

May
2013

Amendments

Direct Taxes and Service Tax

Applicable for May 2013 Examinations

Salient Features of this booklet:

- ★ Detailed discussion in easy language
- ★ At most weightage on concept clarity
- ★ Compatible with touch devices and smart phone with facility of hyperlinks for cross-references
- ★ Useful for CA Inter and Final
- ★ Detailed analysis of each and every provisions
- ★ Student friendly approach

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Preface to the booklet

As we all know, in last budget, drastic changes in the taxation. The motive of those changes may be reduce the tax evasion and blocking the black money and try to reduce it. As far as study of Chartered Accountancy is concerned, the student must be up-to-date with the knowledge in the subject of Taxation. This booklet provides amendment of Direct Taxes which includes Income Tax and Wealth Tax related amendment and also Service Tax Related amendment. I try to maintain the professionalism in each provision and explanation of the same. For perfection in drafting and explaining the provision in-depth, I took help of professional Chartered Accountants from the Taxation field. I personally thankful to **CA P. N. Shah for Direct Tax, CA Atul Kumar Gupta for Service tax amendments, CA Karthik Sundaram for Service Tax, CA Varun Dhavan for Overall analysis on Budget and CA Kaushik Vinod for Point of Taxation Rules.**

I always believe in helping everyone and as result I am very happy by presenting this booklet of amendment. Technology is growing and that's why the booklet is also compatible with many smartphone devices, tablet devices and android based devices along with laptops and PCs. I said this because in this booklet to reduce cross-reference confusion, I put hyperlink wherever the cross-reference is needed. So, I always believe in productive studies and so instead on doing unproductive work on your smartphones and other technological devices, I believe this is new and amazing way of utilizing the time.

Earlier, I issued around 4 editions of Super Summary of Taxation but I personally found that is not conceptual and that's the reason here each and every provisions are explained in-depth with at most conceptual clarity in easy language. As we all know, ICAI always put weightage on new amendments to keep up-to-date the knowledge of students. That's the reason why I covered all amendments related to direct taxes although it may not be in the course of CA Intermediate. This will give glimpse of CA Final interpretations and way of presentation to the students of CA Inter (IPCC). **Don't worry, the language I used is very unique, easy to understand and student-friendly.** The law, any, is based on two main thing viz. Interpretations and Presentation of the provisions contained in any law.

Don't hesitate to ask question because it may silly for you but it may not be for others. Confidence is must while you are studying any kind of subject. As per my logic, if one said, he/she is average student then one knows the ability of above average student as well as him/herself, and I don't think if someone knows the ability of themselves are average student.

BOOK DEDICATED TO FRIENDS

Rules of my life:

1. "Don't use anyone, but be useful for everyone."
2. "There is no tax on helping each other."
3. "If you light a lamp for somebody, it will also brighten your path."
4. "Happiness is a by-product of an effort to make someone else happy."

Regards, **Bhavin Pathak**

Glimpse of All Amendments

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Amendments

PART A: DIRECT TAXES

1. Highlights, Background, Introduction

- The Finance Minister presented the Budget for the year 2012-13 on 16th March, 2012, and introduced the Finance Bill, 2012, containing **154 clauses**.
- Out of these, **113 clauses relate to 'Direct Taxes' and other 41 clauses relate to 'Indirect Taxes'**. There was heated discussion on the various provisions of the Bill which included over **30 amendments in various sections of the Income-tax Act with retrospective effect**.
- There was lot of protest in India and abroad as most of these amendments would affect non-residents and will have adverse effect on global trade.
- In spite of this protest, the Government could manage to get through the legislation with some changes. The Finance Act, 2012, containing **119 sections relating to Direct Taxes is now passed by both Houses of the Parliament and received the assent of the President on 28-5-2012**.
- Originally, the existing Income-tax Act was to be replaced by the Direct Taxes Code (DTC) w. e. f. 1-4-2012. Since the **implementation of DTC is delayed**, we will have to live with the existing Income-tax Act for one more year.
- Some of the amendments made by the Finance Act, 2012, will give some relief in the computation of Income and Tax. However, *some of the amendments, which have retrospective and retroactive effect, will make the life of taxpayers miserable*.
- In particular, **the retrospective amendments of some of the sections of the Income-tax Act will increase the tax burden of non-resident assesseees and also increase their compliance cost**. In this respect, the **tax litigation will also increase in the assessment year**.

2. Rates of Income tax, surcharge and education cess

2.1: Relief in Income Tax

- The tax slabs for individuals, HUF, AOP, BOI, etc. have been made more beneficial.
- The exemption limits for these assesseees have been raised **from ₹ 1,80,000 to ₹ 2,00,000**. As a result of the revision of the **exemption limit and realignment of some of the slabs, tax liability of this category of assesseees for A.Y. 2013-14 will be less by ₹ 2,000 in respect of income up to ₹ 8,00,000**. In respect of income above ₹ 8,00,000 the reduction of the tax will be of ₹ 22,000.
- For senior citizens and super senior citizens there is no change in tax payable on income up to ₹ 8,00,000.
- If the income is more than ₹ 8,00,000 the reduction in the tax liability in their cases will be of ₹ 20,000.

2.2: Rates of Income Tax

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

Income slab	Rates (in %)		
	Super senior citizen [Age is or above 80 years and residents]	Senior citizen [Age is or above 60 years and residents]	Others [Individuals (incl. females also), age less than 60 years]
Upto ₹ 2,00,000	Nil	Nil	Nil
₹ 2,00,000 to ₹ 2,50,000	Nil	Nil	10%
₹ 2,50,000 to ₹ 5,00,000	Nil	10%	
₹ 5,00,000 to ₹ 10,00,000	20%	20%	20%
Above ₹ 10,00,000	30%	30%	30%

Note: No surcharge is payable for A.Y. 2013-14. However, Education cess of 3% (2% Primary Education Cess + 1% Secondary and Higher Secondary Education Cess) of the tax is payable for both the years.

- (2) **Other assesseees:** There are no changes in the rates of the taxes so far as other assesseees are concerned. They will have to pay income tax, surcharge (if applicable) and education cess in A.Y. 2013-14 at the same rate as applicable in A.Y. 2012-12. Table given for the same is as follows:

Co-operative society		Rate	
Upto ₹ 10,000		10%	
₹ 10,000 to ₹ 20,000		20%	
Above ₹ 20,000		30%	
Partnership firms/Limited Liability Partnership		30%	
Company			
Type	Particulars	Surcharge	Rate
Domestic	Whole of total income	5%	30%
Foreign	Specific royalties and technical services	2%	50%
	On balance		40%

Note: No surcharge is payable for A.Y. 2013-14. However, Education cess of 3% (2% Primary Education Cess + 1% Secondary and Higher Secondary Education Cess) of the tax is payable for both the years.

- (3) **Rate of tax under Sec. 115JB (Minimum Alternate Tax):** The rate of tax (i.e. 18.5%) along with surcharge and Education Cess as applicable in A.Y. 2012-13 will be payable on book profits (MAT) in A.Y. 2013-14.
- (4) **Dividend Distribution Tax (DDT):** The rate of tax (i.e. 15%), surcharge and Education Cess is the same under Sec. 115-O for A.Y. 2012-13 as in F.Y. 2011-12. (Simply, no change.)
- (5) **Rate of tax on dividend from specified foreign companies in A.Y. 2013-14 (Accounting year ended on 31-03-2013)**

Income slab	Amount of Tax Payable		
	Super senior citizen [Age is or above 80 years and residents]	Senior citizen [Age is or above 60 years and residents]	Others [Individuals (incl. females also), age less than 60 years]
₹ 3,00,000	Nil	₹ 5,000	₹ 10,000
₹ 5,00,000	Nil	₹ 25,000	₹ 30,000
₹ 8,00,000	₹ 60,000	₹ 85,000	₹ 90,000
₹ 10,00,000	₹ 1,20,000	₹ 1,25,000	₹ 1,30,000
₹ 15,00,000	₹ 2,50,000	₹ 2,75,000	₹ 2,80,000
₹ 25,00,000	₹ 5,50,000	₹ 5,75,000	₹ 5,80,000

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

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

2.3: Surcharge on Income Tax

- (1) **Surcharge on income of non-corporate assessee:** As in A.Y. 2012-13, ***no surcharge is payable by non-corporate assessees*** i.e., individuals, HUF, AOP, BOI, Firm LLP, co-operative societies, etc. in A.Y. 2013-14. In the case of a company the rate of surcharge, *if income exceeds ₹ 1,00,00,000, is 5% of income tax. As regards MAT under Sec. 115JB, if the book profit exceeds ₹ 1,00,00,00, rate of surcharge is 5%.*
- (2) **Surcharge on TDS:** As regards TDS and TCS, ***no surcharge is required to be added*** to the rates of TDS or TCS.
- (3) **Surcharge on Dividend Distribution Tax:** In the case of dividend distribution tax under Sec. 115-O and 115R the rate of surcharge on tax (*i.e., 15%*) ***is 5% of the tax.***
- (4) **Surcharge on income of Foreign Companies:** In the case of foreign companies, the rate of surcharge on income tax is **2%** of tax if the taxable income of the company exceeds ₹ 1,00,00,000. Similarly, the rate of surcharge on tax to be deducted under Sec. 195 in case of foreign company is 2% of the tax if the income from which tax is deductible at source exceeds ₹ 1,00,00,000.

2.4: Education Cess

- As in earlier years, education cess of 3% (including 2% Primary Education Cess and 1% Secondary and Higher Secondary Education Cess) of income tax and surcharge (if applicable) is payable by all assesses (Residents or non-residents).
- No education cess is applicable on TDS or TCS from payments to all residents (including companies).
- However, if tax is deducted from payments made to (a) foreign companies, (b) non-residents or (c) on salary payments to residents or non-residents, education cess at 3% of the tax and surcharge (if applicable) is to be deducted.

3. Tax Deducted and Collected at Sources (TDS and TCS)

3.1: Section 193: Interest on security

- At present, no tax is required to be deducted at source if interest payable to a resident individual on debentures issued by a listed company **does not exceed ₹ 2,500** in a year.
- **This limit is increased to ₹ 5,000 w. e. f. 01-07-2012.**
- This concession will now apply to debentures issued by unlisted public companies as well as to interest payable to resident HUF.
- The existing exemption in respect of interest paid on debentures issued by listed companies which are held in Demat Account will continue without any limit.
- The **amendment** in this section comes into force on 01-07-2012.

3.2: Section 194J: TDS from fees from Professional or Technical services

- This section is now **amended** w. e. f. 01-07-2012.
- It will now be necessary for a company to deduct tax at source from any remuneration, fees or commission paid or payable to a director, if no tax is deductible under Sec. 192 under the head salary.
- **The rate for TDS is 10%.**
- It may be noted that the manner in which the section is amended indicates that this deduction is to be made irrespective of the quantum of such payment in the year.
- As regards professional fees, technical service fees, royalty, etc. to which this Section applies it is provided that tax is to be deducted only if payment under each head exceeds ₹ 30,000 in the financial year.
- Therefore, in case of payment of fees to non-executive directors and independent directors as 'Director's Fees', the tax at 10% will be deductible even if the total payment in the F.Y. is less than ₹ 30,000 to each of them.

3.3: Section 194LA: Payment of compensation on acquisition of certain immovable property

- At present TDS from compensation on compulsory acquisition of immovable property at **10%** is required to be made if compensation amount exceeds ₹ 1,00,000.
- After the **amendment**, this will now be required to be made if the compensation amount exceeds ₹ 2,00,000 w. e. f. 1-7-2012.

3.4: Section 194LC: Income by way of interest from Indian company

- This is a new section **inserted** in the Income-tax Act w.e.f. 1-7-2012.
- It provides for deduction of tax at the concessional rate of **5% plus applicable surcharge and education cess, in respect of interest paid to a non-resident, other than a foreign company.**
- This interest should relate to **money borrowed by an Indian company from the non-resident at any time on or after 1-7-2012 and before 1-7-2015 in foreign currency from a source outside India.**
- This borrowing should be **(i) under a loan agreement or (ii) by way of issue of long-term infrastructure bonds approved by the Central Government.**

- Further, the rate of such interest should **not exceed the rate approved by the Government** for this purpose.

3.5: Section 201: Failure to deduct tax at source

- Under Sec. 201, a person can be *deemed to be an assessee in default* in respect of **non/short deduction of tax at source**.
- The AO can pass order for this purpose within a period of **4 years from the end of the financial year** in a case where no returns for Tax Deducted at Source have been filed.
- Section 201 is **amended** with *retrospective effect from 1st April, 2010*, to extend the time limit for passing the order under Sec. 201(1) for non/short deduction of tax **from 4 years to 6 years from the end of the F.Y.** in which payment is made or credit is given.

3.6: Section 206C: Tax Collection at Sources (TCS)

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

- (i) In respect of sale of minerals, being coal or lignite or iron ore, tax is to be collected by the seller at the rate of **1% of the sale price**.
- (ii) However, such tax is **not to be collected if the purchase of such goods listed in Sec. 206C(i)** is made by the buyer for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power. For this purpose the buyer of such goods has to give a **declaration in Form No. 37C**.
- (iii) In order to reduce the quantum of cash transactions in bullion or jewellery sector and for curbing the flow of unaccounted money in the trading system, it is now provided that the **seller of bullion or jewellery shall collect from the buyer tax at the rate of 1% of the sale consideration**. For this purpose it is provided that the collection of the above tax of 1% shall be made if the sale price in cash exceeds the following amounts:
 - (a) For *bullion*, if the sale price exceeds **₹ 2,00,000**. It may be noted that for this purpose definition of 'Bullion' *does not include coin or any other article weighing ten grams or less*.
 - (b) For *jewellery*, if the sale price exceeds **₹ 5,00,000**.

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

- (iv) There are certain consequential amendments made in Sec. 206C on the same lines as in Sec. 201. According to these **amendments**, if the seller, who is required to collect tax under this Sec. fails to do so, he will **not** be deemed to be in default if he can establish that the buyer has filed his return under Sec. 139 and paid tax on his income after

considering the goods purchased by him. Consequential provision for reduction in the period for which interest is payable under Sec. 206C is also made.

3.7: No advance tax payable by Senior Citizens under Section 207

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

4. Exemptions and Deductions

4.1: Charitable Trust

- Section 2(15) provides that if the object of advancement of general public utility involves carrying on of any activity in the nature of **trade, commerce or business**, etc. and the aggregate value of the **receipts from such activity exceeds ₹ 25,00,000, the trust will not be considered as charitable trust.**
- New Sub-section (8) has been **inserted** in Sec. 13 and a **proviso has been added** in Sec. 10(23C), with **retrospective effect from A.Y. 2009-10**, to provide that the trust or institution will not be granted exemption only for the year in which such receipts exceed ₹ 25,00,000.
- Such loss of exemption in that year will not affect the registration of the trust or institution under Sec. 12AA. The exemption can be claimed in subsequent years when such receipts do not exceed ₹ 25,00,000.

4.2: Section 10(10D): Deduction of Life Insurance Premium

- At present, **any sum received under a life insurance policy**, including bonus, but *excluding amount received under Keyman Insurance policy*, is **exempt**, provided the premium amount **does not exceed 20% of the actual capital sum assured** in any year during the policy period.
- Now, **this limit is reduced to 10% in the case of an insurance policy issued on or after 1st April, 2012.** Similar **amendment** is made under Sec. 80C, whereby it is provided that deduction in respect of life insurance premium, etc. in the case of insurance policies issued on or after 1st April, 2012 shall be available only in respect of **premium not exceeding 10%** of the actual capital sum assured.
- It may be noted that in respect of **life insurance premium paid on policies issued before 31-3-2012, the old limit of 20% of actual capital sum assured will apply.**
- '**Actual capital sum assured**' is also defined to mean the minimum amount assured under the policy on happening of the specified event at any time during the term of the policy, and excluding the value of any premiums agreed to be returned and benefit of bonus or otherwise over and above the sum actually assured.
- This is done to ensure that **life insurance products are not designed to circumvent the prescribed limit by varying the capital sum assured from year to year.**
- This **amendment** comes into force from A.Y. 2013-14 (Accounting Year ending on 31-3-2013).

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

- (i) This Section has been **amended** w.e.f. A.Y. 2013-14. Simultaneously, Sec. 115U has also been **amended**. Section 10(23FB) provides that a **VCC or VCF registered with SEBI and deriving income from investment in a Venture Capital Undertaking (VCU) is exempt from tax**. VCU is presently defined to mean such domestic company whose shares are *not listed in a recognised stock exchange in India and which is engaged in any one of the nine specified businesses*. VCC and VCF registered with SEBI are *granted a pass-through status and the income in the hands of the investor is taxed* in the like manner and to the same extent as if the investment was directly made by the investor in the VCU.
- (ii) The sectoral restriction that the VCU should be engaged in only the nine specified businesses is now removed. The **definition of VCU** is now **amended** to cover any undertaking referred to in SEBI (Venture Capital Funds) Regulations, 1996. As such **VCC and VCF will be exempt from tax, irrespective of the nature of business carried out by the VCU, as long as it satisfies the conditions imposed by SEBI**.
- (iii) At present, the income received by any VCC/ VCF from VCU, is **taxed on receipt basis in the hands of the investor** and hence could result in deferral of taxation till the income is distributed to the investor. It is now provided that the **income accruing to VCC/ VCF will be taxable in the hands of the investor on accrual basis**.

4.4: Section 10(23BBH)

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

4.5: Section 10(48)

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

4.6: Section 40(a)(ia)

- This section provides for **disallowance of payment to a resident if tax required to be deducted there from has not been deducted** by the assessee.
- By **amendment** of this section it is provided that if the assessee establishes that the resident payee (deductee) has paid tax on this income before furnishing his return of income, the expenditure shall not be disallowed under this section.

- This amendment is made from A.Y. 2013-14 (Accounting Year 2012- 13). **Consequential amendment** is made in **Section 201** to provide, w.e.f. 1-7- 2012, that the payer shall **not be deemed to be in default** if he can prove that the payee has furnished his return under Sec. 139 and paid tax on such amount. However, the payer will have to pay interest from the due date till the date of filing return by the payee.
- This being a *beneficial provision*, it should be made applicable to earlier years also. **This will reduce litigation on this issue.**

[Extra knowledge: *It will be possible to argue that the above beneficial amendment will have retrospective effect in view of decision of CIT v. Virgin Creations, ITA No. 302 of 2011 (Calcutta High Court) in respect of similar amendment in the Section by the Finance Act, 2010.*]

4.7: Section 80C: Deduction in respect of LIP

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

4.8: Section 80CCG: Deduction in respect of investment made under an equity savings scheme

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

- The deduction under this section can be **claimed by an Individual who is a resident, if he acquires listed equity shares in accordance with the scheme to be notified by the Government.** The assessee will be **allowed deduction of 50% of the amount invested subject to the limit of deduction of ₹ 25,000** in the computation of income for the year of investment. It may be noted that this **deduction is not allowable to an HUF.**
- The above deduction is subject to the following **conditions**:
 - The **Gross Total Income** of the assessee for the relevant assessment year **should not exceed ₹ 10,00,000.**
 - The assessee should make the above investment in **retail category specified in the scheme.**
 - The above investment should be in **listed equity shares as specified** under the scheme.
 - There will be **locking period of 3 years** for such investment.
- If the assessee **fails to comply** with any of the **above conditions** in any year, the amount of **deduction allowed in earlier years will be taxable** in that year.

4.9: Section 80D

- Under this section deduction up to **₹ 15,000 is allowed to an assessee (individual or HUF)** for premium paid on mediclaim insurance policy.
- For **senior citizens** the **limit** for deduction is **₹ 20,000.**
- Now it is provided that, effective from Accounting Year 2012-13, if the assessee **makes payment up to ₹ 5,000 in a year for preventive health check-up, deduction will be allowed within the above ceiling limit.**
- Further, age limit for senior citizens is reduced from 65 years to 60 years.

- It is suggested that this **deduction upto ₹ 5,000 should have been allowed over and above the existing ceiling limit of ₹ 15,000 or ₹ 20,000.**
- The limits of **₹ 15,000/20,000 were fixed in the year 2000** and deserve to be enhanced due to increase in medical cost and consequential increase in insurance premium.

4.10: Section 80G and 80GGA

- Deduction for **donation of ₹ 10,000 or more** under these sections will **not be allowed if the same is paid in cash.**
- This provision will apply to donations made in the Accounting Year 2012-13 onwards.

4.11: Section 80IA(4)(iv)

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

4.12: Interest from bank exempt under Section 80TTA

- This is a **new section** which has been introduced effective from A.Y. 2013-14 (Accounting Year ending 31-3-2013).
- Under this section, in the case an **Individual or HUF, interest from savings bank account with a bank, co-operative bank or post office bank up to ₹ 10,000 will not be taxable.**
- This provision will **not apply to interest on fixed deposit** with banks.

4.13: Section 115-O

- In A.Y. 2012-13, *dividend distributed by a company out of the dividend received from its subsidiary company, which has paid Dividend Distribution Tax, is not liable to Dividend Distribution Tax once again.* For this purpose, the **dividend receiving company should not be a subsidiary of any other company.**
- By **amendment** of this section, effective from 1-7-2012, the condition that **"the company is not a subsidiary of any other company"** has now been removed.
- Therefore, any **domestic company** (whether it is a holding company or a subsidiary company) **receiving dividend from its subsidiary or step down subsidiary company** and declaring dividend in the same year out of such dividend amount will be allowed to reduce the amount of such dividend for determining the **liability to Dividend Distribution Tax if the subsidiary or step down subsidiary company has paid Dividend Distribution Tax** that is payable.

5. Income under the head "Profit & Gains of Business or Profession"

5.1: Section 32(1)(iia)

- In A.Y. 2012-13, an assessee engaged in the business of manufacture or production of any article or thing is entitled to **additional depreciation of 20% of the cost of the new plant and machinery in the year of acquisition.**
- But as per **amendment**, from A.Y. 2013-14, this benefit is **now extended to an assessee engaged in the business of generation or generation and distribution of power.**

5.2: Section 35(2AB)

- According to the existing provisions (of A.Y. 2012-13) of Sec. 35 (2AB) **weighted deduction at 200% of expenditure** on approved in-house research and development by a company engaged in the business of biotechnology or in the manufacture of specified articles is **allowable up to 31-3-2012**.
- As per **amendment**, **this benefit is now extended upto 31-3-2017**.

5.3: Section 35AD

- (i) **Investment-linked deduction of 100% of capital expenditure** (excluding expenditure incurred for land, goodwill or financial instrument) is **allowed for certain specified businesses**. In the list of specified businesses, there are **8 types of businesses** in A.Y. 2012-13. With effect from 1-4-2012, **3 new businesses have been added to this list**. These 3 businesses relate to setting up and operating
 - (a) inland container depot, or container freight station,
 - (b) warehousing facility for storage of sugar and
 - (c) beekeeping and production of honey beeswax
 which commence operations on or after 1-4-2012.
- (ii) Further, the above investment-linked **deduction is now enhanced to 150%** of the capital expenditure incurred on or after 1st April, 2012 **in respect of certain specified businesses which commence operations on or after 1-4-2012**. These specified businesses are setting up and operating
 - (a) cold-chain facility,
 - (b) warehousing facility for agricultural produce,
 - (c) building and operating a hospital with at least 100 beds,
 - (d) developing and building affordable housing project and
 - (e) production of fertiliser in India.
- (iii) Further, it is provided that an assessee who builds a hotel of two-star or above category as classified by the Central Government and subsequently, continuing to own the hotel, transfers the operation thereof, the assessee *shall be deemed to be engaged in specified business and will be eligible to claim deduction under Sec. 35AD*. **This amendment has been made with effect from A.Y. 2011-12.**

5.4: Section 35CCC and 35CCD

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

- (i) **Section 35CCC** provides that when an assessee incurs any **capital or revenue expenditure for agricultural extension project notified by the CBDT**, he will be allowed **deduction of 150% of such expenditure**.
- (ii) **Section 35CCD** provides that where a **company incurs expenditure (other than expenditure on any land or building) on any skill development project notified by the CBDT**, it will be allowed **deduction of 150% of such expenditure**.

5.5: Presumptive taxation

- Section 44AD provides for presumptive taxation in respect of non-corporate assessee carrying on **specified businesses and having a total turnover of less than ₹ 60,00,000**.
- Under this section **8% of the total turnover is deemed to be the income from business** subject to certain *conditions*.
- It is now provided that this **section will not apply to a person having income from**
 - a profession,
 - commission or brokerage or
 - any agency business.
- This **amendment** is made effective A.Y. 2011-12.
- The limit of ₹ 60,00,000 for **total turnover is increased to ₹ 1,00,00,000** w.e.f. A.Y. 2013-14 (Accounting Year 2012-13).

5.6: Section 44AB

The limit of **turnover/gross receipts for tax audit** under Sec. 44AB has also been **increased for business to ₹ 1,00,00,000 and for profession to ₹ 25,00,000** w.e.f. A.Y. 2013-14 as discussed in Para [17.2](#) below.

6. Income under the head “Capital Gains”

6.1: Section 47(vii)

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

6.2: Section 49

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

6.3: Section 50D

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

6.4: Section 54B

- Before this **amendment**, the benefit of exemption from capital gain on **sale of agricultural land** is available to the assessee on **reinvestment of such capital gain** for purchase of another new agricultural land within **2 years**.
- One of the conditions is that the land should have been used by the assessee or his parent for agricultural purposes.
- This provision is **amended**, w.e.f. A.Y. 2013-14, to provide that **even if such land was used by the HUF, in which the assessee or his parent was a member, this exemption can be claimed**.

6.5: Section 54GB

This is a **new section** which is inserted w.e.f. A.Y. 2013-14 to provide that *if an Individual or HUF makes capital gains on sale of a residential house or plot, he can claim exemption from Capital Gains Tax if he invests the net consideration in equity shares of a new SME (Small and Medium Enterprise) company*. Such SME company is required to invest this amount in **purchase of new plant and machinery**. This exemption can be claimed subject to the following **conditions**:

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

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

6.6: Section 55A: Reference to valuation officer

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

6.7: Securities Transaction Tax (STT)

- (i) Section 98 of the Finance (No. 2) Act, 2004, providing for rates of STT has been **amended w.e.f. 1-7-2012**. The revised rates of **STT in Cash Delivery Segment are reduced from 0.125% to 0.1%**. Therefore, in the case of *delivery-based transaction relating to equity shares of a company or units of equity oriented fund of a mutual fund entered into through a recognised Stock Exchange*, the STT payable by
 - (a) a **purchaser** is reduced from 0.125% to 0.1% and
 - (b) a **seller** is reduced from 0.125% to 0.1% **w.e.f. 1-7-2012**
- (ii) In order to encourage unlisted companies to get them listed in recognised Stock Exchange, it is now provided that *sale of unlisted equity shares by any holder of such shares, under an offer for sale to the public included in an Initial Public Offer (IPO), if subsequently such shares are listed on the recognised Stock Exchange, will be liable for payment of STT at 0.2%. If such STT is paid, long-term capital gain on such sales will be exempt from tax and tax on short-term capital gain will be payable at concessional rate of 15% under Sec. 111A.*

7. Income under the head “Income from Other Sources”

7.1: Section 56(2)(vii)

- Under this section any gift exceeding ₹ 50,000 in any year received by an Individual or HUF on or after 1-10-2009, is taxable as income from other sources, subject to certain exceptions.
- One of the exceptions is about **gift received from relatives of the individual as defined**. Similar exemption is **not given in respect of gifts from members of HUF**.
- It is now provided, w.e.f. 1-10-2009, that **gifts received by HUF from its members will be exempt**. However, if such a gift is **given by a member to such HUF**, income from the property gifted will be **clubbed with the income of the member** under Sec. 64(2). In order

to mitigate hardship experienced in practical life it is suggested that the following relationship should have been covered in the definition of relatives.

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

7.2: Section 56(2)(viib)

- This is a **new provision inserted** from the A.Y. 2013-14.
- It is now provided that *where a closely held company issues shares to a resident, for **amount received in excess of the fair market value of the shares**, it will be **deemed to be the income of the company under the head 'Income from other Sources'**.*
- The fair market value for this purpose is the **higher of the value arrived at on the basis of the method to be prescribed or the value as substantiated by the company to the satisfaction of the Assessing Officer.**
- The company **can** substantiate the value based on the value of the tangible and intangible assets and various types of **commercial rights as stated in the section.**
- This **provision will not apply to** amounts received by a venture capital undertaking from a venture capital fund or a venture capital company. Further, this **provision will not apply to** amount received from a non-resident, a foreign company or from a class of persons as may be notified by the Government.
- The provision appears to have been made with a view to **ensure that excessive amount, representing revenue payment, is not received in the form of share premium and does not escape taxation.**

7.3: Section 68

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

7.4: Section 115BBD

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

7.5: Section 115BBE

- This is a **new section inserted** from A.Y. 2013-14.
- The section provides that unexplained amounts treated as income
 - (i) Under Sec. 68: Cash credits,
 - (ii) Under Sec. 69: Unexplained investment,
 - (iii) Under Sec. 69A: Unexplained money, bullion, jewellery or other valuable articles,
 - (iv) Under Sec. 69B: Amount of investments, expenditure on jewellery, bullion or other valuable articles not fully disclosed in books,
 - (v) Under Sec. 69C: Unexplained expenditure, and
 - (vi) Under Sec. 69D: Amount borrowed or repaid on a Hundi in cash,

will now be taxed at a flat rate of 30% plus applicable surcharge and education cess. No deduction for any expenditure or allowance will be allowed against such income.

8. Minimum Alternate Tax (Section 115JB)

8.1: Amended provisions related to income arises from life insurance business

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

8.2 Amended provisions related to Insurance, Banking and Electricity Company

- (i) The section is **amended** w.e.f. A.Y. 2013-14 to provide that in the case of a company, such as insurance, banking, electricity company, etc., for which the **Form of Profit & Loss A/c. and Balance Sheet is prescribed in the Act governing such companies**, the **book profit shall be determined on the basis of the Form of Profit & Loss A/c. prescribed under that Act**. Further, it is provided that in **respect of companies to which the Companies Act applies**, the **book profit will be computed on the basis of the revised format of Schedule VI**.
- (ii) By **another amendment** of this section effective from A.Y. 2013-14, it is now provided that **the book profit will be increased by the amount standing to the credit of revaluation reserve relating to re-valued asset which has been discarded or disposed of, if the same is not credited to the Profit & Loss A/c.** This amendment is in order to cover cases in which revaluation reserve is directly transferred to general reserve on disposal of asset resulting in the gain that is not being included in the computation of book profits up to now.

9. Alternate Minimum Tax (AMT)

9.1: Amendment related to adjusted total income

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

9.2: Other amendments in Alternate Minimum Tax

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

- The provisions of Section 115JC will **now apply to LLP and all other non-corporate assessees** i.e., individual, HUF, AOP, BOI, Firm, etc. As provided in Section 115JC the assessees will have to **obtain audit report in the prescribed form before the due date.**
- In the case of an individual, HUF, AOP, BOI or Artificial Juridical person, **AMT will not be payable if the adjusted total income does not exceed ₹ 20,00,000.** (Section 115JEE)
- AMT is payable at **18.5% plus applicable surcharge and education cess of the adjusted total income** if the amount of **such tax is more than the tax payable on the total income** computed under other provisions of the Income-tax Act.
- Adjusted total income is defined to mean the total income computed under the Income-tax Act increased by
 - deductions claimed under Chapter VIA (section C) i.e., 80HH to 80 RRB (other than section 80P) and
 - deduction claimed under Sec. 10AA (SEZ income).
- Other provisions of sections
 - Section 115JD for tax credit for AMT paid for 10 years,
 - Section 115JE applicability of other sections of the Income-tax Act and
 - Section 115JF - Definitions will continue to apply to LLP and also to other noncorporate assessees to whom sections 115JC and 115JEE for payment of AMT apply.

10. Specified Domestic Transaction

- Section 40A(2)** of the Income-tax Act, 1961 empowers the **AO to disallow payment** to a related person for expenditure, if he **considers that such expenditure is excessive or unreasonable**, having regard to the fair market value of the goods, services or facilities for which **such payment is made and claimed as a deduction** in the computation of income.
- Similarly, Sections 10AA, 80A, 80IA, 80IB, etc. provide that if there are **any transactions of purchases, sales, etc. between two related persons**, the AO can apply **the test of fair market value and make adjustments** in the computation of income. In all these sections, **the concept of 'fair market value' has not been specifically explained.**
- Therefore, the Supreme Court in the case of ***CIT v. Glaxo Smithkline Asia (P) Ltd. , 195 Taxman 35 (SC)*** observed that *in order to reduce litigation, Sections 40A(2) and 80IA(10)*

need to be amended to empower the AO to make adjustments to the income declared by the assessee, having regard to the market value of the transactions between related parties, by applying any of the generally accepted methods for determination of Arm's-Length Price (ALP), including methods provided under Transfer Pricing Regulations.

- In view of the above, amendments are made in Sections 40A(2), 10AA, 80A and 80IA to provide that the **'Specified domestic transactions' will now be subject to Transfer Pricing Regulations** contained in Sections 92, 92BA to 92F - from A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013).
- In brief, the effect of these provisions, from A.Y. 2013-14 (1-4-2012 to 31-3-2013) onwards will be as under.

10.1: Section 92BA: Definition of “Specified Domestic Transaction”

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

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

10.2: Non-applicability of transfer pricing provisions

- It is also provided that the **Transfer Pricing provisions will not apply if the aggregate amount relating to the above transactions entered into by the assessee, in the relevant accounting year, does not exceed ₹ 5,00,00,000.**
- It is **not clear from the wording of the above section** whether *such aggregate amount is to be worked out by considering the amount of expenditure, purchases, sales, etc. under all the above sections taken together or whether the aggregate amount under each section i.e., Sec. 40A(2), 80A, 80IA, 10AA, etc. is to be separately worked out in order to determine the limit of ₹ 5,00,00,000 provided in the section.*

10.3: Section 40A(2)

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

- This section **applies to the computation of 'Income from Business or Profession' and 'Income from other Sources'**.
- This section is now **amended** to provide that *the fair market value for any payment to which the concept of specified domestic transaction applies shall be determined on the basis of arm's-length price concept as provided in Sections [92C](#) and 92F(ii)*.

10.4: Section 80A

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

10.5: Section 80IA

Section 80IA(8) and 80IA(10) are amended w.e.f. A.Y. 2013-14 as under:

(1) Section 80IA(8):

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

(2) Section 80IA(10)

- This section provides that where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business and any other person, the **course of business between them is so arranged that the profits of the eligible business for which 100% deduction is allowed under Sec. 80IA** is shown at a figure

higher than the ordinary profits in such business, the **AO can re-compute the profits of the eligible business for deduction under Sec. 80IA.**

- The section is now **amended** to provide that, if the above arrangement between closely **related parties** involves specified domestic transactions, the **AO shall compute the profit of the eligible business having regard to the arm's-length price concept** as defined in Section 92F(ii).

(3) Other sections:

- It may be noted that the provisions of Section 80IA(8) and 80IA(10) apply to certain other sections of the Income-tax Act also.
- These sections provide for deduction of income derived from various specified activities.
- In respect of transactions with related parties for claiming deduction from income, the above concept of arm's-length price as applicable to specified domestic transactions will apply.

10.6: Other related amendments in Sec. 80IA(8) and 80IA(10)

Since the concept of arm's-length price is now extended to Section 80IA(8) and 80IA(10), this concept will apply to transactions between related parties in computing income under the following sections:

- **Section 10AA:** Income from newly established units in SEZ.
- **Section 80IAB:** Income of an undertaking or enterprise engaged in the development of SEZ.
- **Section 80IB:** Income from certain industrial undertakings and housing projects, etc. (other than infrastructure development undertakings).
- **Section 80IC:** Income from certain undertakings set up in certain States such as Sikkim, Himachal Pradesh, Uttarakhand, North-Eastern States, etc.
- **Section 80ID:** Income from hotels and convention centres set up in National Capital Territory of Delhi, and Districts of Faridabad, Gurgaon, Gautam Buddha Nagar and Ghaziabad and other specified districts having 'World Heritage Site'.
- **Section 80IE:** Income from eligible business undertakings in North- Eastern States.

10.7: Other Transactions

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

10.8: Effect of arm's-length price concept

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

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

- (2) **Section 92C:** This section deals with computation of ALP in relation to international transactions. As stated above, this concept is now extended to specified domestic transactions. The section provides for **six alternate methods for determination of ALP**.
- (3) **Section 92CA:** This section provides for reference by AO to the Transfer Pricing Officer (TPO). Such reference is to be made if the aggregate value of **international transactions exceed ₹ 5,00,00,000**. The TPO is given wide powers. **The order passed by the TPO is binding on the AO and the AO has to complete the assessment in conformity with the order of the TPO**. This section has now been **amended** and it is now provided that such **reference is to be made by the AO to the TPO even in cases where the assessee has entered into specified domestic transactions**. Since, Section 92BA states that **transactions with related parties aggregating ₹ 5,00,00,000 or more will be considered as specified domestic transactions**, all cases in which these transactions are involved will have to be referred to the TPO.
- (4) **Section 92D:** This section provides for **maintenance and keeping of information and documents** by persons entering into international transactions. This section is made applicable to specified domestic transactions. Therefore, all assessee who enter into specified domestic transactions, as stated above, will have to maintain the information and documents specified in this section. It may be noted that **these records and documents will have to be maintained w.e.f. 1-4-2012, in the manner prescribed in Rule 10D**.
- (5) **Section 92E:** This section requires that an assessee entering into international transactions **has to obtain report from a Chartered Accountant in the prescribed Form No. 3CEB before the due date for filing the return of income**. This requirement is now **extended to specified domestic transactions** from the A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013).
- (6) **Section 92F:** This section gives **definition of certain terms**. The following definitions are relevant in the context of specified domestic transactions.
- (a) **'Arm's-length price':** This term means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.
- (b) **'Transaction':** This term includes an arrangement, understanding or action in concert, whether or not it is formal or in writing or whether or not it is intended to be enforceable by legal proceedings.
- (7) **Penalty under Sec. 271 and 271AA:** By **amendment of Explanation 7 of Section 271**, it is now provided that penalty under that Section will be leviable in respect of amount **disallowed out of the above specified domestic transactions under Sec. 92C(4)**. Similarly, **penalty @ 2%** of the amount can also be levied under Sec. 271AA for not maintaining records under Sec. 92D or not reporting such transactions under Sec. 92E or furnishing incorrect information.

11. Taxation of non-residents

11.1: Important points to understand taxation of non-residents

- Some of the sections dealing with taxation of non-residents have been amended with retrospective effect.
- These amendments will have far reaching effect.

- While presenting the Budget the Finance Minister has not made any mention about these far-reaching changes affecting non-residents in his Budget Speech.
- However, in the Explanatory Memorandum attached to the Finance Bill, 2012, the reasons for these retrospective amendments have been explained.

11.2: Effect of the amendments

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

11.3: Section 2(14)

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

11.4: Section 2(47)

- This section defines the word '**Transfer**' in relation to a capital asset.
- This is an **inclusive definition** and includes **transfer of a capital asset** by way of sale, exchange, relinquishment, or extinguishment of rights in the asset, compulsory acquisition of the asset, etc.
- Now a new **Explanation is added w.e.f. 1-4-1962** to clarify that the word '*Transfer*' *shall include, and shall be deemed to have always included, disposing of, parting with an asset or any interest therein, or creating any interest in any asset, directly, indirectly, absolutely, conditionally, voluntarily or involuntarily*.

- Such transfer may be by **agreement made in India or outside India**.
- This is irrespective of the fact that such transfer has been characterised as **being effected, dependent upon or following from the transfer of shares of an Indian or foreign company**.
- This will show that **if any interest is created in the shares of an Indian or foreign company** by agreement or even an action, it will be **considered as a 'transfer' of capital asset** under Sec. 2(47).

11.4: Section 9

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

- (i) In **Section 9(1)(i)** it is stated that any income shall be deemed to accrue or arise if it accrues or arises, directly or indirectly 'Through' or 'From'
 - (a) any business connection in India,
 - (b) any property in India
 - (c) any asset or source of Income in India or
 - (d) the transfer of a capital asset situated in India.

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

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

This concept is **explained in various other sections in the Income tax** in different manner. This will be evident from reference to substantial interest in the following sections.

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

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

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

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

11.6: Section 9(1)(vi): Royalty

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

- (i) **New Explanation 4 is now added** to provide that the transfer of any rights in respect of any right, property or information includes all or any right for use or right to use **computer software (including granting of a licence) irrespective of the medium through** which such right is transferred.
- (ii) **New Explanation 5 now provides** that '**Royalty**' includes consideration in respect of any right, property or information, whether or not
 - (a) the possession or control of such right, etc. is with the payer,
 - (b) such right, etc. is used directly by the payer, or
 - (c) the location of such right, etc. is in India.
- (iii) **New Explanation 6 now provides** that the expression '**Process**' used in Section 9(1)(vi), includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic-fiber or by any other similar technology. This is irrespective of the fact whether such process is a secret process or otherwise. It appears that this provision has been made to overrule the decision of the Delhi High Court in the case of *Aasia Satellite Telecommunication Co. Ltd. v. DIT*, 332 ITR 340 (Del.).

Some points related to above amendments – a comparative analysis:

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

11.7: Section 90 and 90A

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

- (i) **New Section 90(2A) is inserted** w.e.f. 1-4-2013 (A.Y. 2013-14) to provide that the provisions of **new Sections 95 to 102 dealing with General Anti-Avoidance Rule (GAAR)** will be applicable even if the provisions of DTAA are more favourable to the assessee. In other words, **where GAAR is invoked, the assessee cannot seek protection of beneficial provisions of DTAA. Similar amendment is made in section 90A also.**
- (ii) **New Section 90(4) is inserted** w.e.f. 1-4-2013 (A.Y. 2013-2014) to provide that a **non-resident cannot claim benefit of DTAA unless a certificate in the Form prescribed by the CBDT is obtained from the foreign country with which the Indian Government has entered into the DTAA.** In this certificate such foreign country will have to certify the place of residence of the non-resident and such other particulars which the Indian Tax Department may require to decide whether the **benefit claimed under a particular DTAA is available** to the non-resident assessee. **Similar amendment is made in section 90A.**
- (iii) **New Explanation 3 is inserted** in Section 90 w.e.f. 1-10-2009 to provide that any meaning assigned through Notification under Sec. 90(3) to a term used in DTAA shall be effective from the date of coming into force of the applicable DTAA. **Similar amendment is made in Section 90A w.e.f. 1-6-2006.**

11.8: Section 195

- (i) This section provides for deduction of tax at source (TDS) in the case of payments made to non-residents. This section is now **amended with retrospective effect from 1-4-1962**. By this amendment it is provided in the **new Explanation 2** that the obligation to **comply with TDS provisions will apply, with retrospective effect, to all persons whether resident or non-resident**. So far Section 195 was understood to put the obligation for TDS on residents and non-residents **who have a permanent establishment in India and who make payments to non-residents of Income taxable under the Income-tax Act**. Now, w.e.f. 1-4-1962, the obligation is extended to a non-resident person who has
 - (a) residence or place of business or business connection in India, or
 - (b) any other presence in any manner whatsoever in India.

It may be noted that the **obligation for deducting tax at source (TDS) is never made under Chapter XVII** of the Income-tax Act (Sections 192 to 194, 194A to 194CC and 195) with retrospective effect.

All these provisions for TDS, whenever **introduced or amended, are from prospective dates to enable the payer to comply with the same**. Even in the Finance Act, 2012, such provisions for TDS or amendments are made in **Sections 193, 194E, 194J, 194LA, 194LC and 195(7) only w.e.f. 1-7-2012**.

However, only **Explanation 2 has been inserted** in Section 195(1) with retrospective effect from 1-4-1962. By putting such obligation to deduct tax on certain non-residents who were not covered by the section earlier will create practical difficulties for them. **It may not be possible to deduct tax from payments covered by section 195 for earlier years and they may be saddled with huge Interest liabilities and other penal consequences under the Income-tax Act.**

TDS provisions in Chapter XVII puts an obligation on the payer of any amount to collect tax due by the payee and pay to the Government. This obligation is in the nature of vicarious liability. It is a well-settled principle of law that such vicarious liability cannot be saddled on a person with retrospective effect.

- (ii) **New Section 195(7) inserted** in w.e.f. 1-7-2012. By this amendment it is provided that the CBDT may, by Notification specify a class of persons or cases where the **person responsible for paying to a non-resident, any sum, whether, chargeable to tax or not, can make an application to the AO to determine the appropriate proportion of sum chargeable to tax.** On such determination tax will be deductible under Sec. 195(1) on that portion of the amount. Such determination by the AO may be by a **general order applicable to all similar payments or may be specific order applicable to one specific transaction.**

11.9: Section 163

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

11.10: Section 119 of the Finance Act, 2012

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

11.11: Section 115A

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

11.12: Section 115BBA

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

11.13: Tax on Long Term Capital Gain

- **Section 112** has been **amended** from A.Y. 2013-14 to provide that, in the case of a non-resident or a foreign company, capital gains tax payable on transfer of a long-term capital asset, being shares or securities which are not listed on the Stock Exchange shall be **10%.**

- For this purpose the long-term capital gain is to be computed without indexation or without taking advantage of foreign currency rate differences provided in Section 48.

12. Transfer Pricing Provisions

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

12.1: Section 92B

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

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

12.2: Section 92C

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

- (ii) Further, Section 92C is amended by **insertion of sub-section (2A) with retrospective effect** from 1-4-2002. The amendment is stated to be of a **clarificatory nature**. The effect of this amendment is that, *in respect of first proviso to Section 92C(2), as it stood before its substitution by the Finance (No. 2) Act, 2009, the tolerance band of 5% is not to be taken as a standard deduction while computing ALP*. However, it is also clarified that already concluded assessment proceedings **should not be reopened or rectified on the ground of retrospective amendment**.
- (iii) Section 92C(2) is also amended with retrospective effect from 1-10-2009. This **amendment clarifies** that the **second proviso to Section 92C(2)** shall also be applicable to all proceedings which were pending as on 1-10-2009 i.e., the date on which the second proviso, as inserted by the Finance (No. 2) Act, 2009, came into force.
- (iv) It may be noted that, as stated above, Section 92C **now applies to specified domestic transactions also from A.Y. 2013-14**.

12.3: Section 92CA

- (i) This section deals with **reference by the AO to the Transfer Pricing Officer (TPO) in specified cases involving Transfer Pricing issues**. Sub-section (2B) has now been inserted with retrospective effect from 1-6-2002. It is provided by this amendment that *if the assessee has not furnished the audit report under Sec. 92E in respect of an international transaction and such transaction comes to the notice of the TPO, during the course of proceedings before him, it will be possible for the TPO to consider this transaction as if it has been referred to him by the AO*. It is also provided in new sub-section (2C) that the AO shall not have power to reopen or rectify any assessment proceedings which have been completed before 1-7-2012.
- (ii) As stated above, this section is **now applicable to specified domestic transactions from A.Y. 2013-14**. This will mean that *assesses who have entered into specified domestic transaction exceeding ₹5,00,00,000 in the accounting year 2012-13 onwards will have to appear before the AO as well as the TPO*.

13. Advance Pricing Agreement

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

13.1: Provisions of Section 92CC

- (1) The **CBDT, with the approval of the Central Government, can enter into an APA with any person (assessee)** determining the arm's-length price or specifying the manner in which such ALP is to be determined. **This APA will relate to an international transaction to be entered into by that person.**
- (2) The manner in which ALP is to be determined in the above APA may include any of the methods referred to in Section 92C(1) or any other method, **with such adjustments or variations, as the assessee and the CBDT agree upon.**

- (3) Once **APA is entered into by the CBDT with the assessee**, the ALP for the international transaction, stated in APA, will be determined on that basis and **the AO cannot invoke the provisions of Sections 92C and 92CA.**
- (4) APA referred to above shall be valid for such period not exceeding 5 years as specified in the APA.
- (5) The above APA shall be binding on
 - (a) the person in whose case and in respect of the transaction stated in the APA and
 - (b) the Income tax Authorities in respect of the party to the APA for the transaction specified therein.
- (6) The above APA shall not be binding if **there is change in the law or facts relating to the APA.**
- (7) The **CBDT**, with the approval of the Government, **can declare the APA as void abinitio, if it finds that the APA has been obtained by the assessee by fraud or misrepresentation of facts.**
- (8) If the APA is declared as void by the CBDT, all the provisions of the Act shall apply as if such agreement was not entered into. For the purpose of taking any action against the assessee, in view of the cancellation of APA, **the period from the date of the APA to the date of its cancellation will not be counted for determining the limitation period.**
- (9) The CBDT will prescribe a scheme for the **procedure to be followed for entering into the APA.**

13.2: Effect of the APA entered into by an assessee is explained in the new Section 92CD

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

- (i) Where APA has been entered into by an assessee, the Income-tax return which pertains to a previous year covered under the above agreement and is already filed, **the assessee has to file a modified return of income under Sec. 139 in accordance with and limited to the APA.** This **modified return** has to be filed **within 3 months from the end of the month in which APA is entered into.**
- (ii) Once the modified return of income is filed, the **AO will have to assess, reassess or re-compute the income, irrespective of the fact whether the assessment/reassessment proceedings are over or not, in accordance with the APA.**
- (iii) Where the assessment proceedings are completed, the **reassessment proceedings are to be completed within one year from the end of the financial year** in which modified return of income is filed. If the assessment proceedings are pending, **the period of limitation for completion of these proceedings will be extended by 12 months.**

13.3: Important points from Section 92CC and 92CD

- Considering the wording of Sections **92CC** and **92CD** and the intention of the legislation, it will be possible for any assessee, **who has already entered into international transactions in the earlier years**, to approach the CBDT after 1-7-2012 to enter into APA in respect of such transactions already entered into in the past.
- This will enable the assessee to apply to the AO that the **pending assessments may be completed** on the basis of APA.

- It appears that *even if any appeals are pending for any of the earlier years, the assessee will be entitled to withdraw the appeals and approach the AO to make reassessment or re-computation of income for those years in accordance with APA.*
- For this purpose, the assessee should ensure that **the APA covers all the earlier years for which disputes are pending.**

13.4: Other important points

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

14. General Anti-Avoidance Rule (GAAR)

14.1: Concept and understanding of GAAR

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

14.2: Reason why GAAR applied

- The reasons for introducing GAAR provisions in the Income-tax Act are explained in the Explanatory Notes attached to the Finance Bill, 2012.
- Although GAAR, earlier was part of Direct Tax Code which was already set to applicable in the A.Y. 2013-14, but Finance Minister delayed that and that's why, GAAR is part of Income-tax Act, 1961.

14.3: How GAAR applied?

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

14.4: GAAR provision

- For the reasons stated by the Finance Minister, **special provisions relating to GAAR have been made in Sections 95 to 102** in the Income-tax Act from **A.Y. 2014-15 (Accounting Year ending 31-3-2014) and onwards.**

- **These provisions apply to all assesses (residents or non-resident)** in respect of their transactions in India as well as abroad.
- Very wide **powers are given to the tax authorities** to disregard any agreement, arrangement or any claim for expenditure, deduction or relief.
- These provisions, broadly stated are discussed below.

14.5: Section 95

- This section provides that an arrangement entered into by an assessee may be **declared to be an impermissible avoidance arrangement**.
- The tax arising from such declaration by **the tax authorities, will be determined subject to provisions of Sections 96 to 102**.
- It is also stated in this section that the **provisions of Sections 96 to 102 may be applied to any step, or a part of the arrangement as they are applicable to the entire arrangement**.

14.6: Section 96: Impermissible Avoidance Arrangements

- (i) Section 96 explains the meaning of *Impermissible Avoidance Arrangement* to mean an **arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit** and it
 - (a) creates rights or obligations which would not ordinarily be created between persons dealing at arm's length.
 - (b) results, directly or indirectly, in misuse or abuse of the provisions of the Income-tax Act, 1961
 - (c) lacks commercial substance, or is deemed to lack commercial substance under Sec 97, or
 - (d) is entered into or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.
- (ii) The Finance Bill, 2012, provided in the Section that an arrangement whereby there is any tax benefit to the assessee shall be presumed to have been entered into or carried out for the **main purpose of obtaining tax benefits, unless the assessee proved otherwise**. It will be noticed that this **was a very heavy burden cast on the assessee. However, this requirement has now been deleted** and, as declared by the Finance Minister, the *onus (responsibility) of proof is now on the Department who has to establish that the arrangement is to avoid tax before initiating the proceedings under these provisions*.

14.7: Section 97: Lack of Commercial substance

- (i) Section 97 explains the **concept of lack of commercial substance in an arrangement entered into by the assessee**. It states that an arrangement shall be deemed to lack commercial substance if
 - (a) The substance or effect of the arrangement, as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part of such steps.
 - (b) It involves or includes
 - Round-trip financing
 - An accommodation party,
 - Elements that have the effect of offsetting or canceling each other, or

- A transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction, or
- (c) It involves the location of an asset or a transaction or the place of residence of any party which is without any substantial commercial purpose. In other words, the particular location is disclosed only to obtain tax benefit for a party.
- (ii) For the above purpose, it is provided that round-trip financing includes any arrangement in which through a series of transactions –
 - (a) Funds are transferred among the parties to the arrangement, and
 - (b) Such transactions do not have any substantial commercial purpose other than obtaining tax benefit.
- (iii) It is further stated that the above view will be taken by the Tax Authorities without having regard to the following:
 - (a) Whether or not the funds involved in the round-trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement,
 - (b) The time or sequence in which the funds involved in the round trip financing are transferred or received, or
 - (c) The means by, manner in, or mode through which funds involved in the round-trip financing are transferred or received.
- (iv) The party to such an arrangement shall be treated as 'Accommodating Party' whether or not such party is connected with the other parties to the arrangement, if the main purpose of, direct or indirect, participation of such party with the arrangement is to obtain, direct or indirect, tax benefit under the Income-tax Act.
- (v) It is clarified in the section that the following factor shall not be taken into consideration for determining whether there is commercial substance in the arrangement:
 - (a) The period or time for which the arrangement exists.
 - (b) The fact of payment of taxes, directly or indirectly, under the arrangement.
 - (c) The fact that an exist route, including transfer of any activity, business or operations, is provided by the arrangement.

14.8: Section 98: Consequence of impermissible avoidance arrangement

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

- (1) Disregarding, combining or re-characterising any step in, or part or whole of the impermissible avoidance arrangement;
- (2) Treating, the impermissible avoidance arrangement as if it had not been entered into or carried out;
- (3) Disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

- (4) Deeming persons who are connected persons in relation to each other to be one and the same person;
- (5) Re-allocating between the parties to the arrangement, (a) any accrual or receipt of a capital or revenue nature or (b) any expenditure, deduction, relief or rebate;
- (6) Treating
 - (a) the place of residence of any party to the arrangement or
 - (b) sites of an asset or of a transaction at a place other than the place or location of the transaction stated under the arrangement.
- (7) Considering or looking thorough any arrangement by disregarding any corporate structure.
- (8) It is also clarified that for the above purpose that Tax Authorities may re-characterise
 - (a) any equity into debt or any debt into equity,
 - (b) any accrual or receipt of capital nature may be treated as of revenue nature or vice versa or
 - (c) any expenditure, deduction, relief or rebate may be re-characterised.

14.9: Section 99

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

- (i) The parties who are connected person, in relation to each other, may be treated as one and the same person.
- (ii) Any accommodating party may be disregarded.
- (iii) Such accommodating party and any other party may be treated as one and the same person.
- (iv) The arrangement may be considered or looked through by disregarding any corporate structure.

14.10: Section 100 and 101

- It is further provided in section 100 that the provisions of Sections 95 to 102 shall apply in addition to, or in lieu of, any other basis for determination of tax liability.
- Section 101 gives power to the CBDT to prescribe the guidelines and lay down conditions for application of Sections 95 to 102 relating to the General Anti-Avoidance Rules (GAAR).
- Let us hope that these guidelines will specify the type of arrangements and transactions in relation to which alone the Tax Authorities have to invoke the provision of GAAR.
- Further, it is necessary to specify that if the tax benefit sought to be obtained by any arrangement is say ₹ 5,00,00,000 or more in a year, then only the Tax Authorities will invoke these powers.

14.11: Section 102

This section defines words or expressions used in Sections 95 to 102 as stated above. (For more information see Bare Act.)

14.12: Section 144BA

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

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

14.13: Consequence for assessee engaged in the business with Indian or foreign parties

GAAR is not restricted to only business transactions. Therefore, all other assesseees who are engaged in business or profession or who have no income from business or profession will be affected by these provisions. It appears that any assessee having any arrangement, agreement, or transaction with an associated person will have to take care that the same is at arm's length consideration.

In particular, an assessee will have to consider the implications of GAAR while

- (a) executing a will or trust,
- (b) entering into partnership or forming LLP,
- (c) taking controlling interest in a company,

- (d) carrying out amalgamation of two or more companies,
- (e) effecting demerger of a company,
- (f) entering into a consortium or joint venture,
- (g) entering into foreign collaboration, or
- (h) acquiring an Indian or foreign company.

It may be noted that **this is only an illustrative list and there may be other transactions which may attract GAAR provisions.**

14.14: Arrangement prior to 01-04-2013

- From the wording of the above provisions of Sections [95](#) to [102](#) and [144BA](#) it appears that the provisions of GAAR can be invoked in respect of an arrangement made prior to 1-4-2013.
- The CIT or the Approving Panel can hold any such arrangement entered into prior to 1-4-2013 as impermissible and direct the AO to make adjustments in the computation of income or tax in the A.Y. 2014-15 or any year thereafter.
- As stated in para 14.15 of the report of the Standing Committee on Finance on the DTC Bill, 2010, it would be fair to apply GAAR provisions prospectively, so that it is not made applicable to existing arrangements/transactions.
- It may be noted that no such provision is made in sections 95 to 102 and 144BA and, therefore, it can be presumed that the above GAAR provisions will have retroactive effect.

14.15: Guideline will be issued by CBDT

- In Section 101 it is stated that the CBDT will issue guidelines to provide for the circumstances under which GAAR should be invoked.
- Let us hope that these guidelines will specify that GAAR provisions will apply to all arrangements or transactions entered into after 1-4-2013 and also the type of arrangements or transactions to which GAAR will apply.
- It is also necessary to specify that GAAR provisions will be invoked if the tax sought to be avoided is more than ₹ 5,00,00,000 in any one year.
- This is also suggested by the Standing Committee on Finance in their report on the DTC Bill, 2010. As regards the procedure for invoking GAAR, section 144BA(4) provides that if the CIT agrees with the view of the AO to invoke GAAR, he should refer the matter to an Approving Panel.
- Under Sec. 144BA(14) it is provided that the CBDT will appoint an Approving Panel consisting of two members of the level of Commissioners and one Law Officer.
- As suggested by the above Standing Committee in their report on the DTC Bill, 2010, such Panel should consist of a Chief Commissioner and two independent technical persons.

15. Assessment, re-assessments and appeals

15.1: Section 139: Return of Income

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

- (a) If the person has any asset located outside India. This will mean that if the person owns any immovable property outside India, any shares in a foreign company, any bank account or other assets outside India, he will have to file return even if the total income is below the taxable limit.
- (b) If the person has any financial interest in any entity in a foreign country. This will mean that if the person is a beneficiary in any specific or any discretionary foreign trust, he will have to file his return of income whether he has received any benefit from the trust or not.
- (c) If the person has signing authority in any account located outside India.
- (ii) The above provision applies to a company, firm, individual, HUF or any non-corporate entity who is a resident and ordinarily resident. Such person will have to file return of income for the accounting year 1-4-2011 to 31-3-2012 (A.Y. 2012-13) and onwards. It may be noted that in a case where the person (whether resident or non-resident) has taxable income in India, he will have to give information about the above items in the form of return of income prescribed for A.Y. 2012-13.
- (iii) At present, the due date for furnishing the return of income in the case of an assessee, being a company is required to file Transfer Pricing Report under Sec. 92E, is 30th November. It is now provided that the extended time limit up to 30th November will apply to all assesseees who are required to file Transfer Pricing Report under Sec. 92E. This amendment will come into force from A.Y. 2012-13.

15.2: Section 143: Procedure of Assessment

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

15.2: Section 144C: Reference to DRP

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

- (ii) Further, it is also clarified that the enhancement in time limit for computation of assessment, provided in this section 144C(13), will apply to time limit provided u/s.153 as well as under Sec. 153B w.e.f. 1-10- 2009.
- (iii) It may be noted that from A.Y. 2013-14, cases in which specified domestic transactions are there will now be referred to TPO. Therefore, the above procedure of making draft order and reference to DRP will apply in such cases also.

15.3: Section 147 and 149: Re-assessment of income

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

- (i) At present, the time limit for reopening assessments is 6 years. In a case where assessment is made u/s.143(3) and the income-escaping assessment is not due to failure of the assessee to disclose fully and truly all material facts necessary for assessment for that year, the time limit for reopening is 4 years. This time limit is now enhanced in specified cases.
- (ii) It is now provided that if the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any year, the time limit for reopening the assessment shall be 16 years. For this purpose, where a person is found to have any asset or any financial interest in any entity located outside India, shall be deemed to be a case where income chargeable to tax has escaped assessment. This provision will apply to a resident or a non-resident. In the coming years, this provision will have far-reaching implications.
- (iii) It is now provided that if a person has failed to furnish the Transfer Pricing Report u/s.92E in respect of any international transaction, income shall be deemed to have escaped assessment. In such a case the AO can send notice for reopening assessment within the prescribed period.
- (iv) Similar amendments are made in the Wealth Tax Act also.
- (v) Reading the above provisions, it appears that in a transaction similar to the case of the famous VODAFONE the assessments of a foreign company which has made taxable capital gains or other income can be reopened for 16 years instead of 6 years as in such cases some assets will be located outside India.

15.5: Section 153 and 153B: Time limit of completion of assessment

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

Time limit for completing Assessments

Proceeding under Sec.	Earlier time limits for completion of assessment	Revised time limits (w.e.f. 01-07-2012)
143	21 months from end of A.Y.	24 months
143 read with 92CA	33 months from end of A.Y.	36 months
148	9 months from end of F.Y. in	12 months

	which notice is issued	
148 read with 92CA	21 months from end of F.Y. in which notice is issued	24 months
250, 254 or 263	9 months from end of F.Y. in which order is passed	12 months
250, 254 or 263 read with 92CA	21 months from end of F.Y. in which order is passed	24 months

15.6: Section 153A and 153C: Assessment in case of search requisition

- These sections are amended w.e.f. 1-7-2012.
- Sections 153A and 153C of the Act lay down the procedure for assessment/reassessment in case of search or requisition.
- Presently, the notice for filing of returns of income and assessment thereof has to be given for six assessment years preceding the previous year in which the search was conducted or requisition made.
- It is now provided that the Central Government can notify cases or class of cases where the Assessing Officer shall not be required to issue notice for initiation of assessment / reassessment proceedings for six preceding assessment years and proceedings may only be taken up for the assessment year relevant to the year of search or requisition.

15.7: Section 154 and 156

- (i) These sections have been amended w.e.f. 1-7-2012. A statement of tax deduction at source is processed u/s.200A and an intimation is sent to the deductor as provided u/s.200A(1). At present, there is no provision for rectification or appeal against the said intimation.
- (ii) It is now provided that any mistake apparent from the record in the intimation issued u/s.200A shall be rectifiable u/s.154. It is also provided that the intimation issued u/s.200A shall also be deemed to be a notice of demand u/s.156 and an appeal can be filed with the Commissioner of Income-tax (Appeals) u/s.246A.
- (iii) In actual practice there is considerable delay in passing order u/s.154 for rectification of mistake in any order passed by the AO. It is, therefore, suggested that section 246A should be amended to provide that if rectification order is not passed by the AO within 6 months of filing such application the assessee will have a right to file appeal to the CIT(A). It may be noted that similar provision is made in clause 178 of the DTC Bill, 2010.

15.8: Section 245C: Settlement commission

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

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

- This Section is **amended** w.e.f. 1-4-2013 (A.Y. 2013-14).

- By this amendment it is provided that an **assessee can approach the AAR for determination or decision whether an arrangement which is proposed to be undertaken by any person** (resident or non-resident) is an impermissible arrangement as provided in Sections 95 to 102.
- This will enable the person entering into an arrangement to get an Advance Ruling from AAR **if he apprehends that the AO may invoke GAAR provisions** during assessment proceedings.
- As suggested earlier, this provision should be made available **to persons entering into specified domestic transactions** under Sec. 92BA.

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

- Fees for filing an application before the Authority for Advance Ruling is increased from ₹ 2,500 to ₹ 10,000 w.e.f. 1-7-2012.
- The CBDT is now given power to increase or reduce the amount of fees from time to time by prescribing the necessary rule for this purpose.

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

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

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

15.12: Section 253: Appeal before ITA Tribunal

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

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

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

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

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

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

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

16. Penalties and prosecution

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

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

16.2: Section 271: Penalty for concealment – Amendment w.e.f. 01-04-2013

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

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

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

At present, there is no penalty for non-reporting of an international transaction in the report filed u/s.92E or maintaining or furnishing or incorrect information or documents. Therefore, a levy of penalty at the rate of 2% of the value of the international transaction is provided, if the taxpayer

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

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

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

16.4: Section 271G: Penalty for failure to furnish information or documents u/s.92D (w.e.f. 1-4-2013)

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

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

- This is a new section which has been inserted w.e.f. 1-7-2012.
- In addition to **fees payable under the newly inserted section 234E**, **section 271H** also provides for **penalty for not furnishing quarterly TDS statements** within the prescribed time limit or penalty for furnishing incorrect information such as PAN of the deductee or amount of TDS deducted, etc. in the statements to be filed u/s.200 (3) or 206C(3).
- A **penalty ranging from ₹ 10,000 to ₹ 1,00,000** is leviable for these failures.
- No appeal against the levy of this penalty is provided under Sec. 246A.
- It is also provided that *no such penalty will be levied if the deductor delivers the statement within a year from the due date and the person has paid the tax along with fees and interest before delivering the statement.*

16.6: Section 271AAA and 271AAB: Penalty on undisclosed income

- (1) At present, penalty in the case of search initiated **on or after 1st June, 2007 is not liviable under Sec. 271AAA** subject to certain **conditions**, such as:
 - (a) the assessee admits the undisclosed income in a statement under Sec. 132(4) recorded during the search,
 - (b) he specifies the manner in which such income has been derived, and
 - (c) he pays the tax together with interest, if any, in respect of such income.

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

- (2) **Newly inserted Section 271 AAB** now provides for levy of **penalty on undisclosed income of specified previous years** where search has been initiated **on or after 1st July, 2012** as under:
- (a) If the assessee **admits undisclosed income** during the course of search in a statement under Sec. 132(4), specifies the manner in which such income has been derived, pays the tax with interest on such income and furnishes return of income declaring such income, **penalty shall be 10% of undisclosed income**.
 - (b) If undisclosed income is **not so admitted during the course of search, but disclosed in the return of income filed** after the search and he pays the tax with interest, **penalty shall be 20% of undisclosed income**.
 - (c) In other cases, the **minimum penalty shall be 30% subject to maximum of 90%** of the undisclosed income.

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

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

(1) Section 276C: Wilful attempt to evade tax

- Earlier, if the amount of tax sought to be evaded exceeds ₹ 1,00,000, the punishment is rigorous **imprisonment for minimum of 6 months and maximum of 7 years**.
- The limit of ₹ 1,00,000 is now raised to ₹ 25,00,000.
- In other cases, the rigorous imprisonment period is **3 months minimum and 3 years maximum**. The period of 3 years is now reduced to 2 years.

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

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

(3) Section 277: False Statement in Verification

In this section also amendments similar to amendments in section 276C as stated in point (1) above are made.

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

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

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

In this section also amendments similar to amendments in section 276C as stated in (1) above are made.

(6) Sections 280A to 280D:

- These new sections have been inserted w.e.f. 1-7-2012 with a view to appoint Special Courts to try specified offences under the Income-tax Act.

- It appears that these new provisions are made to strengthen the prosecution mechanism and expedite the disposal of prosecution cases under the Income-tax Act.
- In brief these provisions deal with the following matters:
 - (a) Providing for constitution of Special Courts for trial of offences under the Act.
 - (b) Application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in summons trial are simpler and less time consuming. The provision for summons trials will apply to offences where the maximum term of Imprisonment does not exceed 2 years.
 - (c) Providing for appointment of public prosecutors.

17. Other Amendments

17.1: Senior Citizen

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

17.2: Tax Audit

- Section 40AB provides that an assessee carrying on business or profession has to get the accounts audited by a Chartered Accountant if the **turnover or gross receipts exceed ₹ 60,00,000 in the case of business or exceeds ₹ 15,00,000 in the case of profession**.
- The limit of turnover or gross receipts for this purpose has now been increased to **₹ 1,00,00,000** in the case of business or **₹ 25,00,000** in the case of profession.
- Further, **date for obtaining tax audit report** which is 30th September has been **changed to the due date of filing return of income under Sec. 139(1) as applicable to the assessee**.
- The amendment increasing the limit for turnover/gross receipts will come into force from A.Y. 2013-14 (Accounting Year 2012-13).

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

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

Qualifying ship having tonnage	Earlier amount of daily tonnage income	New rates from A.Y. 2013-14 of daily tonnage income
Upto 1,000 tons	₹ 46 for each 100 tons	₹ 70 for each 100 tons
1,000 to 10,000 tons	₹ 35 for each 100 tons in excess to 1,000 tons	₹ 53 for each 100 tons in excess to 1,000 tons
10,000 to 25,000 tons	₹ 28 for each 100 tons in excess to 10,000 tons	₹ 42 for each 100 tons in excess to 10,000 tons

Exceeding 25,000 tons	₹ 19 for each 100 tons in excess to 25,000 tons	₹ 29 for each 100 tons in excess to 25,000 tons
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17.4: Section 209 - Advance tax calculation

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

17.5: Section 234D - Interest on excess refund

- This section is **amended** w.e.f. 1-6-2003.
- This section was **inserted** by the Finance Act, 2003, w.e.f. 1-6-2003 to **enable the Government to recover amount of excessive refund** granted under Sec. 143(1).
- The section provides for levy of simple interest at the rate of $\frac{1}{2}\%$ for every month or part thereof on the excess amount of refund granted under Sec. 143(1) if, on regular assessment, it is found to be excessive.
- Interest is payable for the period starting from the date of refund to the date of regular assessment. **The Delhi High Court in DIT v. Jacobs Civil Incorporated, (2011) 330 ITR 578** held that this provision will apply from the A.Y. 2004-05 and no interest is payable for the earlier assessment years.
- To overcome this decision, it is now provided that interest shall be payable under Sec. 234D on **excess refund for any earlier assessment years if the proceedings in respect of such assessment are completed after 1-6-2003**.

18. Wealth tax

(1) Section 2(ea): Definition of 'Assets'

- At present, any residential unit allotted to officers, employees or whole-time directors is exempt from wealth tax if the gross annual salary of such person is less than ₹ 5,00,000.
- This limit of **gross annual salary is increased to ₹ 10,00,000**.
- This amendment is effective from A.Y. 2013-14.

(2) Section 17: Wealth-escaping assessment

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

(3) Section 17A: Time limit for completion of assessment and reassessment

- This section is amended w.e.f. 1-7-2012.

- As discussed earlier, while considering the amendments in Sections 153 and 153B of the Income tax, this amendment has the effect of increasing the time limit by 3 months for completion of assessment / reassessment proceedings.

(4) Section 45

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

19. Rapid review of Budget Speech

- From the above discussion, it will be evident that the **amendments made in the Income-tax Act by this Budget are the most controversial**. In particular, the amendments affecting non-residents which have **retrospective and retroactive effect will affect our relationship with many foreign countries** and will affect our global trade. The Finance Minister has quoted in his Budget Speech Shakespear's immortal words "**I must be cruel only to be kind**". Reading the provisions relating to amendments in the Income-tax Act, one can say that this year he has been 'Cruel' with the non-resident taxpayers. Hopefully he may become 'kind' next year.
- In his Budget speech, the Finance Minister has stated that his **proposals relating the Direct Taxes will result in a net revenue loss of ₹ 4,500 Crore in the year and the proposals relating to Indirect Taxes will yield net revenue gain of ₹ 45,940 Crore**. However, from his post-budget speeches before various trade bodies indicate that **retrospective amendments in the Income-tax Act itself will yield revenue of about ₹ 40,000 Crore**. Considering the stakes involved, it is evident that in the coming years we will witness a long-drawn tax litigation relating to interpretation of the retrospective amendments in the Income-tax Act.
- Another provision which is likely to create lot of hardship to resident as well as non-resident **tax-payer is about GAAR**. It is true that the implementation of GAAR has been postponed to next year, there is apprehension that the Tax Department may hold arrangements made **prior to 1-4-2013 as impermissible and make adjustments in the income for the year 1-4-2013 to 31-3-2014 and subsequent years**. In other words, **GAAR provisions may have retroactive effect**. From the wording of GAAR provisions it is evident that it will now be difficult for resident as well as non-resident taxpayers to take any major decisions about the structure of any business transaction. Even the **tax consultants will find it difficult to advise their clients about structuring or restructuring any business transaction**. If the Government does not come out with a taxpayer-friendly Guidance Note, taking into consideration the business realities, the fear above invocation of GAAR will continue in the minds of all taxpayers and their tax consultants.
- Another controversial provision which has been made this year relates to **specified domestic transactions**. By extending the scope of Transfer pricing provisions to these transactions, the compliance cost of the assessee will increase. At present no adequate data about domestic comparable prices is available in our country, and therefore, it will be **difficult for assesses to maintain transfer pricing records and documents for this purpose**. Since the provisions have been made effective from 1-4-2012, many assesses may not be well equipped to maintain these records in this year. Since every case in which specified domestic

transactions are entered into will be referred to the TPO, the entire assessment proceedings will become lengthy and time consuming. This will also increase compliance cost.

- It is true that the **tax burden of individuals, HUF, etc. has been reduced and some beneficial provisions have been introduced to remove some practical difficulties**. But, it can be stated that these efforts are only half-hearted and there are many areas in which the taxpayers will have to face many practical difficulties.
- **The DTC Bill, 2010, is pending before the Parliament.** The report of the Standing Committee on Finance is also laid before the Parliament. **This Bill was to be implemented from 1-4-2012.** However, due to the delay in the legislative process it is stated that DTC will now be passed in the next session of the Parliament and will be made effective from 1-4-2013. In view of this, it is not clear why such controversial amendments are made this year in the last year of the life of the present Income-tax Act. By the time the taxpayers grasp the implications of these amendments, the new provisions of DTC will come into force from next year. **When it became evident in the beginning of this year that DTC may be postponed by one year, it was felt that in this Budget some minimal amendments will be made in the Income-tax Act as and by way of parting gift to the taxpayer.** But, after reading the controversial amendments in the Income-tax Act in this Budget, the taxpayers have felt that this Act has given a parting kick to the taxpayers in the last year of its existence.

PART B: SERVICE TAX

1. Highlights, Background and Introduction

- The levy of Service tax was introduced in the year 1994 vide the Finance Act, 1994 (the Act governing Service Tax) as a levy on 3 taxable services. Since then, new taxable services have been notified every year and earlier there were 119 notified taxable services are subject to Service tax under the Act. The term 'service' which was not defined in the first 18 years of service tax law, has now been defined.
- In terms of the budget proposals, the levy of service tax is on all services other than those services which are specified in the **negative list, at the rate of 12%** on the value of all services. **The budget proposals mark a clear shift from a 'taxation based on a positive list of services' to 'taxation based on a negative list of services'.**
- **The levy is on the services provided or agreed to be provided by one person to another.** It is to be noted that **no other indirect tax legislation seeks to tax future events, such as services to be provided.** The said changes as well as all other connected changes are to come into effect from a date to be notified after the enactment of the Finance Bill, 2012. **The rate change will however be effective from 1st April, 2012.**
- From the date the Finance Bill 2012 was introduced on March 17, 2012 until date, there have been numerous amendments made in the service tax law. Several notifications have been issued over the last three months and many of them have already been superseded by a fresh set of notifications issued on June 20, 2012. **In all, total 40 Notifications have been issued under service tax over the three months after the budget released.**
- The service tax law has undergone a complete overhaul and with these amendments. The most significant changes being the shift to the **new system of taxation popularly known as "Negative List of Services" and the introduction of "Place of Supply Rules"**. These were the two missing links for roll out of the Goods and Service Tax (GST) law and with introduction of both these we are almost ready as a country for adoption of the GST regime.
- Besides these two changes, there are certain changes in the service tax rules, CENVAT credit rules and valuation rules.

1.1: New Sections introduced (in Finance Act) in Service Tax Law

Section	Particular	Newly added part
Section 65B	Definitions	Important definitions include that of • Service • Taxable service • Taxable territory • India
Section 66B	Charging Section	This section says that all services will be taxed at 12% except those services as specified in the Negative List
Section 66C	Place of Provisions of Service Rules, 2012 (Notification 28/2012)	Determine the place where the service is provided or deemed to have been provided
Section 66D	Negative List	Services that would not be considered for service tax

Section 66E	Declared Services	This section deems certain types of contract to be deemed services
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2. Section 65B: New Definitions

2.1: Service

For the first time the Act now defines the term “Service” which was not defined earlier. Service “means **any activity** carried out by a person for another **for consideration and includes a declared service but does not include** transfer or sale of goods and immovable property and provision of service by employee to employer. All activities other than these will be considered as a “service” liable for service tax.

2.2: Taxable Services

Any service on which service tax is leviable under Section 66B is said to be Taxable Services.

2.3: Taxable and non-taxable territory

“Taxable territory means the territory to which the provisions of this Chapter apply. Non-taxable territory means the territory which is outside the taxable territory”.

2.4: India

Amongst the definition of India, it includes the territorial waters, continental shelf, exclusive economic zone, sea bed, subsoil underlying the territorial waters, air space above India’s territory and air space above the territorial waters.

3. Section 66B: Charge of Service Tax and Change in the Rates of Service Tax

- (1) The rate of Service Tax is being **increased from 10% to 12%**. However, no changes in the rates of Education Cess and Secondary and Higher Secondary Education cess, i.e. 2% Primary Education Cess and 1% Secondary and Higher Secondary Education Cess. Therefore, in simple words **Service Tax will be charged at 12.36%** (12% Rate of Service Tax + 2% of 12% Primary Education Cess and + 1% of 12% Secondary and Higher Secondary Education Cess)
- (2) Consequent change in the rate of **Service Tax Rules, 1994**, in specific and compounding rates of tax given as follows:

(a) For Life Insurance Premium under Rule 6(7A)(ii) of Service Tax Rules, 1994

Gross amount of premium charged	New Rate	Old Rate
1st Year	3%	1.5%
Subsequent years	1.5%	1.5%

(b) For money changing under Rule 6(7B) of Service Tax Rules, 1994

Gross amount of currency exchanged	New Rate	Old Rate
Up to ₹ 1,00,000	0.12% subject to minimum of ₹ 30	0.10% subject to minimum of ₹ 50
₹ 1,00,000 to ₹ 10,00,000	₹ 120 and 0.06%	₹ 100 and 0.05%
Above ₹ 10,00,000	₹ 660 and 0.012% subject	₹ 550 and 0.01% subject to

	to minimum of ₹ 6,000	minimum of ₹ 5,000
(c) For distribution or selling agent of lottery tickets under Rule 6(7C) of Service Tax Rules, 1994		
Guaranteed Prize Pay-out	New Rate	Old Rate
More than 80%	₹ 7,000 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by organising State for a draw	₹ 6,000 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by organising State for a draw
Less than 80%	₹ 10,000 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by organising State for a draw	₹ 9,000 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by organising State for a draw

(d) Work contract service

Rate under Composition Scheme has been **increased from 4% to 4.8%** plus cess applicable.

(e) Transport of passengers embarking in India for Domestic and International journey by air

- The **dual rate structure of maximum service tax of ₹ 150 and ₹ 750** in case of economy class travel is being replaced by an ad valorem rate of 12% with abatement of 60% subject to the condition that no credit on inputs and capital goods is taken.
- Therefore, w.e.f. effective rate of tax on journey by air would be **4.8%**, subject to availment of abatement.

4. Section 66D: Negative List of Services

4.1: Basic understanding

- Negative List of services **introduced** which is a shift in the basis of taxation.
- Before the introduction of the negative list of services, there was a definition for each and every "Taxable Service".
- It was a lengthy list of **119 taxable services defined** which were serially numbered from **(a) to (zzzw)**. [i. e. Sec. 65(105)(a) to 65(105)(zzzw)]
- **This list was defined under Section 65(105)** of the Finance Act, 1994 (Commonly referred to as the Positive List) .
- This **positive list finally gets repealed** with introduction of the Negative List of services.
- Therefore, **any activity which meets the definition of a "service" as defined, and does not feature in the negative list will be chargeable to service tax.**
- After applicability of Negative List, there will be **17 Services under Negative List on which service tax will not apply.**

4.2: Review and analysis of Negative List Approach

- A Negative List approach to taxation of services is being introduced vide new Sections, namely, 65B, 66B, 66C, 66D, 66E and 66F proposed in Chapter V of the Finance Act, 1994.

- The services specified in the '**Negative List**' (Section 66D) shall remain outside the tax net.
- All **other services, except those specifically exempted by the exercise of powers under Section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax.**
- Negative list approach to taxation of services shall come into effect from a date to be notified, after the Finance Bill, 2012 receives the assent of the President.
- For operationalizing the Negative List approach, a number of changes have been proposed in Chapter V of the Finance Act, 1994.
- Detailed information regarding these changes is being made available as a Guidance Paper, which will be placed in the public domain.
- The consequential changes in Service Tax Rules, 1994, Service Tax (Determination of Value) Rules, 2006 and Cenvat Credit Rules, 2004 also form part of this Guidance Paper.
- Provisions relating to **positive list approach, namely, Sections 65, 65A, 66, and 66A currently appearing in Chapter V of the Finance Act, 1994, will cease to operate from a date to be notified later**, as and when the negative list approach begins to operate.
- **To support the negative list approach to taxation of services, draft Place of Provision of Services Rules, 2012 is being proposed.**
- The draft Place of Provision of Services Rules contains principles on the basis of which taxing jurisdiction of a service can be determined.
- The Place of Provision of Services Rules, 2012 will be notified **after (Section 66C) the Finance Bill, 2012 receives the assent of the President.**
- When the Place of Provision of Services Rules comes into effect, existing '**Export of Services Rules, 2005**' and '**Taxation of Services (Provided from outside India and received in India) Rules, 2006**' will be rescinded.

5. Section 66E: Declared Services

5.1: Meaning of Declared Services

Declared service means **any activity carried out by a person for another person for consideration and declared as such under section 66E (Section 65B).** This section basically is a deeming section and deems the below activities also to be "service".

5.2: Specified Activities under the list of Declared Services

There are **9 specific activities** under the List of declared services as given under section 66E as under:

Sr. No.	Description of Service	Brief Description
1	Renting of immovable property	Renting of immovable property
2	Construction activity	Construction (including additions, alterations. Replacements or remodelling of existing civil structure) of a complex, building, civil structure or a part thereof, intended for sale wholly or partly to a buyer. However it will exclude in case where the entire consideration is received after issuance of a Completion Certificate.
3	Intellectual Property Rights	Temporary transfer or permitting use or enjoyment of any IPR

4	Information Technology software	Development, design, programming, customisation, adaption, up-gradation, enhancement, implementation of information technology software.
5	Non-compete arrangements	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.
6	Supply of goods on hire	Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.
7	Hire purchase	Activities in relation to delivery of goods on hire purchase or any system of payment by instalments.
8	Works contract	"Service portion" in the execution of works contract.
9	Catering	"Service portion" in an activity wherein goods, being food or any other article for human consumption or any drink is supplied as a part of the activity.

6. Change in the valuation rules

6.1: Work contract (Composition Scheme for Payment of Service Tax) Rules, 2007

At present value of goods is allowed to be reduced from Gross Amount Charged If the value of goods is intimated for State VAT purpose. Now it is proposed to allow the benefit even if value is not intimated for VAT purpose, it can be done on the basis of documentary evidence showing value of goods sold under Work Contract.

In case value of goods cannot be determined, gross value for service tax purpose would be:-

- (a) In case of original work (all new constructions and all types of additions and alterations to abandoned or damaged structures to make them workable): 40% of total amount
- (b) Otherwise: 60% of total amount
- (c) For contracts involving construction of complex or building for sale where any part of the consideration is received before the completion of the building: 25% of the total amount

For this purpose the total amount will be gross amount plus the value of any material supplied under the same contract or any other contract.

CENVAT Credit on input services and capital goods will be allowed in all three cases.

6.2: Determination of value of taxable service involved in supply of food and drinks in a restaurant or outdoor catering

Sr. No.	Description of service	Old taxable portion	New taxable portion	CENVAT Credit availability of input services capital goods and inputs
1.	Service portion in the supply of food or any other article of human consumption or drink at a restaurant	30%	40%	Yes
2.	Sr. No. 1 provided from a premises elsewhere	50%	60%	Yes

	(outdoor catering)			
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6.3: Amendment in Rule 3

- It is proposed to amend Rule 3 of valuation rules to provide that 'prescribed manner' in Rule 3 will be applicable only in the cases where valuation is not ascertainable.
- Earlier, Rule 3 has been inadvertently made applicable to situation where consideration received is not wholly or partly consisting of money, which is fully covered by the Act.

6.4: Amendment in Rule 6

- (1) Any amount realized as demurrage, or by any other name, for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service will be included in taxable value.
- (2) Accidental damages due to unforeseen actions not relatable to the provision of service will be excluded from the value of service.
- (3) Interest on loan has been substituted with
 - (a) Interest on Deposits and
 - (b) Interest on delayed payments.

Interest on loans will now be an exempt income rather than an exclusion from value hence credit reversal will take place in case of interest on loans.

6.5: Other amendment

- Rule 2B inserted. This Rule states how to determine the service portion in the execution of a works contract.
- Rule 2C inserted. Thus Rule states how to determine the service portion in supply of food and drinks in a restaurant or as outdoor catering.
- Demurrage charges liable to service tax.
- Interest on Delayed payments not liable for service tax
- Accidental damages not related to the service, would not be liable for service tax

7. Changes in CENVAT Credit Rules

7.1: Substitution of Rule 5 of CENVAT Credit Rules, 2004 and New Scheme introduced

- A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004.
- The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports.
- Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover in line with Circular No. 868/6/2008-CE dated 09.05.2008.

7.2: CENVAT Credit on Motor Vehicles

Capital Goods

Presently credit on all motor vehicles is not available except to a few specified service providers. This is being liberalised and credit on all the motor vehicles to all the service providers shall now be allowed **except** for following:

Sr. No.	Tariff Heading	Description of Motor Vehicle
1.	8702	Motor Vehicles for the transport of ten or more persons, including driver
2.	8703	Motor Cars and other motor vehicles principally designed for the transport of persons including station wagons and racing cars
3.	8704	Motor Vehicles for transport of goods
4.	8711	Motor Cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars
5.		Chassis of all the Motor Vehicle prescribed above

Input Services

Before amendment, only following input services related to motor vehicle were allowed as CENVAT Credit and that too only to the specified service provider, namely:

- (1) General Insurance Service
- (2) Rent-a-Cab
- (3) Authorised Service Station Service
- (4) Right to use of tangible goods Services

However, now after **amendment**, the **credit of service tax on services related to motor vehicle will be allowed** to all the service providers **except** as mentioned above, of following input services, namely:

- (1) Hiring
- (2) Insurance
- (3) Repair of Motor Vehicle

Following credits in respect of vehicles will also be allowed:

- (1) of insurance to motor insurance companies (as re-insurance and third party insurance) and manufacturers (as in-transit insurance);
- (2) of repair of vehicles to manufacturers in respect of motor vehicles manufactured by them and to insurance companies in respect of motor vehicles insured / re-insured by them.

7.3: Time when CENVAT credit could be taken

- Before the amendment made, credit on inputs and Capital Goods can be taken only after they are brought to the premises of the service provider.
- Sub-rules 4(1) and 4(2) have been amended to allow credit without bringing them into premises subject to due documentation regarding their delivery and location.
- Interest on loans, advances will now be an exempt service.
- This will require reversal of credits used for earning such income.
- For the banking and financial sector, provisions are available to reverse credits up to 50% in Rule 6(3D).

- It is being proposed to change this formula to actual basis, the value of service being net interest i.e. interest earned less interest paid on deposits, subject to a minimum of 50% Of interest paid on deposits.
- For the non-financial sector it is being proposed that they may reverse credits on gross interest basis.

7.4: Amendment in Rule 9(1)(e)

Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by all service receivers on reverse charge.

7.5: Changes related to Input Service Distributors

Rule 7 for input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

For example in case of services by way of advertisement if

- the advertisement is for a product or service provided from only one unit, the said credit shall be distributed only to that unit; and if two units, the said credit shall be distributed only to those two units, in proportion to the respective turnovers;
- if the advertisement is for the company as such, the said credit shall be distributed only to the extent of the turnover of units registered and entitled to avail Cenvat credit to the total turnover of the company including unregistered units.

7.6: Amendment in Rule 3(5) of CENVAT Credit Rules, 2004

Rule 3(5) and 3(5A) are being amended to prescribe that in case the capital goods on which Cenvat credit has been taken are cleared after being used then the amount payable shall be either the amount calculated on the basis of Cenvat credit taken at the time of receipt reduced by a **prescribed percentage or the duty on transaction value whichever is higher**.

7.7: Change in Rule 6(3) of CENVAT Credit Rules, 2004

The rate for CENVAT reversal for exempt services has been revised likewise **from 5% to 6%** in Rule 6(3) of CENVAT Credit Rules (CCR), 2004.

7.8: Amendment in Rule 14 of CENVAT Credit Rules, 2004

Rule 14 is being amended to substitute the word “or” with “and” so that interest is not payable on credit wrongly taken unless the same is utilized.

7.9: Treatment of Interest on Loan for Rule 6(3) of CENVAT Credit Rules, 2004

Interest on (a) Deposits; and (b) Delayed Payment of any consideration for the provisions made (services/goods)	Other Interest
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↓	↓
This will not be relevant for reversal of CENVAT Credit under Rule 6(3) of CENVAT Credit Rules, 2004.	This is relevant for reversal of CENVAT Credit under Rule 6(3) of CENVAT Credit Rules, 2004.

8. Retrospective Changes

- (1) Rule 6(6A) Of CCR Rules will be given effect from February 10, 2006. This will neutralize the investigations or demands for reversal of credits in respect of services provided to SEZs for the past.
- (2) Exemption provided for the setting up of common facilities for treatment and recycling of effluents and solid wastes by Notification 42/2011- ST dated 25th July, 2011 shall be made applicable effective June 16, 2005.
- (3) Repair of roads has been exempted from service tax by Notification 24/2009-ST dated 27th July, 2009. By virtue of power under section 97, exemption relating to roads is extended for the earlier period commencing from June 16, 2005.
- (4) Service tax exemption has also been granted with retrospective effect on management, maintenance or repair service in relation to non-commercial Government buildings from 16th June, 2005 till the coming into force of the negative list when such repair will be exempted by the new mega notification.

9. Point of Taxation Rules

9.1: Background of Rules

- I will start my article with the wordings of Finance Minister while presenting the Budget proposal for the financial year 2011-12, the Finance minister said that in order to "achieve a closer fit between the present service tax regime and its GST successor "it is important to bring the point of taxation rules, 2011 which would shift the basis for collection of tax from cash to accrual system.
- The objective to bring POT Rules is to recover the revenue from service sector which is at present 59% of the GDP which was just 50.9% in the year 2000-01, a sharp increase in this sector also attracted the attention of our Finance Minister to bring these rules.
- Prior to 01-04-2011 as per rule 6(1) of Service Tax Rules the service tax was required to be paid to the credit of Central Government by the 6th/5th day of the next month in which payment has been received towards value of taxable services.
- By following this practice the revenue to the Government account got deferred some time indefinitely due to non-receipt of fund or on account of bad debts.
- The Rules has been introduced by Notification No. 18/2011-ST dated 01-03-2011 to prescribe the time when the service tax is legally due to the exchequer. In this article I have made an attempt to cover all the amendment till 20-12- 2012 in Point of Taxation Rules, 2011.
- Let me make clear to all of you that though Point of Taxation Rules, 2011 has been made applicable from 01-04-2011 but an option was given in Rule 9 to pay tax on accrual basis w.e.f. 01-07-2011.

9.2: Basic Structure of POT Rules, 2011

- Rule 3: Main Rule (This Rule is attracted when no specific rule is prescribed for any situation)
- Rule 4: Determination of point of taxation in case of change of rate of tax (This Rule is very significant in case there is change in effective rate of tax)
- Rule 5: Payment of tax in cases of new services (If a new service has been introduced for the first time then what will be the rate of tax applicable to the newly introduced service and its taxability)
- Rule 6: Determination of point of taxation in case of continuous supply of service (Omitted by the Point of Taxation (Amendment) Rules, 2012, w.e.f. 1-4-2012 and this rule has been merged with Rule 3 of the POT Rules, 2011)
- Rule 7: Point of taxation in case of **Reverse Charge Mechanism** (This Rule also determines the point of taxation in case of associated enterprises also)
- Rule 8: Point of taxation in case of Copyright Services, etc.
- Rule 8A: Where the point of taxation cannot be determined as per these rules (Central Excise Officer determines the Point of Taxation)
- Rule 9: Transitional Provisions (If the Service has been completed or the invoice has been issued up to 30-06-2011 then these rules shall not be applicable to the Service Provider)

9.3: Analysis of Rule 3:

This Rule 3 is main rule in the POT Rules and if none of the specific rule is applicable to the service provided then this rule comes into existence and Point of Taxation is determined in terms of this rule.

Point of taxation shall be the earlier of the two events:

1. The time when the invoice for the service provided or to be provided is issued OR
2. Where the person providing the service, receives a payment

Provide the Invoice has been issued in terms of Rule 4A of Service Tax Rules, 1994 and if the invoice has not been issued in terms of Rule 4A of above rules then point of taxation shall be the date of completion of Provision of Service.

9.4: Time limit of Rule 4A for issuance of invoice:

- In case of Banking and other financial Services: Within 45 days from the date completion of provision of Service.
- Services other than Banking and Financial Services: Within 30 days from the date of completion of Provision of Service.
- The important point to note is that the Rule 6 has been omitted and the same has been merged with Rule 3, now the Point of Taxation of continuous supply of Service shall be determined with in terms of rule 3 only.

Meaning of Continuous supply of Service: The definition of continuous supply of service is given in two parts -

- (i) continuous supply of service means any service which is provided or **agreed** to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,
- (ii) Notified services by the Central Government with or without any condition irrespective of its duration

Notification No. 38/2012-ST dated 01-07-2012

Earlier 5 class of service was prescribed by the Notification No. 28/2011-ST dated 01-04-2011 and now substituted by the Notification No. 38/2012-ST dated 01-07-2012 w.e.f 01-07-2012 and two classes of Services has been prescribed as Continuous supply of Services ie of "telecommunication service and service portion in execution of a works contract".

9.5: Test for determining completion of service

In many situations it is not possible to issue invoices within 30 days of the completion of the service since the exact, date of completion of service is difficult to identify. Instances have been given where the task of providing the service may be physically accomplished, but certain other formalities are required to be completed from the client's end before an invoice can be issued.

This issue has been considered by the CBEC and they have tried to clarify the same vide Circular No. 144/13/2011-ST dated 18-07-2011.

9.6: Extracts of the Circular No. 144/13/2011-ST dated 18-07-2011:

This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

A comprehensive chart indicating the Point of Taxation:

Sr. No.	Date of completion of services	Date of invoice	Date on which payment is received	Point of Taxation	Remarks
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 30 days and before receipt of payment
2.	April 10, 2011	May 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 30 days and payment received after completion of service
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 30 days but payment received before invoice
4.	April 10, 2011	May 26, 2011	April 5, 2011	April 5, 2011 and	Invoice not issued in

			(part) April 25, 2011 (remaining)	April 10, 2011 for respective amts.	30 days. Part payment before completion, remaining later
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Hope this table removed all your queries related to Rule 3 but again I will attract the attention of my readers towards one more burning issue in Rule 3 of Point of Taxation Rules, 2011.

Just a moment back I have shared a Circular of CBEC which was clarifying the doubts regarding completion of Provision of Service and now the second issue is what is the date of Payment to be considered in Rule 3 while prescribing the Point of Taxation and the answer is very simple ie when the cheque or Cash has been received by the person providing the Service. Specific Provisions are also given vide Rule 2A which is as under.

9.6: Extract of Rule 2A of POT Rules, 2011:

For the purposes of these rules, "date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

The things would have been very simple if there was no further Proviso in the above Rule 2A, and the proviso has covered an aspect of the case which can be understood with the help of this illustration:

Illustration:

ABC Pvt. Ltd. has received a cheque for the service provided to XYZ Pvt. Ltd. and on 20-03-2012 and the above cheque was not deposited by ABC Pvt. Ltd. immediately into the Bank Account and the same was deposited in the month of April and the same has been received in the Bank on 20-04-2012, from 01-04-2012 the rate of tax was changed from 10.30% to 12.36%.

Now what is the date of Payment?

Of course **20-03-2012**, in terms of Rule 2A of POT Rules, 2011.

But I do not agree with you since I have the Proviso to Rule 2A and as per the Proviso the date of credit in the Bank Account shall be the date of payment if the following all conditions satisfied:

- (i) If there is change in effective rate of Tax between the date of entry in the books of account and the date of receipt in the Bank account and
- (ii) The credit in the Bank account is after 4 working days from the date of such change and
- (iii) The payment made by an instrument which is credited in the Bank Account

Hope you understood the Proviso to Rule 2A and now I will highlight the impact of the Proviso on the Pocket of Tax Payer.

If in the above case the cheque was deposited in the Bank in such a manner that it get credited in the Bank Account within 4 working days from 01-04-2012 then the date of payment would have been 20-03-2012 rather 20-04-2012 and the rate of tax applicable would have been 10.30% rather 12.36%.

So it is advisable for future to avoid the applicability of proviso to Rule 2A and try to deposit the cheque within time if there is change in effective rate of Tax.

(Circular No. 334/1/2012-TRU dated 16-03-2012)

9.7: Rule 4 of POT Rules Change in effective rate of tax:

Now coming to again one of the burning issue in the POT rules that which rate are applicable to my service if there is change in effective rate of tax.

To understand this concept we have to understand the meaning of three terms which all of us know i.e.

- (i) Date of issue of Invoice
- (ii) Date of Receipt of Payment
- (iii) Completion of Provision of Service

The all the three terms have been explained by me earlier in this article and now need recall of all those explanations to understand Point of Taxation in case of Change in effective rate of tax.

(a) In case a taxable service has been provided before the change in effective rate of tax

Case	Point of Taxation
Where the invoice for the Service has been issued and the payment received after the change in effective rate of tax	Point of Taxation shall be date of payment or issuing of invoice, whichever is earlier
Where the invoice for the Service has been issued prior to the change in effective rate of tax and the payment received after the change in effective rate of tax	The point of taxation shall be the date of issuing of invoice
Where the payment is also received before the change in effective rate of tax but the invoice for the same has been issued after the change in effective rate of tax	The point of taxation shall be the date of Payment

(b) In case a taxable service has been provided after the change in effective rate of tax

Case	Point of Taxation
Where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax	Point of Taxation shall be date of payment
Where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax	Point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier
Where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax	The point of taxation shall be date of issuing of invoice

Hope this charts clear the doubts in your mind relating to change in effective rate of tax and Point of Taxation.

Now one more issue which is still not discussed so far ie what is meaning of change in effective rate of tax?

If I have to reply in one line sentence then Change in effective rate of tax means Upward or downward change in Basic rate of Tax ie rate of tax was enhanced from 10.30% to 12.36% from 01-04-2012 it was an example of Change in effective rate of tax, but definition has described some other situations which are also called in change in effective rate of tax and attracts Rule 4 of POT Rules.

The situations are given below for your reference:

- (i) Change in the rate of abatement as per Notification No. 26/2012-ST Dated 20-06-2012
- (ii) Change in the rate of composition Scheme in Service tax
- (iii) Any other notification issued, altered or amended and which has the effect of change in taxability of any service

This view has been also confirmed by the CBEC vide their Letter F.No.341/34/2010 TRU, dated 31-03-2011.

9.8: Point of Taxation in case of New Services (Rule 5 of Point of Taxation Rules, 2011)

Where a service is taxed for the first time or there is addition in the existing taxable services this will be governed by the Rule 5.

Only two types of situations are covered in Rule 5:

Where the Invoice has been issued and the payment received against such invoice before such service became taxable	No tax shall be Payable
Where Payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.	No tax shall be Payable

9.8.1: Major of Caution in Rule 5:

- This rule covers only two types of situation mentioned above all other situation shall be covered by the general Rule 3; this has been explained with the help of under mentioned illustration.
- Where the date of invoice and the date of completion of Service is before the Service became taxable but the payment has been received after the date when the service became the taxable.
- This situation has not been covered by the Rule 5 and the same shall be governed by the Rule 3 and Point of Taxation shall be determined by the said Rule.
- The Point of taxation in the above case is the date of issue of invoice or date of receipt of payment whichever is earlier i.e. the date of issue of invoice and service is not taxable in this situation also since on the date of payment the service is not a taxable Service.

9.9: Point of Taxation in case of Reverse Charge Mechanism (Rule 7)

The Point of Taxation in case of **Reverse Charge Mechanism** is the date when the payment is made to the person providing the service but subject to one condition that payment should be made within 6 months from the date of issue invoice.

If the payment is not made within 6 months then the point of taxation shall be governed by Rule 3 of the above rules.

Liability to pay tax shall be fastened and interest shall be charges @ 18% p.a on the payment made by the delay.

9.10 Point of Taxation in case of Associated Enterprises (Rule 7)

Where the person providing the service is located outside India, the point of taxation shall be earlier of the following:

- The date of debit in the books of account of the person receiving the service or
- Date of making the payment.

The expression Associated enterprises shall mean the associated enterprises explained in section 92A of the Income Tax Act, 1961.

9.11: Point of Taxation in case of Specified Professionals from 01-04-2012

Before explaining the Point of Taxation in case of specified professionals we have to go in the background of the point of taxation rule, 2011.

From 01-04-2011 to 31-03-2012

From 01-04-2011 a special provision Rule 7(c) was applicable to Individuals, proprietary firm or Partnership Firm providing any of the following taxable Service:

Architect service, CA, CS, CWA, Consulting engineer, Interior decorator, scientific or technical consultancy and legal consultancy service.

The point of taxation was the date of receipt of payment without any restriction on the turnover of the specified professional, but the above provision was applicable if they are providing the above services in their respective capacities.

Sr. No.	Service provided in the capacity	Class of service provided	Point of Taxation
1.	Chartered Accountant	Chartered Accountant Service	As Rule 7(c) the point of taxation is the date of receipt of payment
2.	Chartered Accountant	Management Accountant Service	As per Rule 3 the point of taxation is the date of invoice or the date of receipt of payment whichever is earlier

Whether LLP are covered in the definition of Firm?

Yes with effect from 01-04-2012, a new sub clause (cd) has been inserted in the Rule 2 of Service tax rules, 1994 and now the LLP are also called the Firm and are eligible for all the benefits available to the Partnership Firm.

From 01-04-2012

The Rule 7(c) has been omitted from service tax law and a new Proviso has been inserted in the Rule 6 (1) of service tax Rules, 1994.

Now the from 01-04-2012 the benefit of cash basis payment of service tax has been extended to all the Individuals, Proprietary Firm and Partnership Firm including LLP whose aggregate value of taxable service in the preceding Financial year is up to 50 lacs rupees, these persons has the option to pay tax on cash basis up to 50 Lakhs in the current Financial year

9.11.1: Burning Issue in above matter:

The rate of Service tax has been increased from 10.36% to 12.36% from 01-04-2012, what rate shall be applicable to the service provided and bills raised before 01-04-2012 by the following class of persons and the payment has been received after 31-03-2012.

Of course the rate shall be 12.36% and the same has been confirmed by CBEC vide their circular 154/5/2012-ST dated 28-03-2012 and again the same was reiterated vide Circular No. 158/9/2012-ST dated 08-05-2012.

9.12: Stay by the Delhi High Court in the above matter vide Stay application dated W.P. (C) 4456/2012 & CM No. 9237/2012

The Delhi high court has given a stay on the above differential recovery of 2% vide their Stay order dated 27-07-2012.

9.12.1: Determination of point of taxation in case of copyrights, etc. (Rule 8)

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

9.13: Section 67A of Finance Act inserted with effect from 28-05-2012

From 28-05-2012 Section 67A has been inserted to determine the rate of tax and rate of exchange applicable to a class of Service .From 28-05-2012 the Point of Taxation Rules, 2011 are only relevant to determine the due date of payment of service tax.

The rate of tax shall be determined by newly inserted Section 67A which is given below for your kind reference:

The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

9.14: Treatment of Advance not exceeding Rs.1000 from 01-04-2012

As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to Rs. 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

This provision is made mainly for telephone companies and credit card companies. In many cases (particularly in e-payments) the customer pays amount slightly more than the bill amount (which is adjusted in next bill). Legally, in such case, it is 'advance' and Invoice is to be issued and service tax is to be paid this is impractical and hence this relaxation has been given to such companies.

10. Changes with respect to Small Service Providers

- (1) In extreme situations the small service provider is also being allowed the refund of unutilized Cenvat credit. Suitable changes will be made in Cenvat Credit Rules, to this effect.
- (2) The small scale exemption has been amended to provide that the first clearances up to Rs 10 lakhs will be in considered on the basis of invoices issued and not merely on payments received. However, this will be effective from 01.04.2012. CG has issued notification no 05/2012-ST dated 17.03.2012 to incorporate above changes. The definition of 'aggregate value' as provided in explanation (b) to notification no 06/2005-ST dated 01.03.2005 is amended.

11. Changes with respect to Appeals

Table showing revision in period of filling appeals*

Appeal to	Particulars	Period	
		Now	Earlier
Commissioner	Assesse as well as departmental appeal	2 months	3 months
Appellate tribunal	Assessee appeal	3 months	3 months
	Departmental appeal	4 months	3 months

* Revised period is applicable only for the decisions or orders passed after the date on which Finance Bill, 2012.

Introduction of provisions related to Revision of Order passed by Commissioner (Appeal)

In line with Section 35EE of the Central Excise Act, 1944; introduced vide Section 83 of the Finance Act, 1994 to Service Tax laws; a person (including department) may prefer a revision application to Central Government. The provisions of time limit, specified situations, fee etc. would remain identical to Section 35EE of the Central Excise Act, 1944.

12. Change in the rate of taxable portion as per Notification No. 1/2006

Table showing old and new rates of taxable portion

Sr. No.	Service		Proposed (new) Taxable portion	Earlier (old) Taxable portion	CENVAT credit
1.	Convention center or mandap with catering		70%	60%	All credits, except on inputs, of chapter 1 to 22, will now be available.
2.	Pandal or Shamiana with catering		70%	70%	
3.	Coastal shipping		50%	75%	
4.	Accommodation in hotel etc.		60%	50%	Credits on input services allowed
5.	Railways:	Goods	30%	30%	Credits will be allowed
6.		Passengers	30%	— (New levy)	All credits will be allowed
7.	Service portion in the supply of food or any other article of human consumption or drink at a restaurant		40%	30%	All credits, except on inputs, of chapter 1 to 22, will now be available.
8.	Outdoor catering		60%	50%	All credits, except on inputs, of chapter 1 to 22, will now be available.

13. Penalty waiver for renting of immovable property service

Penalty would be waived for those taxpayers who pay the service tax due on the renting of immovable property service (as on the sixth day of March, 2012), in full along with interest within six months. Section 80A is being introduced for this purpose. In case of failure to do so regular provisions will apply.

14. Service Tax Returns

Table showing particulars to keep in mind for Service Tax Returns

Quarterly Return		Monthly Return
Individual/Firm/LLP	Other assesses	Assesses other than Individual/Firm/LLP
Any amount of tax liability in immediately preceding financial year	Tax liability less than ₹ 25 lakhs in immediately preceding financial year	Tax liability more than ₹ 25 lakhs in immediately preceding financial year

15. Changes in provisions related to issuance of Show Cause Notice

- (1) The period for issue of demands in normal situations is being raised from 12 months to 18 months
- (2) New sub-section (1A) has been inserted so as to provide that the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax. Service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.
- (3) Reference to sub-section (3) is being deleted in sub-section (4A) so that the latter section will not overrule the earlier.

16. Reverse Charge Mechanism

- (1) New term Taxable Territory has been introduced.
- (2) "Taxable Territory"-Only service provided in the taxable territory will be liable to Service Tax.
- (3) Any service provided in the state of J & K will not be liable to Service Tax.
- (4) Newly introduced Place of Supply Rules, 2012 shall determine whether the Service is being provided in the state of J & K.
- (5) However, if service is provided from the state of J & K in the taxable territory, in such case the service receiver located in the taxable territory shall be liable to make the payment of service tax.
- (6) To give effect to this new reverse charge mechanism, a proviso has been added to the subsection (2) of the section 68.
- (7) Both the service provider and receiver will be considered as person liable to make the payment of service tax.
- (8) The scheme is introduced for three services in case of specified service provider as mentioned in the below table.
- (9) Service provider is allowed CENVAT Credit of Tax paid by him on inputs and input services

For the below list of services the Service Recipient is required to discharge the service tax liability in full, or both the service recipient and service provider has to discharge the tax liability as per the prescribed ratio.

Sr. No.	Description of a Service	Percentage of Service tax payable by Service Provider	Percentage of Service tax payable by Service Recipient
(1)	Insurance agent to insurance agent	NIL	100%
(2)	Transport of goods by road	NIL	100%
(3)	Sponsorship service	NIL	100%
(4)	Arbitral services	NIL	100%
(5)	Legal services by Individual advocate or a firm of advocates	NIL	100%
(6)	Support services by Government or local authority	NIL	100%

	(excluding renting of immovable property and certain other specified services)		
(7)	Renting of passenger motor vehicles *	With abatement	Nil
		Without abatement	60%
(8)	Supply of manpower for any service *	25%	75%
(9)	Works Contract service *	50%	50%
(10)	Any taxable service where the Service provider is located in a non-taxable territory and service recipient located in a taxable territory	NIL	100%

* in case where the service provider is a non-corporate entity and the service recipient is a corporate entity.

- “Renting of immovable property” to extend to include any other service in relation to such renting also.
- “Supply of manpower” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

17. Exempted Services

- Notification No. 25/2012: A Single consolidated notification issued for exemptions. Called as the “Mega Exemption Notification”. It lists 39 services which will be exempted under service tax.
- Notification No. 34/2012: Consequential to the Mega list of exemptions, 81 exemption notifications issued in the past 18 years stand rescinded. There will now be only one single mega list of exemption from service tax.
- Notification 27/2012: Exemption for services rendered to foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members from service tax. Detailed provisions made, including the invoice issued to such person to carry additional information. (HO to direct based on case to case basis)

18. Export of Service

- Rule 6A to Service Tax Rules, 1994 introduced vide Notification 36/2012. Provision of any service provided to agreed to be provided shall be treated as export of service when,-
 - (a) The service provider is located in the Taxable Territory
 - (b) The service recipient is located outside India
 - (c) The service is not falling under the Negative List
 - (d) Place of Provision of Service is outside India
 - (e) Payment for such service has been relieved in convertible foreign exchange, and
 - (f) The service provider and service recipient are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 section 65B (44)
- If a service qualifies as an export service, the Central government may by way of notification grant rebates.
- Accordingly, conditions have been laid down for claiming rebate of service tax on export of services. Rebate follows a refund method only. There is no outright exemption. (For further details refer Notification 39/ 2012)

19. Abatement of Service tax

Notification No. 26/ 2012: Abatement will be allowed at the following rates for the following services on the levy of service tax. i.e. Service tax will be charged on the balance value after abatement.

Sr. No.	Description of Taxable Service	Abatement (standard Deduction of value)
1.	Financial leasing and Hire purchase	10%
2.	Transport of goods in a vessel	50%
3.	Transport of goods by road	25%
4.	Transport of goods by rail	30%
5.	Transport of passengers by rail	30%
6.	Transport of passengers by air	40%
7.	Renting of passenger vehicles	40%
8.	Renting of hotels, guest houses	60%
9.	Bundled service including food and hotel rent, convention center, etc.	70%
10.	Tour operator	10%, 25%, 40%
11.	Construction activity (per Section 66E)	25%

20. Other Important Amendments

20.1: Amendments to Service Tax Rules, 1994

- Every person providing a taxable service to issue an invoice within 30 days from the date of completion of such taxable service or receipt of payment, whichever is earlier.
- No invoice to be issued if the excess payment received is upto Rs. 1000 and where the invoice will be issued subsequently.
- Individual and partnership firms providing taxable services up to Rs. 50 Lacs, will have the option to pay service tax on collection basis.
- Excess payment of service tax allowed to be adjusted against the subsequent month's service tax liability without intimation to the jurisdictional Superintendent of Central Excise.

21. Rapid review of budget speech Comprising impact of these amendments

- Under the existing regime, as the levy of Service tax is on a 'definition based taxation of services', the classification of services assumes great importance as it not only determines taxability but also the date from which such service would become taxable, as different taxing entries were introduced at different points in time. It would not be out of place to state that most service tax litigation stemmed from the issue of interpretation of the definition of the various taxable entries/taxable services as defined under the Act. Under the proposed regime, it can be expected that the move towards a 'negative list' will result in lesser classification disputes and more clarity as regards taxability/non-taxability of activities. It however requires to be noted that more commercial activities will now be covered under the definition of the term 'service' and taxed at a higher service tax rate of 12% of the value of services.

- Certain activities/transactions like 'payment of non-compete fees', grant of 'monopoly rights' etc. which are not in common parlance treated as 'services' and were previously not treated as activities liable to Service tax, will now become liable to Service tax leading to an increase in transaction costs and the cost of doing business in India. In fact, the Explanatory notes to the Budget clarifies that even transactions such as an advance forfeited for cancellation of an agreement to provide service, will become liable to Service tax, which is indicative of the very wide scope of the proposed taxing provisions. Though the explanatory notes to the Budget states that the purpose of having a provision relating to 'declared services' is to ensure that there is no ambiguity as to whether such activities are services, if one examines the nature of such services, all these services are activities which are mired in litigation as to whether or not they can be taxed as a 'service at all' and whether the taxation of such activities is within the legislative competence of Parliament.
- Also the old statutory provisions will continue to be applicable in respect to services provided before the coming into force of the new statutory provisions. Therefore it can be expected that for some time, when the old provisions continue to apply in respect of services provided and the new provisions apply for services provided, or, to be provided, there will be some interpretational issues as well as greater administrative time required to be spent by assessee(s)/business' in complying with two sets of provisions.
- The move towards taxation of services based on a negative list of services is in line with global practice, recommendations of the Govind Rao Committee as well as the demand of industrial bodies and is a progressive step. The actual benefits of such a move can however be gauged only by the manner in which it is actually implemented and the manner in which it impacts Indian business'.