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Understanding

Direct Tax

AMENDMENTS

CA FINAL – NOV 2013

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FOREWORD

Dear Friends

Hon'ble Finance Minister, Mr. Pranab Mukherjee (Now Hon'ble President of India), had presented 81st Budget proposals of Independent India & 7th Budget proposal by him as Finance Minister on 16th March, 2012. On the Budget Day 'Master Blaster Sachin Tendulkar' had scored his much awaited 100th Century & Finance Minister had proposed 100+ amendments in Direct Taxes with 24 retrospective amendments.

The Retrospective amendment in various sections to counter 'The Vodafone Effect', Introduction of GAAR [though deferred till March 2016], Transfer Pricing regulations for domestic transactions, Clarification regarding Definition of International Transactions, Introduction of Advance Pricing Agreement are few of the issues, which can impact assessee at large. Various Initiatives had been taken for prevention of generation and circulation of unaccounted money, which will be good for country.

Amendments in Direct Taxes had come by overruling various judicial pronouncements. In this write–up, I had shared those decisions to find out the intention of the statute for bringing Amendments.

For CA Final Exams, amendments normally constitute a good part of question paper. You can expect direct questions related to Amendments made in the Finance Act 2012. A thorough reading of entire amendments will help to score good marks in Direct Taxes.

Please go through the "Memorandum Explaining Finance Bill Direct Taxes 2012" carefully for clear understanding of Amendments. I had incorporated relevant extracts of memorandum in this write up. You can download the full text of the memorandum in www.sbrca.in – publications - direct taxes - case studies or paste the given link in your browser for direct download: **http://sbrca.in/publications.aspx?CatID=1&SCatID=2**

The write up does not cover various circulars and notifications, pronounced after the enactment of Finance Act 2012, and applicable for Nov 2013 term. The same will be available in "Caclubindia Community of Case Study CA Final: Direct Taxes & Indirect Taxes" by last week of August 2013. The link of the same is http://www.caclubindia.com/community/case-study-ca-final-direct-indirect-taxes-3701.asp.

In case of any query, please feel free to contact us.

Regards
Bikash Bogi

Mumbai
15th July, 2013

1. Tax Rates

Individuals, Hindu Undivided Families, Association of Persons and Body of Individuals

Total Income	(FY 2011-12)	(FY 2012-13)
Upto INR 180,000	NIL	NIL
INR 180,000 to INR 200,000	10%	NIL
INR 200,000 to INR 500,000	10%	10%
INR 500,000 to INR 800,000	20%	20%
INR 800,000 to INR 10,00,000	30%	20%
INR 10,00,001 & Above	30%	30%

- In the case of a resident individual of the age of sixty years or above but below eighty years, the basic exemption limit is INR 250,000
- In the case of a resident individual of the age of eighty years or above, the basic exemption limit is INR 500,000
- Education cess is applicable @ 3% on Income Tax
- *In FY 2011-12, exemption limit for women assessee was INR 190,000 but there is no such preference given in FY 2012-13*

Firm, LLP, AOP, BOI

There is no change proposed in taxation of above entities. The existing rates are as under:

- ✓ Taxable @ 30%
- ✓ No Surcharge
- ✓ Education cess @ 3% on income tax.

Corporate

There is no change proposed in corporate tax rates. The existing rates of corporate taxes are as under:

Domestic Companies

- ✓ Taxable @ 30%
- ✓ Tax rate for Life Insurance companies is 12.5%
- ✓ Surcharge is applicable @5% if total income exceeds INR 1 crore
- ✓ Education cess @ 3% on income tax

Foreign Companies

- ✓ Taxable @ 40%
- ✓ Surcharge is applicable @2% if total income exceeds INR 1 crore
- ✓ Education cess @ 3% income tax

Book Profit Based Taxations

Minimum Alternative Tax (MAT)

There are no changes in MAT provisions for companies. The existing rates of MAT are as under:

- ✓ @ 18.5% of the adjusted book profit (if normal tax is less than 18.5% of book profit)
- ✓ Surcharge @ 5% is applicable if adjusted book profit is in excess of INR 1 crore.
- ✓ Education cess is applicable @ 3%.

Alternative Minimum Tax (AMT)

AMT is applicable in case of persons other than company. Till FY 2011-12, AMT is applicable only for LLP. Finance Act 2012 *had included Individual, HUF, AOP, BOI in the AMT purview.*

- ✓ Tax @ 18.5% of the adjusted book profit (if normal tax is less than 18.5% of book profit)
- ✓ Education cess is applicable @ 3%
- ✓ AMT will not be applicable for Individual, HUF, AOP, BOI if adjusted total income of such person does not exceeds INR 20,00,000 [1]

Securities Transaction Tax

Reduce STT in Cash Delivery segment from the existing 0.125% to 0.1%. Details are as under:

Total Income	(FY 2011-12)	(FY 2012-13)	Payable by
Purchase / Sale of equity shares, Units of equity oriented fund (Delivery based)	0.125%	0.100%	Purchaser / Seller
Sale of equity shares, units of equity oriented mutual fund (non-delivery based)	0.025%	0.025%	Seller
Sale of an option in securities	0.017%	0.017%	Seller
Sale of an option in securities, where option is exercised	0.125%	0.125%	Purchaser
Sale of a futures in securities	0.017%	0.017%	Seller
Sale of a futures in securities	0.250%	0.25%	Seller

This amendment in the rates of Securities Transaction Tax (STT) is effective from the 1st day of July, 2012

Wealth Tax

There are no changes in Wealth Tax rates. As per existing law, Wealth tax is imposed @ 1 percent on the value of specified assets held by the taxpayer on the valuation date (31 March) in excess of the basic exemption of INR 3,000,000.

Tonnage Taxation (For Shipping Company)

Operating profit of a shipping company is determined on the basis of tonnage capacity of its ships. There are certain changes (w.e.f. 01-04-2012) proposed by finance bill 2012, which is summarised as under:

Qualifying ship having net tonnage	Existing Rate	Amendment 2012
Up to 1,000	INR 46 for each 100 tons	INR 70 for each 100 tons
1,001 – 10,000	INR 460 plus Rs.35 for each 100 tons exceeding 1,000 tons	INR 700 plus INR 53 for each 100 tons exceeding 1,000 tons
10,001 - 25,000	INR 3,610 plus Rs.28 for each 100 tons exceeding 10,000 tons	INR 5,470 plus INR 42 for each 100 tons exceeding 10,000 tons
Above 25,000	INR 7,810 plus Rs.19 for each 100 tons exceeding 25,000 tons	INR 11,770 plus INR 29 for each 100 tons exceeding 25,000 tons

[1] There are other changes in MAT & AMT, which will be analysed in succeeding paras

2. Personal Taxation (Individual & HUF)

Benefits for Senior Citizens

Eligible age of Senior Citizen reduced for various exemption & deductions:

Present Age Limit : 65 Years
Proposed Age Limit : 60 Years

Senior Citizen will get Benefits of Reduced Age Limit in the following Sections:

- 80D : Deduction of INR 20,000 for premium paid towards health insurance policy
- 80DDB : Deduction of INR 60,000 for treatment of specified disease
- 197A : No TDS for Interest income earned after furnishing Form 15H

Resident senior citizen will exempt for Advance Tax payment if no business or professional income

Exemptions

Section	Existing Provision	Amendments 2012
10 (10D)	Any Sum received under Life Insurance policy is exempt subject to condition • Premium not in excess of 20% of actual capital sum assured.	Exemption allowed if premium not in excess of **10% of Actual capital sum assured.** **Actual capital sum assured** shall be minimum amount assured under the policy at any time during the term of policy not taking into amount - Value of any premiums agreed to be returned Any benefit by way of bonus or otherwise over and above actual sum assured.
54B	✓ Assessee being Individual or HUF ✓ Land used for agricultural purpose in preceding two years from sale date ✓ Used by **Assessee or parents** ✓ Capital Gains exempt if entire capital gains reinvested in Agricultural land ✓ Reinvestment within two years of sale	✓ Used by **Assessee or parents or HUF**
54 GB	To encourage Capital Investment in Small and Medium Enterprises (SME) in the manufacturing Sector, a ***new Section 54GB*** is introduced, the features of which is as under: ❖ Assessee being Individual & HUF sold residential house property (including plot of land) ❖ Sale consideration reinvested in Equity of a new start up SME company in manufacturing sector ❖ Reinvestment will be made on or before due date as per 139(1) ❖ Will hold either 50% of the share capital or 50% of voting power ❖ SME utilised the proceeds for purchase of New Plant & Machinary ❖ Lock in period of 5 years for transfer of shares / plant & machineries	

Definition of Relative Expanded to Include HUF [Section 56 2(vii)]

Present Law	Amendments 2012
✓ Any sum or property received by Individual or HUF ✓ For Inadequate / without Consideration. ✓ Deemed as Income chargeable under Other sources <u>Exception</u> ✓ Receipts from relatives are excluded ✓ **Relative defines only in relation to an individual**	✓ **Relative defines in relation to HUF also and includes its members** ✓ **Retrospective Amendment w.e.f. 01-10-2009** Clubbing Provisions may be applicable.

The said amendment principally affirms <u>Rajkot ITAT decision in case of *Vineet Kumar Raghavji Bhai (46 SOT 97)*</u>, in which ITAT had ruled that HUF is a Relative for Gift purpose as 'HUF is nothing but group of close family members.

Deduction under Chapter VI-A

Sec.	Existing provision	Amendment 2012
80C	❖ Eligible Assessee being Individual & HUF ❖ Premium paid for Life Insurance ❖ Maximum Deduction INR 1,00,000 ❖ Deduction allowed for premium not in excess of 20% of actual capital sum assured.	Deduction allowed for premium not in excess of **<u>10% of Actual capital sum assured</u>** **<u>Actual capital sum assured</u>** shall be minimum amount assured under the policy at any time during the term of policy not taking into amount - Value of any premiums agreed to be returned - Any benefit by way of bonus or otherwise over and above actual sum assured
80CCG	New Section.	The deduction under this section is available if all conditions will be satisfied: i. The assessee is a resident individual (may be ordinarily resident or not ordinarily resident); ii. The assessee is a new retail investor as specified in the above notified scheme; iii. Gross total income does not exceed INR 10 lakhs; iv. Acquired listed shares in accordance with a notified scheme; v. Shares will be locked-in for a period of 3 years from the date of acquisition in accordance with the scheme; vi. The assessee satisfies any other condition as may be prescribed.

		Deduction: ❖ 50% of amount invested in equity shares subject to maximum INR 25,000. ❖ Assessee shall not be entitled to deduction under this section **in subsequent year**, if deduction claimed in any previous year. Amount of Deduction will be treated as income in the previous year, in which any of the conditions violated by the assessee.
80D	- Premium Paid towards Health Insurance Policies - Assessee, Spouse & Dependent Children Covered - Maximum Deduction INR 15,000 - Addition Deduction of INR 15,000 for Parents - Premium should be paid other than **CASH**	- Premium Paid for **Preventive Health Care also** included - Maximum Deduction INR 5,000 for all - Premium can be paid in CASH also
80CCD	✓ Assessee being individual, HUF ✓ Subscription of Specified Infrastructure bonds ✓ Maximum Deduction INR 20,000 ✓ Subscription till 31 March 2012	***Deduction withdrawn as time limit not extended***
80TTA	**New Section**	✓ Assessee being individual, HUF ✓ Interest on Saving Bank account (excluding time deposit) with specified banks, co-operative societies and post offices ✓ **Maximum Deduction INR 10,000**
80G	✓ Donation to certain funds, charitable institutitions etc subject to certain conditions in **any mode including cash**	Donation in **Cash Exceeding INR 10,000** will be not eligible for deduction
80GGA	✓ Donations for Scientific research, universities, colleges, other institutions subject to certain conditions ✓ Donations in any mode including cash	Donation in **CASH exceeding INR 10,000** will be not eligible for deduction

Exemption to Residential house allotted to Employee under Wealth Tax

Present Law	Proposed changes
✓ As per Section 2 of the Wealth tax the specified assets for levy of wealth tax do not include a residential house allotted by a company to an employee or an officer or a whole time director ✓ If the gross annual salary of such employee or officer, etc. **is less than INR 5,00,000.**	✓ **Limit Extended to INR 10,00,000**

3. Anti Evasion Measures & Prevention of Generation & Circulation of Unaccounted Money

Cash Credits u/s 68

Present Law	Amendment 2012
✓ If any sum is found credited in the books of an assessee and assessee Either ✓ does not offer **any explanation about nature and source of money;** Or ✓ Explanation is not satisfactory as per AO *Then,* ✓ Such amount can be taxed as income of the assessee	✓ Nature and source of any sum credited, ✓ Being **Share capital, Share Premium etc**., in the **books of a closely held company** shall be treated as **explained only if** ✓ **Source of funds** is also explained by the assessee company **in the hands of the resident shareholder.** **Exemption if shareholders being** ✓ Venture Capital Fund & Venture Capital Company registered with (SEBI)

The amendment has nullified the impact of few court decisions as under

❖ *Hindustan Inks & Resins Limited vs. DCIT 60 DTR 18 (Guj HC)* : Assessee having established identity of shareholders, addition under section 68 could not be made on the ground that assessee failed to explain the source of credit.

❖ *CIT vs. STL Extrusion (p) Ltd. 333 ITR 269 (MP High Court) :* Where the Assessee had provided to the assessing authority the name, age, address, date of filing the share application and number of shares applied by each shareholder, addition under section 68 of the Act cannot be made.

❖ *CIT vs. Dataware (p) Ltd (Kolkata HC):* Assessee's Assessing Officer cannot question Creditor's I. T. Return.

❖ *CIT vs. Lovely Exports (p) Ltd 216 CTR 195 (SC):* Court held that if the share application money is received by the assessee from alleged shareholders, whose names are given to AO, department is free to proceed to reopen individual assessments. Further held that share application money cannot be taxed u/s 68.

Extract of Memorandum:

" Judicial pronouncements, while recognizing that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be

prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company

In the case of closely held companies, investments are made by known persons. Therefore, a higher onus is required to be placed on such companies besides the general onus to establish identity and credit worthiness of creditor and genuineness of transaction. This additional onus, needs to be placed on such companies to also prove the source of money in the hands of such shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit."

Unexplained Money, Investments etc u/s 68, u/s 69, u/s 69A – 69D (section 115BBE)

Present Law	Amendment 2012
✓ Certain unexplained amounts are deemed as income ✓ u/s 68, 69, 69A, 69B, 69C, 69D of the Act ✓ and taxed as per **Applicable TAX SLAB Rate** ✓ **In case of individuals, HUF, no tax till basis exemption**	✓ Unexplained credits, money, investment, expenditure, etc., ✓ u/s 68, 69, 69A, 69B, 69C, 69D of the Act ✓ **shall be taxed @ 30% (plus applicable surcharge /cess)**. ✓ **No deduction allowed** being any expenditure or allowance for earning said unexplained income.

Memorandum explaining finance bill

" 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"

TCS on Bullion / Jewellery / Certain Minerals (Section 206C)

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
✓ Tax is required to collected at source ✓ By the Seller ✓ At the specified rate on goods like • Alcoholic liquor • Tendu leaves • Scrap etc.	✓ Tax is required to collected at source ✓ By the Seller from the buyer ✓ At the specified rate of **1% of sales** on • Bullion • Jewellery ✓ If Sale consideration of Bullion (excluding any coin/ article weighing 10 grams or more) **exceeds INR 2,00,000 or** ✓ If Sale consideration of Jewellery **exceeds INR 5,00,000** ✓ **&** ✓ Sale is in **CASH.** ✓ Irrespective of fact that buyer is a Manufacturer or trader or Purchase is for personal use

✓ Presently no TCS on sale of certain Minerals	✓ Tax is required to collected at source ✓ By the Seller from the buyer ✓ At the specified rate of **1% of sales** on • Coal • Lignite • Iron Ore **Exception** ✓ Used for personal consumption ✓ Used for manufacturing, processing or producing article or things TCS provisions will not be applicable, if the goods are purchased for generation of Power.

Bullion & Jewellery : Purchase of Bullion in excess of INR 2,00,000 or jewellery in cash in excess of INR 5,00,000 will be the charging criteria.

Minerals: Basically Applicable for entities engaged in Trading of coal, lignite & ore. No threshold limit prescribed, which means Tax should be collected at source from INR 1 onwards

Extract of Memorandum:

"In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, ...

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or under-reporting of trading in minerals trading transactions for the taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, it is proposed.........................."

Share Premium in excess of FMV will be treated as Income [u/s 56(2)]

Existing Act	New Clause
✓ Specific Category of Income will be ✓ Taxed under ✓ Income from Other Sources (IOS).	**Taxability** ✓ where a **Company (NOT being a company in which public are substantially interested)** , ✓ Receives, from any resident **Consideration for issue of shares** ✓ Which exceeds **Face value of such shares**, then ✓ the aggregate consideration received, **as exceeds, the FMV of shares** ✓ Shall be taxed under the head "Income from other sources. ✓ Company will be provided an opportunity to substantiate its claim regarding the FMV. **Calculation of FMV, being HIGHER of value** ✓ as may be determined in accordance with the method as may be prescribed; or ✓ as may be substantiated by the company to the satisfaction of

	the AO , based on the value of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. **<u>Exemption</u>** ✓ Where the Recipient of consideration is a venture capital undertaking from a venture Capital Company or a venture capital fund. ✓ Companies which belong to a class or classes of persons as may be notified by the central government in this behalf.
	<u>Section 2(24)(xvi):</u> Any consideration received for issue of shares, as exceeds the fair-market value of the shares referred to above, shall be treated as 'Income'.

- Excess share premium received by Unlisted Company for issue of shares to Residents will be taxable as Income from other sources
- Section 56(1)(viia) states that if a person acquires shares at a price which is less than 'fair value', the difference may be treated as income in the hands of such shareholder.

Provisions will not be applicable when shares will be issued to a non resident

Assets held outside India

Section	Existing Act	Amendment 2012
Compulsory Return Filing		
139	✓ Every person is required to furnish ROI ✓ if Total income during the previous year ✓ Exceeds the maximum amount which is not chargeable to tax	✓ It will be Mandatory for **Every Resident assessee (But other than not ordinarily resident)** ✓ **<u>HAVING ANY ASSETS (Including Financial interest in any entity)</u>** ✓ **<u>LOCATED OUTSIDE INDIA</u>**, or ✓ **<u>Signing Authority</u>** in any a/c located outside India ✓ **<u>Irrespective</u>** of the fact ✓ whether the resident taxpayer ✓ Has **<u>taxable income or not</u>** ✓ **W.R.E.F. AY 2012-13**
Reopening upto 16 years		
149	✓ Time limit for issue of notice ✓ for **<u>reopening</u>** of Assessment ✓ on account of income escaping assessment **<u>is 6 years</u>**	✓ Income in relation to **<u>any asset (including financial interest in any entity) located outside India</u>**, ✓ chargeable to tax,

		✓ has escaped assessment, ✓ Time limit for issue of notice ✓ for **reopening** of Assessment ✓ **will be 16 years** **Reopening can be made for any assessment year on or before 01-04-2012**
Deemed Income Escaping		
147	Income deemed to escape assessments, when ✓ No ROI by assessee, even if total income exceeds exemption limit ✓ ROI Furnished and no assessment made and AO finds excessive losses, allowances, deductions etc ✓ When Assessment made and Income under assessed or excess deduction allowed etc	✓ 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** ✓ **W.E.F. 01-07-2012**
Extended Time limit for Assessment, when information sought under DTAA		
153 / 153B	✓ Time limit for Completion of assessment shall exclude ✓ Time taken in obtaining information from foreign tax authorities ✓ It **starts from the date** on which the process of getting information is initiated and **end with the date** on which information is Received by the Commissioner Currently, **this period of exclusion is limited to "SIX MONTHS"**	✓ Period of Limitation extended to "**1 year"** ✓ **W.e.f. 01-07-2012.**

- For Resident assessee (but other than not ordinarily resident), it is mandatory to file return of Income for AY 2012-13 and succeeding years, if any assets including financial interest are outside India. In case of resident assessee having signing authority in any account outside India, then also have to file ROI.
- If Resident assessee has not disclosed "Such Assets", it shall be presumed that his Income has escape assessments and his case will be reopened.
- To give more time to track such type of transactions, Reopening can be made **UPTO 16 YEARS**. Memorandum explaining finance bill "*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*" affirms the same.

4. International Taxation

➢ Retrospective Amendments: Income Deemed to accrue or arise in India

Sec.	Existing Act	Amendment 2012 (w.r.e.f. 01-04-1962)
2(14)	**"CAPITAL ASSETS"** means **"PROPERTY"** of any kind held by an assessee, Whether or not connected with his business or profession, but does not include.........................	**"PROPERTY"** Includes and Shall be **Deemed to have Always included** any rights in or in relation to an Indian company, including ❖ rights of management or ❖ control or ❖ Any other rights whatsoever
2(47)	**TRANSFER**, in relation to a "**Capital Assets"** includes,— the sale, exchange or relinquishment of the asset ; or the extinguishment of any rights therein........... ;	**"TRANSFER"** includes and shall be "**Deemed to have Always included** ❖ disposing of or ❖ **parting with an asset** or **any** interest therein, or ❖ creating any interest in any asset In any manner whatsoever, ❖ directly or indirectly, ❖ absolutely or conditionally, ❖ voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or ❖ **otherwise**,

		Notwithstanding that such **transfer of rights** has been characterized as ❖ being effected or ❖ dependent upon or ❖ flowing from the transfer of a share or ❖ Shares of a company registered or incorporated outside India
9(1)(i)	Incomes shall be '**Deemed to Accrue or arise in India** :— All income accruing or arising, whether directly or indirectly, **"Through"** or from any business connection in India, or **"Through"** or from any property in India, or **"Through"** or from any **Asset** or source of income in India, or **"Through"** the transfer of a **Capital asset** situate in India.	"**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 **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 assets located in India
195(1)	**ANY PERSON** responsible for paying to a **non-resident**, ❖ not being a company, or ❖ to a foreign company, any interest or any other sum chargeable under the Act , shall, ❖ at the time of credit of such income to the payee or ❖ at the time of payment thereof	Obligation to comply with 195(1) applies and shall be **Deemed to have always applied** and extends and shall be deemed to have always extended to **All persons, resident or non-resident**, whether or not the non-resident has:- ❖ a residence or place of business or business connection in India; or ❖ any other presence in any manner whatsoever in India.

	✓ in cash or by the issue of a cheque or draft or by any other mode + whichever is earlier, + Deduct income-tax thereon at the rates in force.	≈ Boards Shall, by Notification ≈ **Instruct class of Persons or cases** ≈ to **make an application before AO** ≈ to determine the **Appropriate portion of Taxable Sum** ≈ and after such determination ≈ Deduct tax u/s 195.

+ **Validation Clause Inserted : (New Clause)**

- Provision for Validation of Income Tax Proceedings and corresponding demands
- Where income accruing or arising,
- through or from transfer of a capital asset situate in India,
- in consequence of
    - the transfer of a share or shares of a company registered or incorporated outside India or
- in consequence of
    - Agreement or otherwise outside India
- Through this validation clause, any notice sent or purporting to have been sent,
- taxes levied, demanded, assessed, imposed or collected or recovered
- **during any period prior to Finance Act 2012 coming into force**
- shall be **deemed to have been validly made** and
- such notice or levy of tax shall not be called in question **on the ground that the**
- tax was not chargeable or any ground including that capital gains arising out of transactions which have taken place outside India.
- This Validation clause shall operate irrespective of any court decisions

Brief Comment:

≈ This Amendment overrules Hon'ble SC decision in case of *Vodafone International Holdings B.V. vs. Union of India & ors* in which Apex court had held that

(a) in case of International Holding structures, the form of the transaction have to be seen and not the substance.

Department should **"LOOK AT"** the transactions and not "**LOOK THROUGH"** the transactions.

(b) There is no transfer of capital assets in India due to transfer of shares outside India

(c) Income Tax Act does not contain any provisions to tax such kind of offshore transactions

Court had held that Govt should bring required changes in law to tax such kind of transactions. Regarding the Vodafone Case, Income Tax Department had filed a review petition before SC, which was rejected by SC.

≈ Retrospective Amendments :

Hon'ble SC in case of "Ujagar Prints & Ors vs. UOI" & Bhaskar Trust & Ors" had held that a Retrospective Amendments, which is directed to negate a SC decision is not sustainable. If SC gives judgement, exposing lacuna in the law and retrospective amendment addresses that lacuna and as a results, renders the judgement ineffective, then the retrospective amendments is valid in law.

SC in case of "National Agricultural Co-operative Marketing federation vs. UOI", had held that if a clarificatory explanation is seeking to get over previous decisions, will results into a altogether new levy or changes the law drastically, then the retrospective amendment will be treated bad in law and liable to be quashed.

Amendments seeks to put altogether new levy, through retrospective amendment, is results into violation of Fundamental rights, as per Article 14 & Article 19 of the constitution of India.

All Retrospective amendments says "Deemed to mean and shall be deemed to have always meant" like words, the meaning of which is drawn from long drawn litigations.

A retrospective amendments in law after years of litigations, cannot be seems to provide a reasonable certainty.

≈ All Retrospective amendments says "Deemed to mean and shall be deemed to have always meant" like words, the meaning of which is drawn from long drawn litigations.

≈ Definition of Property includes Rights or management or control in an Indian Company. Overseas restructuring through tax heavens will now seems to be curbed through these amendments.

≈ Definition of Transfer retrospectively amended to clarify that Transfer shall always mean disposing of the assets in any manner irrespective of the fact that the same are related to transfer of shares outside India.

≈ Section 195 now casts liability on non residents also to deduct tax at source, regardless of their physical presence, if transaction is liable to or deemed to be liable to tax in India. There may be various administrative issues, in which clarifications is required from government like collection or recovery of taxes from persons having no physical presence.

≈ Memorandum Explaining the Finance Bill:

"Non-resident person is also required to deduct tax at source before making payments to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. There are no other conditions specified in the Act and if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident. Certain judicial pronouncements have created doubts about the scope and purpose of sections 9 and 195. Further, there are certain issues in respect of income deemed to accrue or arise where there are conflicting decisions of various judicial authorities. Therefore, there is a need to provide clarificatory retrospective amendment to restate the legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law."

➢ Royalty RE-defined [Section 9(1)(vi)]

Existing Act	Amendment 2012 (w.r.e.f. 01-06-1976)
Any income payable by way of **ROYALTY** in respect of ❖ any right, ❖ property or ❖ information is deemed to Accruing or Arising in India. **ROYALTY MEANS** Consideration received or receivable for for transfer of all or any right in respect of (a) Transfer of all or any rights including granting of License in respect of a Patent, Invention, Model, Design, Secret formula or "**Process**" or trade mark or similar property. (b) Imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or "**Process**" or trade mark or similar property ; (c) the use of any patent, invention, model, design, secret formula or "**Process**" or trade mark or similar property ; (d) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ; (e) the use or right to use any industrial, commercial or scientific equipment. (f) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary,	**COMPUTER SOFTWARE** ROYALTY includes and has Always included transfer of all or any right for Use or Right to use a "**COMPUTER SOFTWARE**" (including granting of a licence) **Irrespective of the medium** Through which such right is transferred. **RIGHT, PROPERTY & INFORMATION:** ROYALTY includes and has Always included consideration in respect of any "**Right, Property or Information**", whether or not ❖ Possession or control of such right, property or information is with the payer; ❖ Such right, property or information is used directly by the payer; ❖ the location of such right, property or information 'is in India'. **PROCESS RE – DEFINED :** The term **"PROCESS"** includes and shall be Deemed to have always included ❖ transmission by satellite ❖ (including up-linking, amplification, conversion for down-linking of any signal), ❖ cable, ❖ optic fibre or ❖ by any other similar technology, Whether or not such process is secret.

artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or (g) Rendering of any services in connection with the activities referred to in above sub-clauses	

- ❖ Various courts had held that Consideration for use of Computer software is not Royalty. To nullify the effect of these judgements, this amendment has come. Few of such decisions are as under :
  DIT vs. Ericsson AB - 66 DTR 1 (Delhi HC) : Supply of software is inseparable part of GSM systems and incapable of independent use is not Royalty
- ❖ Process RE-defined : Mumbai ITAT in "*Standard Chartered Bank vs. DDIT 11 ITR 721 (Mum ITAT)*" had held that "*the activity of transmitting raw data to user, processing of the data by such user by using software belonging to assessee and transmission of such data to assessee does not involve "use of any process" so as to constitute royalty*". To overcome these judicial pronouncements, the word "Process" redefined w.r.e.f. 01-06-1976.
- ❖ Asia Satellite Telecommunications Co vs. DDIT (Delhi HC) 197 Taxman 263 : Income received by foreign satellite companies is not taxable in India.
- ❖ Sale consideration received by Non resident on account of Computer Software is now taxable as per amended provision. Non Resident have to comply with other provisions also like obtaining of PAN, filing of returns etc.

Extract of Memorandum:

"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."

➢ Extended Time Limit for Issue Notice to agent of Non Resident

Existing Act	Amendment 2012 (W.r.e.f. 01-04-2011)
✓ Notice u/s 149 ✓ Can be issued ✓ **Upto 2 YEARS** from the **end of Assessment years** ✓ to any person ✓ who is Treated as Agent of NON Resident	✓ Extended to "**6 Years**"

5. Transfer Pricing

International Transaction RE-defined

Existing Act	Amendment 2012 (w.r.e.f. 01-04-2002)
✓ International transaction" means a ✓ transaction between two or more ✓ associated enterprises, ✓ either or both of whom are non-residents, ✓ in the nature of ✓ purchase, sale or lease of **tangible or intangible property**, or ✓ **provision of services**, or ✓ **lending or borrowing money**, or ✓ any other transaction "**having a bearing on the profits, income, losses"** or "**assets"** of such enterprises, and ✓ shall include a mutual agreement or arrangement between two or more associated enterprises ✓ for the allocation or apportionment of, or any contribution to, ✓ any cost or expense incurred or ✓ to be incurred in connection with a benefit, service ✓ or facility provided or to be provided to any one or more of such enterprises	**International Transaction Shall include** Capital financing, ✓ **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** or ✓ receivable or any other debt arising during the course of business; Provision of services : ✓ Market research, market development, marketing management, ✓ administration, technical service, ✓ Repairs, design, consultation, agency, scientific research, legal or accounting service**..** ✓ Business restructuring or reorganisation, ✓ entered into by an enterprise with an associated enterprise, ✓ **"Irrespective of the fact that"** ✓ it has "**bearing on the profit, income, losses or assets"** of such enterprises at the time of the transaction or at any future date; 'Intangible property' shall include : ✓ **Marketing related intangible assets**, such as, trademarks, trade names, brand names, logos; ✓ **Technology related intangible assets**, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how; ✓ **Artistic related intangible assets**, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings; ✓ **Data processing related intangible assets**, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

	✓ **Engineering related intangible assets**, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation; ✓ **Customer related intangible assets**, such as, customer lists, customer contracts, customer relationship, open purchase orders; ✓ **Contract related intangible assets**, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements; ✓ **Human capital related intangible assets**, such as, trained and organised work force, employment agreements, union contracts; ✓ **Location related intangible assets**, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights; ✓ **Goodwill related intangible assets**, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value; ✓ **Methods, programmes, systems**, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; ✓ **Any other similar item** that derives its value from its intellectual content rather than its physical attributes.'

Comment:

- ❖ Below mentioned decisions is seems to be overruled by the amendments:
- ❖ ITAT Hyderabad in *Four Soft Ltd vs. DCIT 62 DTR 308* had held that "Corporate Guarantee" provided by assessee to its Subsidiary company is not covered in the definition of International Transaction. Vide retrospective amendment; "Corporate Guarantee" will now covered in the definition of International Transaction.
- ❖ ITAT Pune in Patni *Computers vs. DCIT 60 DTR 113* had held that Delayed payment from associated enterprises is not covered under the definition on International Transaction. The amendment is going to overrule the said decision.
- ❖ Delhi HC in "*Maruti Suzuki vs. ACIT* " had discussed in detail, the effect of Marketing intangible in Transfer Pricing regulations vis a vis International Transaction.
- ❖ Definition of International Transaction now Redefined & brings clarity on its scope. Capital Financing, Provision of services & Intangibles are the broad categories, through which International Transactions has been defined.

Extract of Memorandum:

" The definition by its concise nature does not mention all the nature and details of transactions, taking benefit of which large number of International Transactions are not being reported by taxpayers in transfer pricing audit report. In the definition, the term "intangible property" is included. Still, due to lack of clarity in respect of scope of intangible property, the taxpayer has not reported several such transactions.

Certain judicial authorities have taken a view that in cases of transactions of business restructuring etc. where even if there is an international transaction Transfer Pricing provisions would not be applicable if it does not have bearing on profits or loss of current year or impact on profit and loss account is not determinable under normal computation provisions other than transfer pricing regulations. The present scheme of Transfer pricing provisions does not require that international transaction should have bearing on profits or income of current year.

Therefore, there is a need to amend the definition of international transaction in order to clarify the true scope of the meaning of the term. "International transaction" and to clarify the term "intangible property" used in the definition."

TP regulations for Domestic Companies

Existing Act	Proposed Changes
✓ **Provisions of Transfer Pricing are** ✓ Applicable for ✓ **International Transaction** between ✓ associated enterprises, ✓ **either or both of whom are non-residents**	❖ TP Regulations will also Applicable to "**Specified Domestic Transactions**" **between related parties, if** ❖ **"Exceeds INR 5 crore" in Aggregate** during the previous year **Section 40A(2)** ✓ **Disallowance** on account of any expenditure ✓ being excessive or unreasonable ✓ having regard to the Fair Market Value, ✓ shall be made in respect of a "Specified Domestic Transaction" ✓ If such transaction is ✓ **NOT at Arm's Length Price** as per 92 F. Related Party includes "**Companies**" having '**same Parent Company'** **Section 80-IA(8)** ✓ Transfer of Goods or Services between related entities ✓ **Is Not at ALP** & Due to which ✓ **More than ordinary profit** arises **Section 10AA** ✓ Transaction between Entities ✓ **Located in SEZ**. ✓ **If Not at ALP**.

Comment:

- Supreme Court in the case of **CIT Vs. Glaxo Smith Kline Asia (P) Ltd**., 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. Hence, this amendment.
- Transactions exceeding INR 5 crore, will falls in TP net.

Extract of Memorandum

" The application and extension of scope of transfer pricing regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonableness of expenditure between related domestic parties. It will create legally enforceable obligation on assessees to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions will lead to increase in compliance burden on all assessees which may not be desirable.

Therefore, the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA.

The concerns of administrative and compliance burden are addressed by restricting its applicability to the transactions, which exceed a monetary threshold of Rs. 5 crores in aggregate during the year. In view of the circumstances which were present in the case before the Supreme Court, there is a need to expand the definition of related parties for purpose of section 40A to cover cases of companies which have the same parent company."

Verification of International Transaction not reported by Assessee & Reopening

Existing Act	Amendment 2012 (w.r.e.f. 01-06-2002)
✓ U/s 92C, AO, ✓ if he considers it necessary or expedient to do so, ✓ may with the previous approval of CIT ✓ Refer the matter of determination of ALP in respect of an international transaction to the Transfer Pricing Officer (TPO).	✓ TPO can Determine ✓ ALP of an International transaction ✓ noticed by him in the course of proceedings before him, ✓ **"even if "** ✓ the said transaction '**was not referred to him'** by AO, ✓ provided that ✓ such international transaction ✓ **"was not reported by the taxpayer"** in the Audit report u/s 92E

✓ TPO is competent to exercise all powers that are available to the Assessing Officer u/s 92C (3) for determination of ALP and consequent adjustment. ❖ As per section 92E, ❖ Assessee has an **obligation to file** ❖ **Audit Report before AO** ❖ **containing details** of ❖ all international transactions during the year	**Will take effect retrospectively from 1st June, 2002**. ❖ Due to retrospectively of the amendment ❖ **no reopening of any proceeding** would be undertaken ❖ **Only on account of this** amendment. ❖ **W.e.f. 01-07-2012**
✓ A concluded proceedings ✓ Can be reopened, ✓ if any income chargeable to tax has escaped assessment	✓ Where it is found that **an international transaction** ✓ has not been reported ✓ either by non-filing of report or otherwise ✓ then such **non-reporting would be considered** ✓ as a case of **deemed escapement of income** ✓ and such a case can be reopened under section 147 of the Act.

Extract of Memorandum:

" This audit report is the primary document with the Assessing Officer, which contains the details of international transactions undertaken by the taxpayer. If the assessee does not report such a transaction in the report furnished under section 92E then the Assessing Officer would normally not be aware of such an International Transaction so as to make a reference to the Transfer Pricing Officer. The Transfer Pricing Officer may notice such a transaction subsequently during the course of proceeding before him. In absence of specific power, the determination of Arm's Length Price by the Transfer Pricing Officer would be open to challenge even though the basis of such an action is non-reporting of transaction by the taxpayer at first instance.
If an international transaction is not reported by the assessee, such transaction never gets benchmarked against arm's length principle. It is, therefore, imperative that non-reporting of international transactions should lead to a presumption of escapement of income."

Determination of Arm's Length Price

Existing Act	Amendment 2012 (w.r.e.f. 01-04-2002)
First Provisio Section 92C(2) + where **more than one price** is determined + by application of most appropriate method, + the Arms length price (ALP) shall be taken + to be the '**Arithmetic mean' of such prices**.	• In case variation of '**Transaction price**' • is within the "**Tolerance range of 5%",** • No adjustment was required to be made to transaction value. + **5% Tolerance Band was not a standard Deduction.** • **No Re-opening** of • already completed assessments or proceedings • due to this retrospective amendment + Second proviso to section 92C

Second Provisio Section 92C(2) • In case variation of '**Transaction price**' • from the **arithmetic mean** • is within the "**Tolerance range of 5%",** • No adjustment was required to be made to transaction value. • Till 31st March 2011.	• shall also be applicable to all proceedings • Which were **pending as on '01.10.2009'**. • Retrospective effect from **1st October, 2009.**
• As per Proviso to 92C (2) • Central Government may • notify a percentage and • if **variation between the ALP** & Transaction price • **is within the notified percentage of transaction price**, • no adjustment shall be made to the transaction price	**Notified percentage determined as 3%** for determination of arms length price. **w.e.f. AY 2013-14**

Comment:

❖ Various Court had held that Amendment made by Finance Act 2009 is not applicable for pending assessments as on that date and amendment is applicable only from AY 2010-11. Few of them are

Kuber Tobacco Products (P) Ltd. v. Dy. CIT 117 ITD 273 (Delhi)(SB)
ITO v. Ekta Promoter s(P) Ltd. 113 ITD 719 (Delhi)(SB)
iPolicy Network Pvt. Ltd. v. ITO 59 DTR 209 (Delhi)(Trib).

As it has been clarified in the amendment that changes made by FA 2009 is applicable for all proceedings pending on 01-10-2009 and accordingly nullifies the above judgements.

❖ Tolerance band of 5% provided in the section shall be taken as Standard deduction as per

Genysis Integrating Systems vs. DCIT (Bang ITAT)
TNT India Ltd vs. ACIT 45 SOT 471 (Bang ITAT)

Tolerance band of 5% given in the section shall not be taken as Standard deduction as per

ST Micro electronics vs. CIT 61 DTR 1 [Delhi ITAT]
DCIT vs. Deloitte Consulting India (p) Ltd 61 DTR 101 (Hyd ITAT)

To bring clarity in the law, this amendment is proposed by Finance bill 2012.

Extract of Memorandum:

"Disputes arose regarding the interpretation of the proviso. Whether the tolerance band is a standard deduction or not, in case variation of ALP and transaction value exceeded the tolerance band. Different courts interpreted it differently. In order to bring more clarity and resolving the controversy the proviso was substituted by Finance Act (No.2), 2009.

The substituted proviso not only made clear the intent that 5% tolerance band is not a standard deduction but also changed the base of determination of the allowable band, linked it to the transaction price instead of the earlier base of Arithmetic mean. The amendment clarified the ambiguity about applicability of 5% tolerance band, not being a standard deduction."

Advance Pricing Adjustments (APA) [VVI]

New Section (w.e.f . 01-07-2012) [Read with Notification no. 36/2012 dated 30.08.2012]

- ✓ 'Advance Pricing Agreement' (APA) is an agreement between a **'Taxpayer and a Taxing authority'** on
- ✓ **an appropriate Transfer Pricing Methodology** for a **set of transactions** over a fixed period of time in **future**

Procedural Aspects:

- The Board, may enter into an '**APA'** with any person for determination of the **Arm's length Price** or
- specify the manner in which arm's length price shall be determined,
- in relation to an '**International Transaction**' **[existing or proposed]** to be entered by that Person.
- Any person can enter into Unilateral, Bilateral or Multilateral APA.

  For Unilateral APA application to be filed with Director General of Income Tax.

  For Bilateral / Multilateral APA application to be filed before competent Authorities.
- The APA team will constitutes of experts in economics, statistics, law or any other related field.
- The **"APA"** will **valid** for a period of **5 Years**.
- The "**APA"** shall "**not be binding"** if there is any '**change in law or facts'** or change in '**Critical Assumptions**' having bearing on such APA. Critical Assumption means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed.
- Every person proposing to enter into an APA should make an application in writing requesting for "**Pre filing consultation**" to DGIT. This includes

  - Determining the scope of the agreement

  - Identification of Transfer pricing issues

  - Determine the suitability of international transaction of the agreement

  - Brood terms of the agreement.

  Any person can approach for "**Anonymous pre filing**" in that case name of the applicant and AE should not be given in the prescribed form. However name and contact details of Authorised Representative must be given.

- Application for APA shall be made in Form 3CED to the DGIT (for Unilateral APA) or Competent Authority [for Bilateral / Multilateral APA] along with requisite fees.

- Fees for Making an APA Application:

Amount Involved in International Transaction	Fees (INR)
Amount not exceeding INR 100 crore	10 Lakh
Amount not exceeding INR 200 crore	15 Lakh
Amount exceeding INR 200 crore	20 Lakh

- Time for Making Application:

  In case of APA for an international transaction of a continuing nature then it shall be made on or before the first day of previous year. In any other case before entering into international transaction.

- Where an application is made by a person for **APA**, proceedings shall be "D**eemed to be pending"** in the case of the person for the purposes of the Act like.. for making enquiries under section 133(6) of the Act. During this process site visits of the applicant shall also be permitted.

- APA shall be entered after **Mutual Understanding** of the terms by the APA team as well as the applicant. APA shall be entered after final approval by Central Government.

- The **APA** shall be binding only on "**the person"** and the Department.

- The applicant should file an Annual Compliance Report to the DGIT for each year covered under APA within 30 days of "Due date of filing of return" or within 90 days of entering into APA, whichever is later.

- TPO shall carry out a "**Compliance Audit**" for each year covered under APA.

- The person entering in to such **APA** shall necessarily **have to furnish a Modified Return** within a **3 Months** from the **end of the month** in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA.

- Board is empowered to declare **APA as Void** if obtained by F**raud or Misrepresentation of facts.**

  Board may Cancel APA if applicant

  - Fails to comply the terms of APA
  - Fails to file Annual Compliance Report

- Annual Compliance Report contains error
- Not agree with the revision of APA.

- Appeal before CIT (A) can be filed against the assessment or reassessment pursuant to modified return based on APA.
- All the other provisions of this Act shall apply accordingly as if the modified return is a return u/s 139.

Note:
Please refer full text of Notification No. 36/2012 dated 30.08.2012 regarding "Advance Pricing Agreement Scheme".
Download the full text of the Notification in www.sbrca.in – publications - direct taxes - case studies or refer given link for direct download: **http://sbrca.in/publications.aspx?CatID=1&SCatID=2**

Procedural Aspects

Existing Act	Amendment 2012
Extended Time for Return Filing (139)	
≈ Due Date for Return Filing ≈ **In Case of Corporate Assessee,** ≈ Who is required to ≈ obtain and file ≈ Transfer Pricing report (u/s 92E), ≈ extended to 30th Nov of assessment year	• Applicable to" **ALL Assessee"** • **W.r.e.f. AY 2012-13.**
Due Date for Audit Report in case of International Transaction (44AB)	
• Due Date for • furnishing tax audit report under section 44AB • is **30th September of Assessment Year**	• Due Date for • furnishing tax audit report under section 44AB • would be the same as **Due date u/s 139** • **W.r.e.f. AY 2012-13**
Penalty Provisions	
Penalty U/s 271BA ✓ Penalty of **INR 1,00,000** for ✓ Failure to furnish Audit report u/s 92E. Penalty U/s 271AA ✓ Penalty of **2% of value of International Transaction** ✓ Failure to keep relevant records. Penalty U/s 271G ✓ Penalty of **2% of value of International Transaction** ✓ Failure to furnish relevant records	Penalty U/s 271AA as amended (w.e.f. 01-07-2012): ✓ Penalty **of 2% of value of International Transaction**, ✓ If the taxpayer – ❖ fails to maintain prescribed documents or information or; ❖ fails to report any international transaction which is required to be reported, or; ❖ maintains or furnishes any incorrect information or documents. This penalty would be **in addition to** penalties in section 271BA and 271G.

<u>Extract of Memorandum</u>:.

<u>Extended ROI Date:</u>

" Vide the Finance Act, 2011 the due date for filing of return of income in case of corporate assesses who were required to obtain and file Transfer Pricing report (required under section 92E of the Act), was extended to 30th November of the assessment year. It has been noted that assesses other than companies are also faced with similar constraints of absence of sufficient contemporary data in public domain by 30th September which is currently the due date of filing of return of income and Transfer Pricing report in their cases."

<u>Penal Provisions :</u>

" The meager penalty of Rs.1 lakh as compared to the quantum of international transactions is not an effective deterrent. There is presently no penalty for non-reporting of an international transaction in report filed under section 92E or maintenance or furnishing of incorrect information or documents. Therefore, there is need to provide effective deterrent based on transaction value to enforce compliance with Transfer pricing regulations."

6. General Anti Avoidance Rules (GAAR) [Applicable from 01.04.2016]

GAAR is Introduced in IT Act to '<u>COUNTER AGGRESIVE TAX PLANNING</u>.' Applicable w.e.f. 01-04-2016 i.e. from AY 2016-17.

A. <u>Applicability :</u>

- An '<u>Arrangement</u>' whose **<u>MAIN PURPOSE</u>** or **<u>ONE of the MAIN PURPOSE</u>** is
- to obtain a "**<u>TAX BENEFIT"</u>** and
- which **Also satisfies** at least **<u>ONE of the "FOUR TESTS"</u>**,
- can be declared as
- an **<u>"Impermissible Avoidance Arrangements"</u>**

<u>Department have to 'PROVE'</u> that Obtaining of 'TAX BENEFIT' is 'NOT' the MAIN PURPOSE

1. <u>Four Tests includes:</u>

- ✓ The arrangement **<u>Creates Rights and Obligations</u>**, which are "**<u>Not normally Created"</u>** between parties dealing at arm's length.
- ✓ It results in "**<u>MISUSE or ABUSE"</u>** of provisions of tax laws.
- ✓ It lacks commercial substance or is **<u>"DEEMED TO LACK COMMERCIAL SUBSTANCE</u>**".
- ✓ Is carried out in a manner, which is normally not employed for bonafide purpose...

2. <u>DEEMED TO LACK COMMERCIAL SUBSTANCE, :</u>

- The Substance or effect of the arrangement as a **<u>WHOLE</u>**, is inconsistent with, or **<u>Differs significantly</u>** from, the **<u>FORM</u>** of its **<u>INDIVIDUAL STEPS or a part</u>**; or
- It involves or includes -
  - **<u>Round Trip Financing</u>**;
  - an Accommodating party ;
  - elements that have effect of offsetting or cancelling each other; or
- Transaction which is conducted through one or more persons and disguises the **<u>value, location, source, ownership or control of fund</u>** which is subject matter of such transaction; or
- It involves the
  - location of an asset or
  - of a transaction or
  - of the place of residence of any party

  Which is without any substantial commercial purpose other than **<u>Obtaining TAX BENEFIT</u>** (but for the provisions of this chapter) for a party.

- Certain circumstances like
  - Period of existence of arrangement,
  - Taxes arising from arrangement,
  - Exit Route,

Shall not be taken into account while determining '**Lack of Commercial Substance**' test for an arrangement.

3. **Consequences when Transactions treats as " Impressible Avoidance Agreements**

Arrangement in relation to tax or benefit under a tax treaty can be determined by keeping in view the circumstances of the case, like :-

- Disregarding or Combining **any step** of the arrangement.
- Ignoring the arrangement for the purpose of taxation law.
- Disregarding or combining **any party** to the arrangement.
- **Reallocating** expenses and income between the parties to the arrangement.
- Relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement.
- Considering or "**LOOKING THROUFG**" the arrangement by disregarding any corporate structure.
- Re-characterizing equity into debt, capital into revenue etc.

B. For Limited Purpose GAAR will override DTAA :

C. Procedural Aspects regarding Invocation of GAAR:

- AO shall make a reference to the Commissioner for invoking GAAR and
- Commissioner shall hear the taxpayer and if he is not satisfied by the reply of taxpayer and is of the opinion that GAAR provisions are to be invoked, he shall refer the matter to an Approving Panel.
- In case the assessee does not object or reply, the Commissioner shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.
- The Approving Panel has to dispose the reference within 6 months from the end of the month in which the reference was received from the Commissioner
- The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made.
- AO will finally determine consequences of such a positive declaration of arrangement.
- Previous approval of Commissioner is Required for passing Final order incorporating the GAAR Effect.
- Assessee can file Appeal Directly in ITAT.
- The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.
  - The Approving Panel shall comprise of a) officers of rank of Commissioner and b)an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India and c) will have a minimum of three members.
- Board shall prescribe a scheme for regulating the condition and manner of application of these provisions.

7. Corporate Tax Proposals

Power Sector

Present Law	Amendment 2012
Depreciation Benefits (Section 32)	
✓ Additional depreciation (in addition to normal depreciation) ✓ @ 20% of the actual cost on new machinery or plant (other than ships and aircraft) ✓ in the business of manufacture or production of any article or thing ✓ in the year of **acquisition and instalment** **Exception** ✓ Additional Depreciation not available ✓ on the new machinery or plant ✓ installed by assessee for ✓ **Generation or generation and distribution of Power**	✓ Assessee engaged in **generation or generation and distribution of power** ✓ shall '**also**' be allowed ✓ Additional depreciation @ 20% on ✓ Actual cost of new machinery or plant ✓ **acquired and installed** in a previous year
Extension of Sunset Clause [u/s 80-IA(4)]	
✓ Deduction should be allowed to an undertaking which – • is set up for the generation and distribution of power. • Starts transmission or distribution by laying a network of new transmission or distribution lines.. • Undertakes substantial renovation and modernization of existing network of transmission or distribution lines..... ✓ **AND** ✓ Completes the **above projects till 31st March 2012**	✓ **Sunset Clause Extended to 31st March 2013**

Extract of Memorandum

" In order to encourage new investment by the assessees engaged in the business of generation or generation and distribution of power, it is proposed to amend this section to provide that an assessee engaged in the business of generation or generation and distribution of power shall also be allowed initial depreciation at the rate of 20% of actual cost of new machinery or plant (other than ships and aircraft) acquired and installed in a previous year."

Investment Linked Incentives u/s 35 AD

Present Law	Amendment 2012
✓ **100% deduction** shall be allowed ✓ on any expenditure of capital nature ✓ (other than on land, goodwill and financial instrument) ✓ **incurred** wholly and exclusively,	**Specified Business will also include** ❖ Setting up and operating an **inland container depot or a container freight station** as approved as per customs act;

✓ for the purposes of the "specified business" ✓ **during the previous year** ✓ in which such expenditure is incurred. **Specified Business are** ❖ setting up and operating a cold chain facility; ❖ setting up and operating a warehousing facility for storage of agricultural produce; ❖ laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. ❖ building and operating, anywhere in India, a new hotel of two-star or above category; ❖ building and operating, anywhere in India, a new hospital with at least one hundred beds for patients; ❖ developing and building a housing project under a scheme for slum redevelopment or rehabilitation, ❖ developing and building a housing project under a scheme for affordable housing framed by Govt.; and ❖ Production of fertilizer in India	❖ **Bee-keeping and production of honey** and beeswax; and ❖ Setting up and operating a **warehousing facility for storage of sugar**. Deduction @ 150% will be allowed to Specified business, Commencing operations, on or after 01-04-2012 ✚ Setting up and operating a cold chain facility; ✚ Setting up and operating a warehousing facility for storage of agricultural produce; ✚ Building and operating, anywhere in India, a new hospital with at least one hundred beds for patients; ✚ Developing and building a housing project under a scheme for affordable housing framed by Govt.; and ✚ Production of fertilizer in India.
✓ **100% deduction** shall be allowed to Specified Business being ✓ **Building and operating**, anywhere in India, a new hotel of two-star or above category; as classified by CG.	❖ Assessee builds a hotel......... **and subsequently**, ❖ while **continuing to own the hotel**, ❖ **transfers the operation thereof to another person**, ❖ the assessee shall be deemed to be carrying on the specified business of building and operating hotel. ❖ i.e. Still Eligible for Deduction u/s 35AD. ❖ **Retrospective Application w.r.e.f. 01-04-2010 i.e. from AY 2011-12.**

❖ Additional Benefit i.e. 150% deduction will be available to certain *"Specified Business"*

Extract of Amendment:

"Currently, the investment-linked deduction under section 35AD is allowed to an assessee engaged in the business of building and operating a hotel whereby the deduction can only be granted to the owner of a hotel if he himself operates it. In service industries like hotels, a franchisee business system exists where the hotel owner may get the hotel operated through an outsourcing arrangement.

Therefore, it is proposed to provide a suitable clarification so that a hotel owner continues to be eligible for the investment-linked deduction under section 35AD if he, while continuing to own the hotel, transfers the operation of such hotel to another person."

Weighted Deduction

Present Law	Amendment 2012
Scientific Research (u/s 35(2AB))	
✓ A company is allowed ✓ weighted deduction **@ 200%** ✓ of expenditure incurred **till 31st March, 2012** (not being in the nature of cost of any land or building) ✓ incurred on ✓ approved in-house research and development facilities	✓ Extended to 5 more years **i.e. upto 31st March 2017.**
Agricultural Extension Project [New Section 35CCC]	
✓ A weighted deduction @ 150%, Will be allowed ✓ On Expenditure incurred in **Agricultural extension project** Notified by the Board.	
Skill Development :	
✓ A weighted deduction @ 150% , will be allowed ✓ On Expenditure (Other than Land & Buildings) ✓ incurred in **Skill Development Project** ✓ Notified by the Board	

❖ The Department of Industrial Policy & Promotion (DIPP) has notified the National Manufacturing Policy (NMP) vide Press Note dated 4th November, 2011. The notified NMP inter alia propose to provide following direct tax incentive for skill development in manufacturing sector:

" To encourage the private sector to set up their own institutions, the government will provide weighted standard deduction of 150% of the expenditure (other than land or building) incurred on Public Private Partnership (PPP) project for skill development in the ITIs in manufacturing sector in separate facilities in coordination with NSDC."

Disallowance u/s 40(a)(ia) vis a vis 201(1)/(1A)

Present Law	Amendment 2012 (w.e.f 01-07-2012)
Assessee in Default [u/s 201(1)/(1A)]	
≈ In case of non-deduction of tax ≈ Payer will be treated as ≈ an assessee in default u/s 201(1) ≈ in respect of the ≈ Amount of such non-deduction.	✓ Payer who fails to comply TDS provisions ✓ shall not be deemed to be an assessee in default in respect of such tax ✓ if such resident payee – • has furnished his ROI u/s 139; • Offered such income for taxation • Paid Requisite Taxes • and • an accountant (for e.g. CA etc) certifies the same. The date of payment of taxes by the

	resident payee shall be deemed to be the date on which return has been furnished by the payer**.**
❖ The payer is liable to pay ❖ interest u/s 201(1A) ❖ on the amount of non/short deduction of tax ❖ from the date on which such tax was deductible ❖ to the date on which the payee ❖ **Has discharged his tax liability '<u>Directly'</u>**.	• Where the payer fails to comply TDS provisions • and '**<u>not'</u>** an assessee in default u/s 201(1) • the interest under section 201(1A)(i) • shall be payable • <u>from the date on</u> • which such tax was deductible • to the date of • **<u>Furnishing of ROI by such resident payee</u>**.
Disallowance u/s 40(a)(ia)	✓
✓ <u>No deduction</u> of expenditures like ✓ Interest, commission, Brokerage, professional fees etc.. ✓ Is allowed to **<u>PAYER</u>** ✓ If ✓ Tax not deducted as per law. ✓ In case the tax is deducted in subsequent previous year, ✓ the expenditure shall be allowed ✓ **<u>In that subsequent previous year of deduction.</u>**	✓ Where an assessee makes these ✓ to a "**<u>Resident Payee"</u>** ✓ **<u>without deduction of tax</u>** ✓ and ✓ is not deemed assessee in default u/s 201(1) ✓ then, ✓ **<u>for the purpose of allowing deduction of such sum,</u>** ✓ <u>it shall be deemed that the</u> ✓ <u>assessee has deducted and paid the tax</u> ✓ on such sum ✓ <u>on the date of Return filed by the resident payee.</u>

❖ The said amendment is going to reduce the effect of Mumbai ITAT decision in case of ***<u>ACIT vs. DICGC Ltd</u>*** in which Hon'ble ITAT had held that even if payees has paid tax, payer is not eligible for deduction and accordingly disallowance u/s 40(a)(ia) should be compulsorily made.

❖ We can expect a clarification from CBDT or courts can interpret accordingly as done by **<u>Kolkata High court in CIT vs. M/s Virgin Creations (ITA 302/2011)</u>** by stating that TDS amendments to give extended time for payment is retrospective in nature, though the same was not mentioned in the act.

<u>Extract of Memorandum:</u>

" A related issue to the above is the disallowance under section 40(a)(ia) of certain business expenditure like interest, commission, brokerage, professional fee, etc. due to non-deduction of tax. It has been provided that in case the tax is deducted in subsequent previous year, the expenditure shall be allowed in that subsequent previous year of deduction.

In order to rationalise the provisions of disallowance on account of non-deduction of tax from the payments made to a resident payee, it is proposed to amend section 40(a)(ia)"

Tax Audits (Section 44AB)

Present Law	Amendment 2012
✓ Every person carrying on Business / Profession ✓ Required to get Books of account audited if ✓ Total Sales, Gross Turnover or gross receipts ✓ Exceeds **INR 60,00,000 for Business / INR 15,00,000 for Profession**.	✓ Limit for **Business increased to INR 1 crore.** ✓ Limit for **Profession increased to INR 25,00,000.**

Presumptive Taxation (44AD)

Present Law	Amendment 2012 (w.r.e.f.01-04-11)
✓ Threshold limit of total turnover, gross receipts is upto **INR 60,00,000.**	**Clarification regarding Non Applicability on** ✓ Person carrying on profession as per section 44AA(1) ✓ Person earning commission or brokerage income ✓ Person carrying agency business
✓ Applicable only to a person carrying on business.	

Dividends from Foreign Company (Section 115BBD)

The above provision was introduced as an incentive for attracting repatriation of income earned by residents from investments made abroad with certain conditions to check the misuse of the incentive.

Present Law	Amendment 2012
✓ Gross dividends received by an Indian Company from a specified foreign company ✓ In which it has shareholding of 26% or more ✓ Shall be taxed @ 15% ✓ If dividend is **included in total income of FY 2011-12** i.e. AY 2012-12.	✓ **Benefit extended to one more year i.e. for FY 2012-13.**

Removal of Cascading effect of Dividend Distribution Tax [DDT] (Section 115O)

Present Law	Amendment 2012
✓ Any amount declared, distributed or paid by way of dividends, ✓ whether out of current or accumulated profits, ✓ shall be taxed at the rate of 15% (DDT) ✓ Dividend liable for DDT in case of a 'Company' ✓ **is to be reduced** by an amount of dividend received ✓ **from 'its subsidiary'** after payment of DDT ✓ if the 'Company' ✓ is not a subsidiary of any other company.	✓ Company receives, during the year, ✓ any dividend from **'any' subsidiary,** and ✓ such subsidiary has paid DDT , then, ✓ dividend distributed by the holding company ✓ in the same year, ✓ **to that extent**, ✓ shall not be subject to DDT.

8. Book Profit Based Taxations:

Minimum Alternative Tax (MAT)

Present Law	Amendment 2012
✓ Company is liable to Pay 18.5% of its Book profit (if it exceeds normal taxation) ✓ Book profit to be calculated as per profit & loss A/c prepared in accordance with Schedule VI of the companies Act. ✓ Every Company is required to prepare accounts as per Schedule VI. ✓ Exception is Insurance, Banking & Electricity Company in which accounts prepared as per respective laws	➢ Insurance or banking company or any company engaged in the generation or supply of electricity (or any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company), has been given an option, to prepare profit and loss account either in accordance with the provisions of: **i. Schedule VI to the Companies Act; or** **ii. In accordance with the provisions of the Act governing such companies.**
✓ In Certain Cases ✓ The amount of **<u>revaluation reserve</u>** is taken directly to general reserve on disposal of a revalued asset. ✓ Resultant Gains attributable to revaluation of the asset is not subject to MAT liability.	Book Profit for section 115JB shall be **<u>increased</u>** by ✓ Revaluation reserve relating to the revalued asset which has been retired or disposed ✓ If the same is **<u>not credited to the profit and loss account.</u>**
MAT provisions will not be apply to Companies engaged in Life Insurance Business.	

<u>Comment:</u>

❖ Hon'ble Mumbai ITAT in *<u>Krung Thai Bank PCL vs. JDIT 133 TTJ 436</u>* had held that MAT provisions is not applicable for banking companies as they are governed by Banking regulations Act & schedule VI of companies Act is not at all applicable on them.

❖ Kerala HC in Kerala State Electricity board vs. DCIT had held that MAT provisions will not be applicable for Electricity companies.

❖ The same ratio is going to apply in case of Insurance & Electricity companies. To bring these companies under the purview of MAT, this amendment came.

❖ Mumbai ITAT *in <u>DCIT vs. Bombay Diamond Company Ltd. 33 DTR 59</u>:* had held that tax authority has the power to alter the net profit entered in the profit & loss A/c, if the same is not in accordance with law. To clarify the intention of law & preventing further litigation, it is proposed that Book profit u/s 115JB shall be increased by revaluation reserve, if the same is not routed through P & L A/c.

❖ Mumbai ITAT in case of <u>ITO vs. Galaxy Saws 132 ITD 236</u> had held that no addition can be made to profit & loss a/c when revaluation reserve directly taken to balance sheet.

Extract of Memorandum:

" As per the provisions of the Companies Act, 1956, certain companies, e.g. insurance, banking or electricity company, are allowed to prepare their profit and loss account in accordance with the provisions specified in their regulatory Acts. In order to align the provisions of Income-tax Act with the Companies Act, 1956, it is proposed to amend section 115JB to provide that the companies which are not required under section 211 of the Companies Act to prepare their profit and loss account in accordance with the Schedule VI of the Companies Act, 1956, profit and loss account prepared in accordance with the provisions of their regulatory Acts shall be taken as a basis for computing the book profit under section 115JB."

" In certain cases, the amount standing in the revaluation reserve is taken directly to general reserve on disposal of a revalued asset. Thus, the gains attributable to revaluation of the asset are not subject to MAT liability."

Alternative Minimum Tax (AMT)

Present Law	Amendment 2012
✓ Applicable to **LLP's** ✓ Where regular income tax payable by LLP is ✓ Less than AMT payable for such previous year ✓ The adjusted total income (ATI) will be deemed to be total income ✓ Tax payable shall be 18.5% of ATI. ✓ Tax credit (difference of Normal tax & AMT) shall be carried forward to 10 years. Adjusted Total Income shall be 'Total Income' as increased by ✓ Deduction under chapter VI-A (heading –C) i.e. section 80HH to 80RRS ✓ Deduction u/s 10AA.	✓ Applicable to assessee **other than company** ✓ Where regular income tax payable by Assessee is ✓ Less than AMT payable for such previous year ✓ The adjusted total income (ATI) will be deemed to be total income ✓ Tax payable shall be 18.5% of ATI. ✓ Tax credit (difference of Normal tax & AMT)shall be carried forward to 10 years ATI shall be 'Total Income' as increased by ✓ Deduction under chapter VI-A (heading –C) i.e. section 80HH to 80RRS (**except 80P**) Deduction u/s 10AA **Exemption to** ✓ Individual, HUF, AOP, BOI, Artificial judicial persons ✓ If ATI does not exceeds ✓ INR 20,00,000

Extract of Memorandum:

" 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-à-vis profit linked deductions, it is proposed to amend provisions regarding AMT contained in Chapter XII-BA in the Income-tax Act 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" or under section 10AA, shall be liable to pay AMT."

9. Capital Gains

Cost of acquisition in case of certain transfer (Section 49 / 47)

Present Law	Amendment 2012
✓ Where transfer of an asset from one person to another is not regarded as a transfer u/s 47, ✓ then, for computing capital gains (on subsequent sale), ✓ the cost of acquisition (COA) for successor u/s 49 ✓ is taken as that of the predecessor <u>COA for company, is not specifically covered u/s 49, when converted from</u> ✓ Sole proprietorship – [u/s 47 (xiv)] ✓ Partnership Firm - [u/s 47 (xiii)]	✓ **COA of Proprietorship Firm or Firm shall be taken as cost in the hands of company.** ✓ **Retrospective Amendment w.e.f. 01-04-1999**

Comment:
Cost of acquisition was not defined for cases when transfer from sole proprietorship or partnership firm. To bring clarity on intention of statute, the said clarificatory amendment is retrospectively introduced w.e.f 01-04-1999.

Extract of Memorandum
"Certain transactions like transfer of assets by a sole proprietorship or a firm to a company on conversion are not regarded as transfer under the provisions of section 47(xiv) and section 47(xiii). While computing capital gains on subsequent sale of such assets by the company, there is no reference in the provisions of section 49 with regard to the cost to be taken for such assets."

Reference to Valuation officer u/s 55A (COA as on 01-04-1981)

Present Law	Amendment 2012 (w.e.f 01-07-2012)
✓ U/s 55, where the capital asset ✓ became the property of the assessee ✓ before 1st April, 1981, ✓ Assessee **<u>can take FMV</u>** as on **<u>01-04-1981</u>** ✓ As COA. ✓ U/s 55A, where AO feels that ✓ value of asset as per assessee is **<u>less than FMV</u>** ✓ he may refer the valuation of a capital asset ✓ to a Valuation Officer	✓ U/s 55A, where AO feels that ✓ value of asset as per assessee is **<u>MORE THAN FMV</u>** ✓ he may refer the valuation of a capital asset ✓ to a Valuation Officer

Hon'ble Bombay High Court in case of <u>CIT vs. Daulat Mohta HUF ITA no. 1031 of 2008 dtd. 22-09-2008 (BOM)</u> had held that reference to DVO can be made u/s 55A only when the AO is of the opinion that the value of the capital asset claimed by the assessee is less than its fair market value and not when he was of the opinion that the fair market value of the property on 1st April, 1981 as shown by the assessee was more than its actual fair market value.
To overcome similar kind of judgements, this amendment is proposed.

Extract of Memorandum:
" In such a case the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, would lead to a lower amount of capital gains being offered for tax."

Amalgamation / Demerger

Present Law	Amendment 2012
Transfer will not regarded as a transfer if, ✓ In a scheme of amalgamation ✓ Shareholders transfer shares in a amalgamating company ✓ in **consideration of the allotment to him, of any shares in the amalgamated Indian company**	✓ Amalgamated company need not require to issue shares ✓ **When the shareholders is** ✓ **Amalgamated company itself**.
Transfer will not regarded as a transfer if, ✓ In a scheme of demerger ✓ Shareholders transfer shares in a demerged company ✓ in **consideration of the allotment to him of any share or shares in the resulting Indian company**	✓ Resulting company need not require to issue shares ✓ **When the shareholders is** ✓ **Resulting company itself**

In case of Subsidiary company amalgamated with Holding company, it is practically not possible to fulfil the condition of section 47 i.e. to issue shares to the shareholders of subsidiary company because Holding company is itself a shareholder. Same situation in case of demerger, with the Resulting Company. Hence this amendment.

Extract of Memorandum:
" In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions at (a) above, i.e. that the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself. Therefore, it is proposed to amend the provisions of section 47(vii) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company. However, the amalgamated company will continue to be required to issue shares to the other shareholders of the amalgamating company."

FMV taken as consideration for certain transfer (New Section 50D)

Present Law	Amendment 2012
✓ As per Judicial Rulings ✓ When **Sale consideration** for ✓ Transfer of as Assets ✓ **Is not determinable** ✓ No Capital gains on Such Transfer.	✓ **FMV of the assets** ✓ Will be Sale consideration ✓ If **Actual consideration is** ✓ **Not attributable or determinable.**

As per memorandum explaining the finance bill ' As the Machinary provisions fails, the gains arising from transfer of such assets is not taxable'. To tax such type of transaction, this amendment is proposed.

Mumbai ITAT in *Bennett Coleman & Co. Ltd vs. ACIT 12 ITR 97* had held that when consideration for transfer is not determinable, there is no question of capital gains. Same view has been taken in case of Dana Corporation 321 ITR 178 (AAR). To counter these decisions, the said amendment is proposed.

10. TDS & TCS

TDS Rates

Sec.	Present Law	Amendment 2012 (w.e.f. 01-07-2012)
193	✓ A person responsible for paying interest to a resident individual ✓ on **listed debentures** of a company, ✓ In which the public are substantially interested, ✓ No TDS on interest payable ✓ if aggregate interest paid during a FY ✓ does not exceed INR 2,500 and ✓ the interest is paid by account payee cheque	✓ A person responsible for paying interest to a resident individual **or HUF** ✓ on **listed / Unlisted debentures** of a company, ✓ In which the public are substantially interested, ✓ No TDS on interest payable ✓ if aggregate interest paid during a FY ✓ does not exceed INR 5,000 and ✓ the interest is paid by account payee cheque
194LA	✓ Person responsible for paying any compensation or consideration ✓ For **Compulsory acquisition of immovable property** (other than agricultural land) ✓ is required to deduct tax at the rate of 10% ✓ in case the consideration **exceeds INR 1,00,000**	Threshold limit **extended to INR 2,00,000**
194J	✓ TDS rate on remuneration paid to director ✓ which is not in the nature of Salary ✓ Is not specified in the ACT	**TDS @ 10%** on such payments.

Procedural Aspects

Section	Present Law	Amendment 2012 (w.e.f. 01-07-2012)
201	✓ In respect of non-deduction/short deduction of tax, ✓ a person can be deemed to be ✓ **an assessee in default**, ✓ by an order, ✓ which can be passed ✓ **within a period of 'four years'** ✓ from end of FY in a case ✓ **where no statement** as referred to in section 200 has been filed.	✓ Four years extended to **SIX years.**
204	Person responsible for paying defined to ✓ to include employer, company or its principal officer or the payer. Lack of clarity when **payment made by**	**When payment made by Central / State Govt.** Person responsible for paying shall be ✓ the Drawing and Disbursing Officer

	✓ **Central / State Govt.** ✓ As to who is the person responsible for paying the sum to the payee.	✓ or any other person (by whatever name called) ✓ responsible for making payment
209	✓ 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.**	✓ 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... **Applicable w.r.e.f AY 2012-13**.

Penalty for delay in furnishing of TDS/TCS statement

Sec.	Present Law	Amendment 2012 (w.e.f. 01-07-2012)
272A	✓ A Penalty of **INR 100 per day** ✓ for **delay in furnishing** of TDS statement.	✓ Extended to **INR 200 per Day**. ✓ Additional Penalty of **INR 10,000 - INR 1,00,000** for not filing TDS statement within time. ✓ Maximum Penalty upto TDS amount. ✓ No Penalty if TDS statement submitted within 1 years from due date along with interest & fees. ✓ No Penalty for Late filing of TDS on or after 01-07-2012.
271H	**NEW SECTION**	✓ Additional Penalty of **INR 10,000 - INR 1,00,000** for **INCORRECT INFORMATION** in TDS statement.
273B		**No penalty** **If** **Reasonable Cause proved.**

11. Non Resident Taxations

Foreign Company engaged in Crude oil business (Section 10)

Present Law	Amendment 2012 (W.r.e.f. 01-04-2011)
✓ Subject to the conditions specified ✓ In the relevant clauses of section 10, ✓ Certain incomes are ✓ not included in the total income of a person i.e. Exempt from Tax.	✓ any income of a foreign company ✓ **Received in India** in '**INR**' ✓ on account of sale of crude oil to any person in India ✓ will be exempt ✓ subject to the following conditions: • Receipt is under an agreement or an arrangement which is either entered into by the Central Government or approved by it. • The arrangement is notified by CG to the national interest in this behalf. • The receipt of the money is the **only activity** carried out by the foreign company in India.

Tax incentive for Foreign funding in Infra Sector

Existing Act	Amendment 2012 (w.e.f. 01-07-2012)
Section 115A ✓ Interest income received ✓ by any non-resident ✓ from the Govt. or an Indian concern ✓ shall be taxable **at the rate of 20%** ✓ on the gross interest income.	✓ Any interest paid by a S**pecified Company** ✓ to a non-resident ✓ in respect of **borrowing made in foreign currency** ✓ from **sources outside India** ✓ Between " 1st July, 2012 and 1st July, 2015", ✓ under an agreement, including rate of the interest payable, ✓ approved by the Central Government, ✓ shall be taxable at the rate of **5%** (plus applicable surcharge and cess). The **specified company** shall be an Indian company engaged in the **business of** - ✓ construction of dam, ✓ operation of Aircraft, ✓ manufacture or production of fertilizers, ✓ construction of port including inland port, ✓ construction of road, toll road or bridge; ✓ generation, distribution of transmission of power ✓ construction of ships in a shipyard; or ✓ Developing and building an affordable housing project.
Section 194LC (New Section) ✓ Interest income paid by such specified company.	

- ✓ to a non-resident.
- ✓ Shall be subjected to TDS @ 5% (plus applicable surcharge and cess).

Extract of Memorandum:
" In order to augment long-term low cost funds from abroad for the infrastructure sector, it is proposed to provide tax incentives for funding certain infrastructure sectors from borrowings made abroad subject to certain conditions."

Non Resident entertainer & Sports person

Existing Act	Amendment 2012
Section 11BBA Sports Person ✓ Gross Receipts or Income Received by sports persons ✓ who are non-citizen and non-resident. ✓ By way of participation ✓ in any game or sport, advertising or contribution of article in any newspaper etc. Sports Associations ✓ Gross Receipts being ✓ guarantee money received by ✓ non-resident sports association or institution for ✓ any game or sport played in India. Both are **Taxed @ 10% of the gross receipts.**	✓ Tax **@ 20% on Gross Receipts** ✓ Of ✓ Non Resident non citizen i.e. • Sports man • sports association or institution • **Entertainer (theatre, radio, television artists and musicians**) **Applicable w.e.f. AY 2013-14.**
Section 194E **TDS @ 10%**	**TDS @ 20%** **w.e.f 01-07-2012**

Section 112 : LTCG

- ❖ For Non – residents & Foreign Companies.
- ❖ LTCG on unlisted securities (shares, debentures etc) **will be taxable @ 10%.**
- ❖ Without giving effect to first proviso to section 48 (Capital gains calculation on foreign currency) &
- ❖ Without giving indexation benefits.

Internationally Sports Persons, associations and Entertainers are taxed at the range of 10% - 30% of gross receipts. To bring parity with international tax rates, tax rate proposed to be increased to 20%.

Extract of Memorandum
"Under the Double Tax Avoidance Agreement (DTAA's), there is parity between a non-resident sportsman and a non-resident entertainer. A similar tax regime i.e. taxation on basis of gross receipts rather than net income would simplify the process of taxation in the case of entertainer. The special treatment in respect of entertainer is required because determination of deductible expenses for performance is complicated, especially when the production expenses of an international tour need to be allocated across performances in various countries."

12. Double Taxation Avoidance Agreements

Existing Act	Amendment 2012
Meaning assigned to a term used in DTAA	
Section 90 ✓ Central Govt is empowered to ✓ enter into an agreement with the ✓ Government of any foreign country or specified territory outside India ✓ for the purpose of – • Granting relief in respect of avoidance of double taxation, • Exchange of information and • Recovery of taxes. **Section 90A** ✓ CG is empowered ✓ to adopt any agreement (DTAA) ✓ between specified associations for ✓ Relief of double taxation & ✓ **Assign meaning of any Term through Notification** ✓ **Which was not in the ACT or DTAA.**	✓ Any meaning assigned through notification to a term ✓ used in DTAA but not defined in the Act or DTAA, ✓ shall be '**Effective**' from the ✓ **'Date of coming into force of the DTAA'** **W.r.e.f. 01-10-2009**
Tax Residency certificate 'NOT' sufficient for DTAA benefits	
✓ Provisions of ACT or DTAA , ✓ Which is more beneficial ✓ Shall ✓ Applicable to Assessee.	✓ Submission of Tax Residency Certificate (TRC) ✓ containing prescribed particulars, ✓ as a '**Necessary but NOT SUFFICIENT CONDITION'** ✓ For availing benefits of the DTAA. **W.e.f. 01-07-2012**

- Term which has not defined in the Act or treaty is generally defined by Notifications. As per retrospective amendments, the notification will apply from the date when relevant DTAA came into force. DTAA benefits will be given to companies that are Tax residents and having DTAA with India.
- Amendment is aimed to possible misuse of Tax treaties like Mauritius Treaty.
- Extract of Memorandum:

"Since this assignment of meaning is in respect of a term used in a treaty entered into by the Government with a particular intent and objective as understood during the course of negotiations leading to formalization of treaty, the notification under section 90(3) gives a legal frame work for clarifying the intent, and the clarification should normally apply from the date when the agreement which has used such a term came into force."

"It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits."

13. Search & Seizure

Penalty for Undisclosed income during search (Section 271AAA – 271AAB)

Amendments will apply to any search and seizure action taken after 1st day of July, 2012

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
Section 271AAA : ✓ **No penalty is levied** ✓ If Assessee admits undisclosed income in a statement u/s 132(4) during search ✓ Specifies the manner in which undisclosed income earns ✓ Pays the taxes together with interest **Section 271AAA will apply for Search Conducted till 30-06-2012**	**New Section 271AAB :** a) If undisclosed income admits during search ✓ Penalty **@ 10%** of undisclosed income as per existing law subject to conditions ii) If undisclosed income not admits during search, but disclosed in ROI ✓ Penalty **@ 20%** of undisclosed income as per existing law subject to conditions Except (i) & (ii) above ✓ Penalty **@ 30% to 90%** of undisclosed income

Application before Settlement commission : Section 245C

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
✓ An Application can be filed ✓ Where the Applicant • is '**Related to the Person**', in whose case proceedings have been initiated as a result and who had file an application **and** • is a person, in whose case proceedings have also been initiated as a result of Search ✓ The Additional amount of Income Tax payable disclosed in his application exceeds ✓ **INR 10,00,000.** **Definition of Related Person** ✓ The substantial interest is found to exist, ✓ where a person holds more than 20% shares or ✓ 20% share in profits, ✓ **At ANY** TIME during the previous year	**Definition of Related Person amended** ✓ The substantial interest is found to exist, ✓ where a person holds more than 20% shares or ✓ 20% share in profits, ✓ **As on the "DATE OF SEARCH"**

Completion of assessment in search cases referred to DRP

Present Law	Amendment 2012
Section 144C / 153 ✓ Where an eligible assessee files an objection	✓ Also Applicable for ✓ Assessment made

against the draft assessment order ✓ before the DRP, ✓ then, the time limit for completion of assessments ✓ for the **AO**, shall be ✓ within One month from the end of the month ✓ in which **direction of 'DRP' received**	✓ As a result of **"Search & Seizure"** **W.r.e.f. 01-10-2009.**

Exemption for compulsory reopening of 6 years

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
✓ After the Search proceedings ✓ Notice u/s 153A should be given for compulsorily filing of return for ✓ **6 Assessment year, immediately preceding the AY** in which search was conducted	✓ Central Govt can notify cases or class of cases ✓ Where **153A notice will not be issued for preceding 6 AY**. ✓ Scrutiny only for previous year in which search conducted

Authorisation / Requisition and subsequent assessments

Amendment 2012 (w.r.e.f. 01-04-1976)

As per Section 292CC in the Income-tax Act to provide that –

- It shall **not be necessary to issue** an **authorisation** u/s 132 or make a **requisition** u/s 132A "**Separately in the name of Each Person**";
- Where an authorisation u/s 132 or requisition u/s 132A has been made mentioning
  - therein the name of '**More than one person'**
  - the mention of such names of more than one person on such authorisation or requisition
  - shall not be "**Deemed to Construe**" that
  - it was issued in the name of
  - an association of persons or body of individuals consisting of such persons;
- **Notwithstanding** that an authorisation u/s 132 or requisition u/s 132A has been made
  - mentioning therein the name of '**More than one Person**',
  - the assessment or reassessment shall be made
  - **Separately** in the name of '**Each of the persons**"
  - mentioned in such authorisation or requisition.

❖ Allahabad HC in case of *CIT v. Vandana Verma 330 ITR 533* had held that *"A warrant of authorization must be issued individually. If it is not issued individually, then the assessment cannot be made in individual capacity."* To overcome similar type of judgements , this amendment is made.

Extract of Memorandum:

" In a recent Court decision, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorisation must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals."

14. Tax Administration & Litigation

Dispute Resolution Panel (DRP)

Present Law	Amendment 2012
✓ The Income Tax Department ✓ **does not have the right to appeal** ✓ against the directions given by the DRP.	✓ As the directions of DRP binding on AO ✓ AO **may also file an appeal** before ITAT. ✓ Against the directions of DRP ✓ If ✓ Assessee **files objection** against the draft assessment order ✓ **On or after 01-07-2012**
✓ The DRP has the power to confirm, ✓ reduce or enhance ✓ **the variations** ✓ **Proposed in the draft order**.	Due to ambiguity regarding the enhancement , it is proposed to clarify that ✓ Power of the DRP to enhance the variation ✓ shall include and ✓ **shall always be deemed to have included** ✓ the power to consider any matter arising out of the assessment proceedings ✓ Relating to the draft assessment order. ✓ **irrespective of the fact whether** ✓ **Such matter was raised by the eligible assessee or not**. ✓ **Retrospectively applied w.e.f. 01.04.09**

- Mumbai ITAT in *Dredging International NV v. ADIT 48 SOT 430 (Mum ITAT)* had held that DRP power to enhancement is confined to confined to issues raised in Draft assessment order only. The same view had been taken by Karnataka HC in *GE India Technology Centre (p) Ltd vs. DRP WP1010/2011 (Kar HC)*. To overcome these judgements this amendment is made.

- Earlier, against the Directions of DRP, there was no appeal in ITAT by department. Through this amendment, department can file appeal in ITAT. Vide these two Amendments, DRP & CIT (A) comes to a same footings. Chances of enhancement in case of DRP are much higher than DRP.

Extract of Memorandum:
" As the directions given by the DRP are binding on the Assessing Officer, it is accordingly proposed to provide that the Assessing Officer may also file an appeal before the ITAT against an order passed in pursuance of directions of the DRP.
In a recent judgement, it was held that the power of DRP is restricted only to the issues raised in the draft assessment order and therefore it cannot enhance the variation proposed in the order as a result of any new issue which comes to the notice of the panel during the course of proceedings before it."

Extended time limits for Proceedings

Time limit for completion of assessment / reassessment has been proposed to be increased by three months, which is summarised as below:

Sec.	Current Time Period	Amendment 2012 (w.e.f 01-07-2012)
143	21 months from the end of the A.Y.	24 months
143 & 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 & 92CA	21 months from the end of the F.Y. in which notice issued	24 months
250/254/263	9 months from the end of the F.Y. in which order received	12 months
250/254/263 & 92CA	21 months from the end of the F.Y. in which order received	24 months

Consequential changes made in section 17 of wealth tax act to increase the time limit by 3 months.

Processing of Return u/s 143(1)

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
✓ 100% returned processed u/s 143(1) ✓ Refunds if arises issued to taxpayers. ✓ Scrutiny notice u/s 143(2) issued.	✓ Processing u/s 143(1) will not be necessary ✓ if ✓ Notice u/s 143(2) already issued.

Intimation after processing of TDS statement (Section 200A)

Present Law	Amendment 2012 (w.e.f. 01-07-2012)
After processing of TDS statement, an intimation is generated specifying the amount payable or refundable**, which is not** ✓ subject to rectification under section 154; ✓ appealable under section 246A; and ✓ Deemed notice of demand u/s 156	The intimation generated after processing of TDS statement **shall be** ✓ subject to rectification u/s 154; ✓ appealable under section 246A; and ✓ Deemed notice of demand u/s 156.

Filing fees for application before Authority for Advance Ruling (AAR)

Present Fees (Till 30.06.2012) INR 2,500	Amendment (01-07-2012) INR 10,000

15. Other Amendments

Interest u/s 234D

Present Law	Amendment 2012 (w.r.e.f. 01-06-2003)
✓ Where any refund u/s 143(1) has been granted to assessee ✓ and subsequently on regular assessment, ✓ refund amount is reduced, ✓ then, assessee shall be liable to pay ✓ **Interest @ .5% on excess refund** ✓ Starting from the date of refund to the date of such regular assessment	✓ 234D would be applicable ✓ **to any proceeding** which is completed ✓ **on or after 1st June, 2003,** ✓ irrespective of the assessment year to which it pertains

Comment:
In below mentioned judgements, court had held that Interest is payable for AY 2004-05 only and no interest before this period can be recovered from the assessee.
1) C.A. Computer Associates (p) Ltd vs. DCIT 8 ITR 142 (Mum)
2) CIT vs. Faunc India Ltd 57 DTR 340 (Kar. HC)
3) DIT vs. Jacobs Civil Incorporated 330 ITR 578 (Delhi HC)

To overcome these judgements, Amendments is made.

Exemption u/s 10 (23BBH):
Income of Prashar Bharati will be exempt from Tax (w.e.f. AY 2013-14)

Charitable Institutions

Present Law	Amendment 2012(w.r.e.f. 01-04-2009)
Section 11 & 12 ✓ Income of Charitable Institutions is ✓ Exempt if, ✓ Registered in India & ✓ Income Applied for **"Charitable Purpose"** in India. **Section 2(15) & 2nd Provisio** ✓ '**Charitable Purpose**' includes " ✓ Advancement of any other object of general public utility" provided that ✓ It does not involve carrying on of any activity ✓ In the **nature of trade, commerce or business**. Exemption will not be denied ✓ If receipts from Commercial Activity ✓ **Does Not Exceeds INR 25,00,000**	**Amendment in 10(23C), section 13 and section 143** ✓ Such organization does not get benefit of tax exemption ✓ In the "**Previous Year"** in which ✓ **it's Receipts from Commercial activities** ✓ **exceed the threshold INR 25,00,000** ✓ whether or not ✓ the registration or approval granted or notification issued ✓ is **cancelled, withdrawn or rescinded**

✓ In Previous Year	

Comment:
For withdrawing exemption for a particular year, it will now not be necessary to cancel the registration of Trust. As and when receipts from commercial activities exceeds INR 25,00,000 during the previous year, then in that year, exemption of the trust will automatically be withdrawn.

Venture capital fund (VCF) / Venture capital company (VCC)

Present Law	Amendment 2012
Section 10(23FB) : ❖ Income of VCF/VCC is Exempt, if ❖ Investment by such VCC/VCF was in ❖ Unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU). ✓ Income of a SEBI regulated VCF or VCC, ✓ derived from Investment in a VCU , ✓ is exempt from taxation, ✓ provided the VCU is engaged in ✓ Only nine specified businesses. **Section 115U** : ❖ Income, in the hand of the investor ❖ through VCF/VCC is taxed ❖ **in like manner and to the same extent**, as if ❖ the investment was directly made by investor in the VCU. ❖ i.e. on **Receipts by investors.** **TDS provisions are not applicable** ✓ to any payment made by the ✓ VCF to its investor ✓ and ✓ payment by VCC to the investor is ✓ Exempted from DDT	**10 (23FB) & 115U proposed to amend to provide that.-** ❖ The venture Capital undertaking shall have same meaning as provided in relevant SEBI regulations and there **Would be no sectoral restriction**. ❖ Income accruing to VCF/ VCC shall be Taxable **in the hands of 'Investor'** on accrual basis '**with No deferral**'. It means that "Investor" now have **to pay Tax** on **Accrual Basis**

Special provision for conversion of Indian Branch of a foreign Bank into a subsidiary Indian Company:

≈ Subject to fulfilment of scheme framed by RBI, such conversion will be exempt from capital gain tax.

≈ Provisions of the Act relating to treatment of unabsorbed depreciation, set off or carry forward of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in the case of the foreign company and the Indian subsidiary company, shall apply with such exceptions, modifications and adaptations as may be specified in that notification.

≈ In case of non compliance of guidelines framed by RBI, normal provisions of the Act will apply and exemption will be withdrawn by passing order u/s 154.

Prosection

Section	Present Law	Amendment 2012 (w.e.f 01-07-2012)
276C **276CC** **277** **277A** **278**	✓ Where the amount of tax, penalty or interest ✓ which would have been evaded by a person ✓ **exceeds INR 1,00,000,** ✓ he shall be punishable with ✓ rigorous imprisonment for a term ✓ **Min 6 months - Max 7 years & with fine** ✓ For Net Tax Evasion upto **INR 1,00,000** ✓ he shall be punishable with ✓ rigorous imprisonment for a term ✓ **Min 3 months - Max 3 years & with fine**	✓ Amount of tax, penalty or interest evaded ✓ **exceeds INR 25,00,000,** ✓ Assessee shall be punishable with ✓ rigorous imprisonment for a term ✓ **Min 6 months - Max 7 years & with fine** ✓ For Net Tax Evasion upto **INR 25,00,000** ✓ he shall be punishable with ✓ rigorous imprisonment for a term ✓ **Min 3 months - Max 2 years & with fine**
280A	New Section: Provision for constitution of Special Courts.	
280B	New Section: Trail of Offences by Special Court.	
280C	New Section: Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.	
280D	New Section: Providing for appointment of public prosecutors.	

Extract of Memorandum:

" It is proposed to strengthen the prosecution mechanism (through new sections 280A, 280B, 280C and 280D) under the Income-tax Act by –

a) Providing for constitution of Special Courts for trial of offences.

b) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.

c) *Providing for appointment of public prosecutors."*

GLOSSRY

AMT - Alternate Minimum Tax
AO –Assessing Officer
AOP – Association of Person
APA – Advance Pricing Agreements
AS – Accounting Standards
AY – Assessment Year
BOI – Body of Individuals
CBDT – Central Board of Direct Taxes
CIT - Commissioner of Income tax
CIT(A) – Commissioner of Income-tax (Appeals)
DDT – Dividend Distribution Tax
DRP – Dispute Resolution Panel
DTC – Direct Taxes Code, 2010
ECB - External Commercial Borrowings
FCCB- Foreign Currency Convertible Bonds
FCEB- Foreign Currency Exchangeable Bonds
FCNR – Foreign Currency Non-Resident
FDI – Foreign Direct Investment
FII-Foreign Institutional Investors
FMV-Fair Market Value
GAAR – General Anti-avoidance Rules
GST - Goods and Service tax
HUF – Hindu Undivided Family
IPO-Initial Public Offer
JV – Joint Venture
KYC – Know Your Customer
LLP – Limited Liability Partnership
LNG – Liquefied Natural Gas
MAT – Minimum Alternate Tax
NRE - Non Resident External
ODI - Overseas Direct Investment
PAN - Permanent Account Number
PE – Permanent Establishment
PSU- Public Service Undertakings
QFIs - Qualified Foreign Investors
RBI – Reserve Bank of India
SEBI – Securities and Exchange Board of India
SEZ – Special Economic Zone
SIDBI-Small Industries Development Bank of India
SFMS - Special Focus Market Scheme
SME – Small and Medium Enterprises
STT-Securities Transaction Tax
TAS - Tax Accounting Standards
TCS – Tax Collected at Source
TDS – Tax Deducted at Source
TIN – Tax Information Network
The Act – Income-tax Act, 1961
TPO – Transfer Pricing Officer
TRC- Tax Residency Certificate
ULIP- Unit Liked Insurance Plan
UTI- Unit Trust of India
VCC – Venture Capital Company
VCF – Venture Capital Fund
VCU – Venture Capital Undertaking
WOS - Wholly-owned subsidiary
W.r.e.f – With Retrospective Effect from

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