204 Taxman 408, wherein it was held that influence/persuasion of a parent company over its subsidiary could not be construed as a right in the legal sense.

**7.2— Insertion of explanation to section 2(47) [*w.r.e.f.* 1.4.1962]:** The Supreme Court in the case of *Vodafone International Holdings B.V.* v. *UOI supra* gave the following ruling─

> "Transfer of the foreign holding company's share offshore cannot result in an extinguishment of the holding company's right of control of the Indian company and the same does not constitute extinguishment and transfer of an asset/management and control of the property situated in India."

To supersede the aforesaid ruling section 2(47) has been amended *w.r.e.f.* 1.4.1962 so as to clarify that transfer includes─

*a.* disposing of or parting with an asset or any interest therein, or

*b.* creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily,

by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

**7.3— Cost of acquisition in the hands of successor company [Amendment to section 49(1) *w.r.e.f.* A.Y. 1999-2000]**: Section 49(1) defines cost of acquisition in certain situations. As per this section, the cost of acquisition in the hands of transferee is taken as that of the transferor.

So far no reference is provided under this section with regard to transfer [referred to in section 47(*xiii*) and 47(*iv*)] by firm/sole proprietor to any company.

A new clause is inserted to this section so as to provide that in case of conversion of firm/sole proprietor into company referred to in section 47(*xiii*) and 47(*iv*), the cost of assets so transferred in the hands of the company will be the same as that in the hands of firm/sole proprietor.

**7.4— Fair market value deemed to be full value consideration in certain cases [Insertion of new section 50D *w.e.f.* A.Y. 2013-14]:** In certain cases it has been held that where the consideration in respect of transfer of an asset is not determinable, then since the machinery provision fails, the capital gain from such transfer of such asset is not taxable.

To supersede these rulings, a new section 50D is inserted so as to provide that where the consideration in case of transfer of a capital asset is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration in respect of such transfer.

**7.5— Exemption of section 54B is also given to HUFs [Amendments of section 50B *w.e.f.* A.Y. 2013-14]:** Benefit of exemption under section 54B in respect of transfer of agricultural land and purchase of new agricultural land is extended to HUFs also.

**7.6— Capital gains tax on sale of residential property to be exempt if the sale consideration is used for subscription in equity of a manufacturing SME company for purchase of new plant and machinery [Insertion of new section 54GB *w.e.f.* A.Y. 2013-14]**

7.6—*a.* The Government had announced National Manufacturing Policy (NMP) in 2011, one of the goals of which is to incentivize investment in the Small and Medium Enterprises (SME) in the manufacturing sector. A new section 54GB is inserted by the Finance Act, 2012 *w.e.f.* A.Y. 2013-14 so as to provide rollover relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery.

7.6—*b.* This relief would be subject to the following conditions─

| | |
|---|---|
| *Condition 1* | Assessee (*i.e.* transferor of residential property) is an individual or HUF; |
| *Condition 2* | The assessee has transferred a long term capital asset, being a residential property (a house or a plot of land); |
| *Condition 3* | Before the due date of furnishing of return of income under section 139, the amount of net consideration is used by the assessee for subscription in equity shares of an 'eligible company'; |
| *Condition 4* | The 'eligible company' has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new plant and machinery; |

7.6—*c. Amount of exemption [Section 54B(1)]*: On fulfilment of above conditions, the assessee will be eligible for the exemption under section 54GB, as under─

$$\text{Total capital gain} \times \frac{\text{Amount invested in new asset by such eligible company}}{\text{Net Consideration}}$$

Where, net consideration = sale consideration ─ expenses on transfer

It should, however, be noted that amount of exemption cannot exceed the total amount of capital gain.

7.6—*d. Unutilised amount to be deposited in specified bank/institution [Section 54B(2)]:* The amount of the net consideration, which has been received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company (before the said due date) in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.

7.6—*e. Deposited amount shall also be treated as cost of new asset [Section 54B(3)]:* While computing exemption amount referred to in sub-section (1), the amount (if any) deposited under sub-section (2) shall also be deemed to be the cost of the new asset.

7.6—*f. Withdrawal of exemption*: In the following cases, the amount of exemption referred to in sub-section (1) will be withdrawn and will become long term capital gain of the assessee of that previous year—

1. If the amount deposited in accordance with sub-section (2) is not utilised by the eligible company for purchase of new plant and machinery within one year from the date of subscription in equity shares by the assessee;

2. If the new asset acquired by the company is sold or otherwise transferred by it within a period of 5 years from the date of its acquisition;
3. If the equity shares of the company so acquired by the assessee are sold or otherwise transferred by him within a period of 5 years fro
4. m the date of their acquisition;

7.6—*g. Meaning of 'eligible company'*: For the purposes of this section, 'eligible company' means a company which fulfils *all* the following conditions—

*a.* It is a company incorporated in India during the period from the 1st day of April of the previous year in which the capital gain arises to the assessee to the due date of furnishing of return of income under section 139(1) of section 139 by the assessee;
*b.* It is engaged in the business of manufacture of an article or a thing;
*c.* It is a company in which the assessee has more than 50% share capital or more than 50% voting rights after the subscription in shares by the assessee; and
*d.* It is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006;

**7.7— Reference to valuation officer can be made even if value claimed by assessee is more than its FMV [Amendments to section 55A *w.e.f.* 1.7.2012]**

The existing provisions of clause (*a*) of section 55A provide that an Assessing Officer with a view to ascertain the fair market value of a capital asset may refer the valuation of a capital asset to a Valuation Officer where, in his opinion the value of the asset as claimed by the assessee is **less than** its fair market value.

Such clause (*a*) is amended so as to provide that reference may be made to the Valuation Officer for ascertaining the fair market value of a capital asset in case such value is at variance with its fair market value instead of making a reference only when such value is less than its fair market value.

**7.8—Amendment to section 112 [By Finance Act, 2012, *w.e.f.* A.Y. 2013-14]**: Section 112 has been amended as under–

♦ In case of **non-resident individual and foreign company** tax on long term capital gain on unlisted securities will be calculated at the rate of 10% (+SC, if any)+EC+SHEC.
♦ This new rate will apply if such capital gain is computed without giving effect to first proviso [*i.e.* computing capital gain in foreign currency] and second proviso [*i.e.* indexing provisions] to section 48;

## 8. Amendments of 'income from other sources' head

**8.1— In case of a HUF means, any member thereof [Amendments to section 56 by Finance Act, 2012 *w.r.e.f.* 1.10.2009]**

The existing provisions of clause (*vii*) of sub-section (2) of section 56, *inter alia,* provide that where any sum of money, the aggregate value of which exceeds Rs. 50,000, is received without consideration, by an individual or a HUF, in any previous year from any person on or after 1-10-2009, the whole of the aggregate value of such money shall be chargeable to income-tax under the head 'Income from other sources'. The second proviso to the said clause provides that the provisions of this clause shall not apply to any sum of money or any property received from any 'relative'. Clause (*e*) of *Explanation* to clause (*vii*) defines 'relative'

This clause is amended so as to provide that the definition of 'relative' shall also include any sum or property received by a HUF from its members. This amendment will take effect retrospectively from the 1-10-2009.

**8.2— Share premium in excess of the fair market value to be treated as income [New section 56(2)(*viib*) inserted by Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**

New clause (*viib*) is inserted in sub-section (2) of section 56 so as to charge an income under the head 'Income from other sources' as under─

♦ Where a company (other than a company in which the public are substantially interested) receives any consideration for issue of shares from any person being a resident and

♦ Such consideration exceeds the face value of these shares, then

♦ Such excess amount of consideration shall be chargeable to income-tax.

However, the said new clause shall not apply where the consideration for issue of shares is received (*a*) by a venture capital undertaking from a venture capital company or a venture capital fund or (*b*) by a company from a class or classes of person as may be notified.

The company receiving the consideration for issue of shares shall be provided an opportunity to substantiate its claim regarding the fair market value of the shares.

## 9. Amendments of deductions of Chapter VI-A

**9.1— Additional deduction of up to Rs.5000 for preventive health check-up and payment mode defined - [Amendments to section 80D, *w.e.f.* A.Y. 2013-14]**

9.1—*a*. Under the existing provisions contained in section 80D of the Income-tax Act, a deduction is allowed in respect of premium paid towards a health insurance policy for insurance of self, spouse and dependant children or any contribution made to the Central Government Health Scheme, up to a maximum of Rs.15,000 in aggregate. A further deduction of Rs.15,000 is also allowed for buying a health insurance policy in respect of parents.

This section is amended so as to include any payment made by an assessee on account of preventive health check-up of self, spouse, dependent children or parents(s) during the previous year as eligible for deduction within the overall limits prescribed in the section. However, the deduction on account of expenditure on preventive health check-up (for self, spouse, dependent children and parents) shall not exceed in the aggregate Rs.5,000.

9.1—*b*. It is also provided that for the purpose of the deduction under section 80D, payment can be made – (*i*) by any mode, including cash, in respect of any sum paid on account of preventive health check-up and (*ii*) by any mode other than cash, in all other cases.

9.1—*c*. Age of senior citizen for claiming additional deduction of Rs. 5,000 is reduced to 60 years as against existing 65 years.

**9.2— Deduction in respect of investment made under an equity savings scheme- Section 80CCG [Inserted by Finance Act, 2012, *w.e.f.* A.Y. 2013-14]**

This newly inserted section provides deduction *w.e.f.* assessment year 2013-14 in respect of investment made under notified equity saving scheme [Rajiv Gandhi Equity Savings Scheme (RGESS) is notified for this purpose]. The deduction under this section is allowed if following conditions are satisfied─

| | |
|---|---|
| *Condition 1* | The assessee is a resident individual (may be ordinarily resident or not ordinarily resident); |

| | |
|---|---|
| *Condition 2* | His gross total income does not exceed Rs. 10 lakhs; |
| *Condition 3* | He has acquired listed shares in accordance with a notified scheme; |
| *Condition 4* | The assessee is a new retail investor as specified in the above notified scheme; |
| *Condition 5* | The investment is locked-in for a period of 3 years from the date of acquisition in accordance with the above scheme; |
| *Condition 6* | The assessee satisfies any other condition as may be prescribed. |

*Amount of deduction* -The amount of deduction is at 50% of amount invested in equity shares. However, the amount of deduction under this provision cannot exceed Rs. 25,000. If any deduction is claimed by a taxpayer under this section in any year, he shall not be entitled to any deduction under this section for any subsequent year.

*Withdrawal of deduction* - If the assessee, after claiming the aforesaid deduction, fails to satisfy the above conditions, the deduction originally allowed shall be deemed to be the income of the assessee of the year in which default is committed.

**9.3– Amendment to section 80C [By Finance Act, 2012, *w.e.f.* A.Y. 2013-14]**

The existing provisions of section 80C provide that insurance premium on the life of the assessee himself, spouse and children is allowed to be deducted under section 80C. However, the premium in excess of **20%** of sum assured is not eligible for deduction under this section.

Amendments have been made in section 80C so as to reduce this limit from existing 20% to **10%** of the sum assured.

**9.4— Prohibition of cash donations in excess of Rs. 10,000 [Amendment to section 80G *w.e.f.* A.Y. 2013-14]**

Section 80G of the Income-tax Act provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to specified conditions. The deduction is allowed in respect of any donation being a sum of money. Similarly, section 80GGA of the Income-tax Act provides for a deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/ institutions, subject to specified conditions.

Before applicability of Finance Act, 2012, there was no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, these sections are amended so as to specify that any payment exceeding a sum of Rs. 10,000 shall only be allowed as a deduction if such sum is paid by any mode other than cash.

**9.5—Sunset date for power section extended [Amendment to section 80-IA(4) A.Y. 2013-14]**

Sunset date for tax holiday for power sector is extended by one more year from existing 31.3.2012 to 31.3.2013.

**9.6—Deduction of up to Rs.10000 for interest on savings bank account: [Insertion of section 80TTA *w.e.f.* A.Y. 2013-14]**

Under the proposed new section 80TTA of the Income-tax Act, a deduction up to an extent of Rs. 10,000 in aggregate shall be allowed to an assessee, being an individual or a Hindu undivided family, in respect of any income by way of interest on deposits (not being time deposits) in a savings account with—

(*i*) *a banking company* to which the Banking Regulation Act, 1949, applies (including any *bank* or banking institution referred to in section 51 of that Act);

(*ii*) a *co-operative society* engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(*iii*) a *post office*, as defined in clause (k) of section 2 of the Indian Post Office Act, 1898.

However, where the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the association or body.

## 10. Tax Deducted at Source/Tax Collected at Source/Advance payment of tax

**10.1 Amendment of section 193 [by Finance Act, 2012 *w.e.f.* 1.7.2012]**: Under the existing provisions of clause (*v*) of section 193, no tax is required to be deducted from any interest payable to an *individual* who is resident in India, on debentures issued by a company in which the public are substantially interested, if such debentures are *listed on a recognised stock exchange in India*; the interest is paid by the company by an account payee cheque; and the aggregate amount of interest payable by the company to such individual does not exceed *Rs. 2,500*.

This clause is substituted by a new clause so as to provide that no deduction of income tax shall be made on any interest payable to an *individual or a HUF*, who is resident in India, on any debenture (*listed/unlisted*) issued by a company in which the public are substantially interested, if the interest is paid by the company by an account payee cheque and the amount of such interest or, as the case may be, the aggregate of the amounts of such interest paid or likely to be paid during the financial year by the company to such individual or a HUF does not exceed *Rs. 5,000*.

Thus, after amendment exemption of tax deduction at source is also provided to HUF; the debentures may be listed or unlisted and threshold limit is Rs. 5,000.

**10.2 Amendment of section 194E [by Finance Act, 2012 *w.e.f.* 1.7.2012]**: This section is amended so as to enhance its scope to cover payments to a non-resident entertainer who is a non-citizen. Further, the rate at which tax is deducted at source as per this section is increased from existing 10% to 20%.

**10.3 Amendment of section 194J [by Finance Act, 2012 *w.e.f.* 1.7.2012]**: The existing provisions of section 194J provide that a person [referred to in sub-section (1)], who is responsible for paying to a resident any sum by way of fees for professional services, fees for technical services, royalty or sums referred to in clause (*va*) of section 28 shall deduct an amount equal to 10% of such sum as income-tax.

New clause (*ba*) is inserted to this section so as to provide that the person [referred to in sub-section (1)] who is responsible for paying to a director of a company any sum by way of any remuneration or fees or commission, by whatever name called (other than those on which tax is deductible under section 192), shall deduct an amount equal to 10% of such sum as income-tax in accordance with the provisions of section 194J.

**10.4 Amendment of section 194LA [by Finance Act, 2012 *w.e.f.* 1.7.2012]**: The threshold limit upto which tax deduction at source is not provided in section 194LA is increased from existing Rs. 1,00,000 to Rs. 2,00,000.

**10.5 Tax deduction by an Indian company from payment of interest to a non-resident/ foreign company [New Section 194LC inserted by Finance Act, 2012 *w.e.f.* 1.7.2012]**: This section provides as under─

| | |
|---|---|
| *Type of payment* | Interest paid or payable by an Indian company to a non-resident/foreign company |
| *Who is payee* | (*i*) Foreign company, or<br>(*ii*) other non-residents |
| *Who is payer* | Any Indian company |
| *Criteria of TDS* | **Nature of payment**: The payment should be in the nature of interest on monies borrowed in foreign currency (between 1.7.2012 to 30.6.2015). Such borrowing should be approved by the Central Government. Further, rate of interest under such borrowing does not exceed the rate of interest approved by the Central Government.<br>**TDS when**: Payment or credit, whichever is earlier.<br>**Exemption**: No threshold limit is provided for this section. |
| *Rates of TDS* | Tax is required to be deducted at the rate of 5%.<br>Following points should be noted in respect of TDS rate—<br>*1. In case payee is a foreign co.:* SC @ of 2% of TDS will be deducted if such payment exceeds Rs. 1 crore; also EC @ 3% of TDS (+SC) will be deducted. Thus, total rate of TDS can be **5.253%** or **5.15%.**<br>*2. In case payee is any other non-resident.:* No SC but EC @ 3% of TDS will be deducted. Thus, total rate of TDS will be **5.15%.**<br>**Note:** If the payee does not furnish his PAN to the payer, the tax will be deducted at the rate of 20% as per section 206AA. |

**10.6 Amendment to section 195 [By Finance Act, 2012]**: Following amendments are made to section 195—

10.6—*a.* Sub-section (1) of section 195 is amended to provide that provisions of this section shall not apply in respect of interest referred to in sections 194LB and 194LC. **[*w.e.f.* A.Y. 2012-13]**

10.6—*b. Section 195 to apply to residents and non-residents:* New Explanation is inserted in sub-section (1) of section 195 so as to clarify that the obligation to comply with sub-section (1) *i.e.* to make deduction of tax at source applies to all persons, resident or non-resident whether or not the non-resident person has a residence or place of business or business connection in India or any other presence in any manner whatsoever in India. **[*w.r.e.f.* 1.4.1962]**

10.6—*c. It is now compulsory to make application to A.O. to determine the TDS liability:* New sub-section (7) is inserted in section 195 so as to provide as under **[*w.e.f.* 1.7.2012]** ─

♦ The Board may specify a class (or cases) of persons who are responsible for paying to a non-resident non-company or to a foreign company, any sum, whether taxable or not.

♦ The person(s) so specified shall make an application to the Assessing Office to determine (by general or special order) the appropriate proportion of sum chargeable. On the amount so determined, tax shall be deducted under sub-section (1).

♦ Sub-section (7) shall apply notwithstanding anything contained in sub-section (1) and (2).

**10.7 Amendment to section 201 [By Finance Act, 2012 *w.e.f.* 1.7.2012]**: Finance Act, 2012 has inserted a new 1st proviso to section 201(1) which is applicable *w.e.f.* 1.7.2012. As per this proviso, any person who fails to deduct the tax (wholly or partly) on any sum paid to/credited to a resident shall not be deemed to be an assessee in default in respect of such tax if all the following conditions are satisfied—

| | |
|---|---|
| *Condition 1* | Such resident payee has furnished his return of income under section 139; |
| *Condition 2* | Such resident payee has taken into account such sum in such return of income; |
| *Condition 3* | Such resident payee has paid the tax due on the income declared by him in such return of income; |
| *Condition 4* | And the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed. |

Thus, if the above conditions are satisfied, then it shall be deemed that the payer has deducted and *paid the tax on such amount on the date of furnishing of return of income* by the resident payee.

**10.8 Amendment to section 206C [By Finance Act, 2012 *w.e.f.* 1.7.2012]**: Following amendments are made to section 195—

**10.8—*a.* Now TCS in case of sale of coal or iron ore also**: Every seller shall, at the time of debiting the account of the buyer by the amount payable by him or at the time of receipt of such amount from the buyer, whichever is earlier, collect from the buyer of the following goods, a sum equal to the given below percentage—

| *Sr. No.* | *Name of Goods* | *Rate of TCS (% of the amount payable)* |
|---|---|---|
| **7.** | **Minerals, being coal or lignite or iron ore [Sr. No. 7 is inserted by Finance Act 2012, *w.e.f.* 1.7.2012]** | **1** |

**10.8—*b.* No TCS if goods are purchased for the purpose of generation of power:** Finance Act, 2012, has amended sub-section (1A) so as to provide that no tax shall be collected by the seller, if the goods specified by the TABLE given in sub-section (1) are purchased by a buyer being a resident, for the purposes of manufacturing, processing or producing articles or things **or for the purpose of generation of power** and not for trading purposes, and the buyer furnishes a declaration in duplicate in Form No. 27C to the seller. **[Words in bold are inserted by Finance Act, 2012 *w.e.f.* 1.7.2012]**

**10.8—*c.* Now TCS in case of sale of bullion and jewellery also:** Finance Act, 2012 has inserted new sub-section (1D) to section 206C which is applicable from 1.7.2012, so as to provide that every person, being a seller, who receives any amount in cash as consideration for sale of bullion (excluding any coin or any other article weighing upto 10 grams) or jewellery, shall, at the time of receipt of such cash consideration, collect from the buyer, tax at the **rate of 1%** of total sale consideration. However, tax cannot be collected at source unless the following two conditions are satisfied—

| | |
|---|---|
| *Condition 1* | Total sale consideration of bullion, exceeds Rs. 2,00,000; or<br>Total sale consideration of jewellery exceeds Rs. 5,00,000; |
| *Condition 2* | Out of the sale consideration, *any* amount is received in cash. |

Thus, if both these conditions are satisfied, TCS will be made by the seller even if buyer is manufacturer, trader.

*For example*—

*Case-1:* Total sale consideration of jewellery items is Rs. 6,00,000. Entire sale consideration is paid by cheque. In this case *Condition 2* is not satisfied, thus no TCS.

*Case-2:* Total sale consideration of jewellery items is Rs. 6,00,000. Entire sale consideration is paid in cash. TCS will be made as both conditions are satisfied.

*Case-3:* Total sale consideration of jewellery items is Rs. 5,00,000. Entire sale consideration is paid in cash. In this case *Condition 1* is not satisfied, thus no TCS.

*Case-4:* Total sale consideration of jewellery items is Rs. 6,00,000. Out of total sale consideration, Rs. 5,90,000 is paid by cheque and balance Rs. 10,000 is paid in cash. TCS will be made as both conditions are satisfied.

*Case-5:* PP Jewellers (I) Pvt. Ltd. sales jewellery items of Rs. 4,00,000 to Mr. Ram as on July 11, 2012 (*vide* invoice no. 50/2012-13) and again jewellery of Rs. 2,00,000 is also sold to Mr. Ram as on August 13, 2012 (*vide* invoice no. 60/2012-13). Mr. Ram makes the payment for both these invoices on August 15, 2012 by cash.

Since one invoice represents a sale transaction, and none of these invoices is more than Rs. 5,00,000. Thus, no TCS will be made.

*Case-6:* PP Jewellers (I) Pvt. Ltd. sales jewellery items of Rs. 6,00,000 to Mr. Ram as on July 11, 2012. As a consideration, Mr. Ram transfers his old jewellery of Rs. 5,50,000 and balance Rs. 50,000 is paid in cash. TCS will be made as both conditions are satisfied.

### 10.9 Senior citizens not having business income to be exempted from payment of advance tax─ [Amendment to section 207]

Under the existing provisions of Income-tax Act, every assessee is required to pay advance tax if the tax liability for the previous year exceeds Rs. 10,000. In case of senior citizens who have income of the nature of interest, rent, etc., the requirement of payment of advance tax results in raising compliance burden.

In order to reduce the compliance burden of such senior citizens, Section 207 is amended so as to provide that a resident senior citizen, not having any income chargeable under the head PGBP, shall not be liable to pay advance tax.

## 11. Return of income and assessment procedure

### 11.1 Compulsory filing of income tax return in relation to assets located outside India [Amendment to section 139(1), *w.e.f.* A.Y. 2012-13]

Section 139(1), which require filing of return of income is amended so as to provide that every person being a resident (other than not ordinary residents),

→ who has any asset (including financial interest in any entity) located outside India or

→ such person is a signing authority of any account which is located outside India;

shall file his return of income irrespective of the fact whether he has taxable income or not.

### 11.2 Amendment to section 143 [Applicable from 1st day of July 2012]

Under the existing provisions, every return of income is to be processed under sub-section (1) of section 143 and refund, if any, due is to be issued to the taxpayer. Some returns of income are also selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing. It is therefore proposed to amend the provisions of the Income-tax Act to provide that processing of return will not be necessary in a case where notice under section 143(2) has already been issued for scrutiny of the return.

### 11.3 Reassessment of income in relation to any asset located outside India [Amendment to section 149 [Applicable from 1st day of July 2012]

Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is **6 years**. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

Thus, section 149 is amended so as to increase the time limit for issue of notice for reopening an assessment to **16 years**, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. Thus, after such amendment, time limit (for issue of notice referred to in section 148) is as under—

| *Situation* | *Time limit for issuance of notice* |
|---|---|
| *1.* If the escaped income is any amount | 4 years from the end of the relevant assessment year. |
| *2.* If the escaped income is Rs. 1,00,000 or more | Even beyond 4 years but upto 6 years from the end of the relevant assessment year. |
| ***3.* If escaped income is in relation to any asset (including financial interest in any entity) located outside India.** | **Even beyond 4 years but upto 16 years from the end of the relevant assessment year.** |

Amendments are also made in section 147 of the Income-tax Act so as to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India

### 11.4 Extension of time for completion of assessments and reassessments [Applicable from 1st day of July 2012]

The existing provisions of section 153 and 153B, *inter alia*, provides the time limit for completion of assessment and reassessment of income by the Assessing Officer. Time limits have been provided for completion of assessment or reassessment referred to in section 143(3), 147, 153A, 153C, etc. Further, these time limits get extended if a reference is made under section 92CA to the Transfer Pricing Officer during the course of assessment/reassessment proceedings. These time limits are either from the end of the financial year in which the notice for initiation of the proceedings was served or from the end of the assessment year to which the proceedings relate.

The aforesaid sections, *i.e.*, 153 and 153B have been amended so as to provide that the time limits for completion of assessments and reassessments shall respectively, be increased by 3 months.

The existing period and the new extended period for completion of pending proceedings and subsequent proceedings under these provisions are given below—

| *Proceeding under section* | *Current time allowed* | *Amended limit* |
|---|---|---|
| 143 | 21 months from the end of the A.Y | 24 months |
| 143 and 92CA | 33 months from the end of the A.Y | 36 months |
| 148 | 9 months from the end of the F.Y. in which notice issued | 12 months |
| 148 and 92CA | 21 months from the end of the F.Y. in which notice issued | 24 months |
| 250 or 254 or 263 | 9 months from the end of the F.Y. in which order received | 12 months |
| 250 or 254 or 263, and 92CA | 21 months from the end of the F.Y. in which order received | 24 months |

*Note*—

*1.* This amendment will also apply to assessments which are pending on July 1, 2012.

*2.* Consequential amendments have been made in the provisions of section 17A of the Wealth-tax Act for increasing the time limit by 3 months for completion of assessment/reassessment proceedings.

## 12. Penalty and interest

**12.1 Amendment to section 201(1) [Finance Act, 2012 has inserted a new 1st proviso to this section *w.e.f.* 1.7.2012]**: As per this proviso, any person who fails to deduct the tax (wholly or partly) on any sum paid to/credited to a resident shall not be deemed to be an assessee in default in respect of such tax if all the following conditions are satisfied–

| | |
|---|---|
| *Condition 1* | Such resident payee has furnished his return of income under section 139; |
| *Condition 2* | Such resident payee has taken into account such sum in such return of income; |
| *Condition 3* | Such resident payee has paid the tax due on the income declared by him in such return of income; |
| *Condition 4* | And the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed. |

Thus, if the above conditions are satisfied, then it shall be deemed that the payer has deducted and *paid the tax on such amount on the date of furnishing of return of income* by the resident payee.

**12.2 Fee and penalty for delay and incorrect information of TDS/TCS return [Amendments by Finance Act, 2012]**:

### *PENALTY– [Sec.271H]*

Under the existing provisions of section 272A, penalty of Rs.100 per day is levied for delay in furnishing of TDS statement, however, no specific penalty is specified for furnishing of incorrect information in the TDS statement. It is proved that these provisions of penalty are not effective in reducing or eliminating defaults relating to late furnishing of TDS statement.

Further, in large number of cases, the deductors are not furnishing correct information like PAN of the deductee, amount of tax deducted, etc. in the TDS statement. Furnishing of correct information in respect of tax deduction is critical for processing of ROI furnished by the deductee because credit for TDS is granted to them on the basis of information furnished by the deductor.

Thus, new section 271H has been inserted by the Finance Act, 2012, which will be operative for TDS/TCS returns having due date on or after 1.7.2012 (*i.e.* all quarters of financial year 2012-13 and subsequent financial years). As per section 271H, penalty shall be as under–

| *Type of failure* | *Amount of penalty* |
|---|---|
| *Late furnishing of TDS/TCS return* | Rs. 10,000 or more but not more than Rs. 1,00,000.<br>**Provided that** no penalty shall be levied for *this failure* if the person proves that he had filed TDS/TCS return within one year from the due date thereof **and** before filing such return the amount of TDS/TCS has been paid along with interest and fee (if any). |
| *Incorrect information in TDS/TCS return* | Rs. 10,000 or more but not more than Rs. 1,00,000. |

### *FEE – [Sec.234E]*

*Fee for default in furnishing statements*—Where a person fails to file his TDS/TCS return within the time prescribed under section 200(3) or the proviso to section 206C(3), he shall be liable to pay a fee of Rs. 200 for every day during which the failure continues. The amount of fee, however, cannot exceed the amount of TDS/TCS.

**Note:** This fee will be in addition to the amount of penalty levied under section 271H.

The provisions of this section shall apply to TDS/TCS return of all quarters of financial year 2012-13 and subsequent financial years.

### 12.3 Amendment to section 271(1) [by Finance Act, 2012 *w.e.f.* A.Y. 2013-14]

*Explanation 7 to section 271(1)* which currently provides that where in the case of an assessee who has entered into an international transaction, any amount is added or disallowed in computing the total income under section 92C(4), the amount so added or disallowed shall be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished and thereby penalty for concealment referred to in section 271 is leviable on such amount.

This explanation is amended so as to include therein the reference of a specified domestic transaction for the purposes of said *Explanation.*

### 12.4 Amendment to section 271AAA [by Finance Act, 2012 *w.e.f.* 1.7.2012]

Under the existing provisions of section 271AAA, no penalty is levied if the assessee admits the undisclosed income in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been derived and pays the tax together with interest, if any, in respect of such income. As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet due) found during the course of search attracts a tax at the rate of 30% and no penalty is leviable.

In order to strengthen the penal provisions, amendments have been made to provide that the provisions of section 271AAA will not be applicable for searches conducted on or after 1st July, 2012. Also a new provision (*i.e.* section 271AAB) has been inserted in the Act for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The new section provides that,—

♦ If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10% of undisclosed income subject to the fulfillment of certain conditions.

♦ If undisclosed income is not admitted during the course of search but disclosed in the return of income filed after the search, the taxpayer will be liable for penalty at the rate of 20% of undisclosed income subject to the fulfillment of certain conditions.

♦ In any other case, the taxpayer will be liable for penalty at the rate ranging from 30% to 90% of undisclosed income.

These amendments will take effect from the 1st day of July, 2012 and will, accordingly, apply to any search and seizure action taken after this date.

## 13. Other amendments

**13.1 Removing the cascading effect of DDT in multi-tier corporate structure [amendment to section 115-O by Finance Act, 2012 *w.e.f.* 1.7.2012]**: The existing provisions of section 115-O provide that the amount of dividends referred to in sub-section (1) [*i.e.* amount declared, distributed or paid by way of dividends] shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if the following conditions are satisfied—

| | |
|---|---|
| *Condition 1* | Such amount of dividend is received from its subsidiary; |
| *Condition 2* | The subsidiary has paid tax under this section on such dividend |

| | |
|---|---|
| *Condition 3* | The domestic company (*i.e.* the holding company) is not a subsidiary of any other company. |

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

This section has been amended so as to provide that in case domestic company receives during the year any dividend from any of its subsidiary and the subsidiary has paid dividend distribution tax, which is payable, on such dividend, then the said amount, if it is distributed as dividend by the domestic company (being the holding company) in the same year, shall not be subject to dividend distribution tax.

With a view to remove the cascading effect of DDT in multi-tier corporate structure *Condition 3* is omitted.

**13.2 Taxation of certain foreign dividends at a reduced rate [Insertion of new section 115BBD by Finance Act, 2012 *w.e.f.* A.Y. 2012-13]**

Under the existing provisions of the Income-tax Act, dividend received from foreign companies is taxable in the hands of the resident shareholder at his applicable marginal rate of tax. Therefore, in case of Indian companies which receive foreign dividend, such dividend is taxable at the rate of 30% plus applicable surcharge and cess.

A new section 115BBD is inserted to provide that where total income of an Indian company for the previous year relevant to the assessment year beginning with April 1, 2012, includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable at the rate of 15% (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.

The applicability of above provisions in respect of foreign dividends is extended to the income by way of dividends received during the financial year 2012-13 also.

**13.3 Tax rates for undisclosed income [Amendments made by Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**

Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, amendments have been made to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also provided that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

This amendment will be effective from assessment year 2013-14 onwards.

**13.4 Liability to pay advance tax in case of non-deduction of tax [amendment to section 209 by Finance Act, 2012 *w.e.f.* A.Y. 2013-14]**
Under the existing provisions of section 209 of the Income-tax Act, the amount of advance tax

payable is computed by reducing the amount of income-tax which would be deductible or collectible during the financial year from income-tax on estimated income. Therefore, in cases where the assessee receives or pays any amount (on which the tax was deductible or collectible) without deduction or collection of tax, it has been held by Courts that he is not liable to pay advance tax to the extent the tax is deductible or collectible from such amount.

In order to make an assessee liable for payment of advance tax in respect of income which has been received or paid without deduction or collection of tax, this section is amended so as to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.

**13.5 Related person for the purpose of making an application before Settlement Commission [Amendment to section 245C by Finance Act, 2012 *w.e.f.* 1.7.2012]**

For the purpose of this section substantial interest (*i.e.* 20% shares or 20% share in profits) for being a related person is checked at any time during the previous year". This section is amended to provide that the substantial interest should exist as on the "date of the search" in place of "at any time during the previous year" as the proceedings before the Commission are filed for many previous years.

Accordingly, a person shall be deemed to have a substantial interest in a business or profession if such person is a beneficial owner of not less than 20% of shares or of 20% share in profits *on the date of search*.

This amendment will take effect from the 1st day of July, 2012

**13.6 Fee for filing of applications before Authority for Advance Rulings (AAR) [Amendment to section 245Q by Finance Act, 2012 *w.e.f.* 1.7.2012]**

Under section 245Q of the Income-tax Act, the prescribed fee for filing an application before the Authority for Advance Rulings (AAR) is Rs.2500. This fee was prescribed in 1993, when the provisions for Advance Rulings were first introduced and there has been no change/review thereafter.

Therefore, this section has been amended so as to increase the fee for filing an application for advance ruling from existing Rs.2500 to Rs.10,000 or such fee as may be prescribed, whichever is higher.

# B. WEALTH-TAX

### 1. Salary limit of "less than Rs. 5,00,000" is amended to "less than Rs. 10,00,000" [Amendment to section 2(ea)] [*w.e.f.* A.Y. 2013-14]

Under the existing provisions of section 2(ea) of Wealth-tax Act, a house is not treated an asset if it is exclusively meant for residential purpose and

- → it is allotted by a *company*
- → to a *whole time* employee or officer of such company
- → whose annual gross salary (excluding perquisites) is *less than* Rs. 5,00,000.

This provision is amended **by Finance Act, 2012, *w.e.f.* A.Y. 2013-14 so as to increase the existing limit of Rs. 5,00,000 to Rs. 10,00,000.**

### 2. The time limit of re-assessment in relation to asset located outside India is increased to 16 years- Amendment to section 17(1A) [*w.e.f.* 1-7-2012]

Under the provisions of section 17 of the Wealth-tax Act, the time limit for issue of notice for reopening an assessment on account of wealth escaping assessment is **6 years**. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

Thus, section 17 is amended so as to increase the time limit for issue of notice for reopening an assessment to **16 years**, where the wealth in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. Thus, after such amendment, time limit [for issue of notice referred to in section 17(1A)] is as under—

| *Situation* | *Time limit for issuance of notice* |
|---|---|
| *1.* If the escaped net wealth is any amount | 4 years from the end of the relevant assessment year. |
| *2.* If the escaped net wealth is Rs. 10,00,000 or more | Even beyond 4 years but upto 6 years from the end of the relevant assessment year. |
| ***3.* If escaped net wealth is in relation to any asset (including financial interest in any entity) located outside India.** | **Even beyond 4 years but upto 16 years from the end of the relevant assessment year.** |

*Explanation* to sub-section (1A) is amended so as to insert a clause which provides that where a person is found to have any asset (including financial interest in any entity) located outside India, it shall also be deemed to be a case where net wealth chargeable to tax has escaped assessment.

### 3. The time limit for completion of assessment and re-assessment is increased by 3 months - Amendment to section 17A [*w.e.f.* 1-7-2012]

The existing provisions of section 17A, *inter alia*, provide for time limit for completion of assessments and reassessments of net wealth by the Assessing Officer.

This section is amended so as to revise the time limit for completion of assessment and reassessment. The revised time limits shall be the time limits specified under the aforesaid section, as respectively increased by 3 months.

**4. Reserve Bank of India (RBI) to get exemption from Wealth Tax- Amendment to section 45 [*w.r.e.f.* A.Y. 1957-58]**

Under the existing provisions of the Wealth-tax Act, wealth-tax is levied on individual, HUF and company. The definition of "Company" under the Act includes a corporation established by or under the Central, State or Provincial Act. Therefore, the Reserve Bank of India (RBI), being a corporation established under the Central Act, would be deemed as company for the purpose of levy of wealth-tax and shall be liable to pay wealth-tax. However, there is no provision for exempting RBI from the levy of wealth-tax either in the Wealth-tax Act or in Reserve Bank of India Act, 1934.

In order to provide that the RBI is not liable to pay wealth-tax, it is proposed to amend section 45 of the Act to provide that wealth-tax shall not be levied on the net wealth of RBI.

This amendment will take effect retrospectively from 1st April, 1957 and will, accordingly, apply in relation to the assessment year 1957-58 and subsequent assessment years.