Salient Features of Finance Bill, 2013: Direct Taxes

The Finance Minister has not tinkered with the tax rate structure, both under direct and indirect taxes. He has not also levied any new taxes as was being widely debated, except commodity transaction tax on non-agricultural commodities. The Finance Minister in his Budget speech has promised to bring the Direct Taxes Code (DTC) back to the house before the end of the Budget session. However, on Goods and Service Tax (GST), he has not made a commitment about the time. The Finance Minister also made a statement to ensure clarity in tax laws, a stable tax regime, non-adversarial tax administration, a fair mechanism for dispute resolution and an independent judiciary. Regarding the amendments on direct taxes, the Finance Bill, 2013 has 53 clauses amending the various provisions on direct taxes. The various amendments proposed in the Finance Bill, 2013 are analysed in this article. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2014 i.e. assessment year 2014-15 relevant to the income earned in the financial year 2013-14. Read on to know more…

CA. Ved Jain

(The author is a member and the Past President of the ICAI. He can be reached at jainved@gmail.com)

Shri P. Chidambaram, after reassuming the office of Finance Minister, presented his first Budget and also the last Budget of the UPA-II Government. This budget was keenly watched not only by people in India, but also by the foreign investors. The Finance Minister had the challenge to revive growth without increasing fiscal deficit. He had a challenge to increase revenues without raising taxes, to revive investment and saving without more doles and to rein in inflation without choking growth, besides that of bringing enough pre-election populism without increasing expenditure.

In this backdrop, the Finance Minister presented a cautious Budget, seeking support of all sections of the House as well as the people of India, to navigate the Indian economy through a crisis that has enveloped the whole world and spared none. The Finance Minister has not tinkered with the tax rate structure both under direct and indirect taxes. He has not also levied any new taxes as was being widely debated, except commodity transaction tax on non-

agricultural commodities. Despite all the constraints, the Finance Minister has been able to contain the fiscal deficit for the current year at 5.2 and has projected a fiscal deficit of 4.8% in the next year. The Finance Minister, in his Budget speech, has promised to bring the Direct Taxes Code (DTC) back to the house before the end of the Budget session. However, on Goods and Service Tax (GST), he has not made a commitment about the time. He has only hoped to take the consensus on GST forward in the next few months and bring a draft Bill on the constitutional amendment and a draft Bill on GST. The Finance Minister also made a statement to ensure clarity in tax laws, a stable tax regime, non-adversarial tax administration, a fair mechanism for dispute resolution and an independent judiciary. To adopt the best global practices, the Finance Minister has proposed to set up a Tax Administration Reform Commission to review the application of tax policies and tax laws and submit periodic reports that can be implemented to strengthen the capacity of the tax system.

Coming to the amendments on direct taxes, the Finance Bill, 2013 has 53 clauses amending the various provisions on direct taxes. The various amendments proposed in the Bill are analysed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2014, i.e. assessment year 2014-15, relevant to the income earned in the financial year 2013-14.

A. Tax Rates

1. No increase in threshold limit – credit of ₹2,000 for individual tax payer having income upto ₹5 lakh

The Finance Minister has proposed no changes in the current slabs of income tax. The existing threshold exemption accordingly continues to be the same for individual, HUF, association of persons, body of individual and every juridical person:

Income	Tax Rate
Upto ₹2,00,000	Nil
₹2,00,001 - ₹5,00,000	10%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

However, the Finance Minister has proposed to allow credit to an individual resident in India whose total income does not exceed ₹5 lakh. The tax credit shall be equal to the tax payable or ₹2,000 whichever is less. The implication of this will be that an individual resident having taxable income up to ₹2,20,000 shall not be required to pay any tax. This credit shall be available only to individual resident and as such HUF, AOP, etc. shall not be entitled for this deduction. Similarly,z non-resident individual will also not be entitled for this deduction.

No change has been proposed in the threshold exemption for the senior citizens (of 60 years to 80 years of ₹2,50,000) and for very senior citizen (above 80 years of age of ₹5 lakh). Since the proposed tax credit of ₹2,000 is for resident individual, senior citizen between 60 years to 80 years of age shall get benefitted if the total income does not exceed ₹5 lakh. Such senior citizen will be required to pay tax over and above income of ₹2,70,000. However, in case of very senior citizen, threshold exemption being at ₹5 lakh, they will not be entitled to take benefit of this tax credit.

The ceiling of ₹5 lakh is with reference to the total income after all other deductions such as deduction under Section 80-C in respect of long term savings like life insurance premium, provident fund, deduction under Section 80D in respect of health insurance premium, etc.

2. Surcharge of 10% on all non-corporate tax payers whose income exceeds ₹1 crore

The Finance Bill, 2013 proposes to levy surcharge across the board on all persons. In the case of individual, HUF, AOP, body of individual or every juridical person, the surcharge shall be payable at the rate of 10% of the tax where the total income exceeds ₹1 crore. This surcharge shall be levied on the total tax payable once the income has exceeded ₹1 crore. However, marginal relief has been provided so as to ensure that the surcharge does not exceed the amount of the income which exceeds ₹1 crore. Similarly, co-operative society, firm, LLP, local body shall also be required to pay surcharge at the rate of 10% of the tax in case the income exceeds ₹1 crore.

3. Increase in rate of surcharge from 5% to 10% on companies where income exceeds ₹10 crore

The Finance Bill, 2013 proposes to increase the rate of surcharge, both on domestic as well as foreign companies. Presently, the surcharge is payable at the rate of 5% by a domestic company in case its income exceeds ₹1 crore. This is proposed to be revised to 10% where the total income exceeds ₹10 crore.

Thus, there will be no surcharge in case the total income of the company does not exceed ₹1 crore. Surcharge applicable shall be 5% where the income exceeds ₹1 crore, but does not exceed ₹10 crore. The surcharge applicable shall be 10% where the income exceeds ₹10 crore.

In the case of a foreign company (a company other than a domestic company) the surcharge is being

The Finance Bill, 2013 proposes to reduce the security transaction tax rate. There will be no STT payable on the delivery based purchases of units of an equity oriented Fund. On delivery based sale of units of an equity oriented Fund – STT payable has been reduced from 0.1% to 0.001%.

increased from 2% to 5% where the income exceeds ₹10 crore. The existing rate of surcharge of 2% shall continue to apply where the income of the foreign company exceeds ₹1 crore but does not exceed ₹10 crore.

4. **Surcharge on dividend distribution tax increased from 5% to 10%**
The rate of surcharge on dividend distribution tax payable under Section 115O and Section 115-R is proposed to be increased from 5% to 10%. The effective rate of dividend distribution tax (including education cess) which is at present 16.22% shall get increased to 16.99%. This amendment is being made from 01-04-2014 and accordingly dividend distributed on or after 01-04-2013 shall be liable for increased surcharge.

The Finance Minister in his Budget speech has stated that the surcharge being levied in this budget is only for one assessment year. However, past experiences show that surcharge once levied is extended year after year.

5. **Tax on distribution of income of debt mutual fund increased from 12.5% to 25%**
The tax rate on distribution of income by Debt Mutual Fund (other than a Money Market Mutual Fund or Liquid Fund) to an individual and HUF, is being increased from 12.5% to 25%. Presently under Section 115-R, no tax is payable on distribution of income of an equity oriented fund. However, in respect of debt fund, there are two classifications. For money market mutual fund or a liquid fund, the tax rate on distribution of income to an individual or HUF is 25% and in respect of other debt fund, the tax rate prescribed is 12.5%. Accordingly, investors could park their funds in debt mutual fund other than money market mutual fund or liquid fund instead of putting the money in deposit with the bank, etc. so as to get the benefit of reduced rate of tax of 12.5%. This has affected the flow of deposits into banks. To address this anomaly, the Finance Bill, 2013 has proposed to increase the tax rate to 25%. Accordingly, the tax rate applicable on distribution of income to an individual or HUF by all debt mutual funds will be 25%. The tax rate on distribution of income to any person other than an individual or HUF i.e. a firm, or a company continues to be 30%.

This new rate will be applicable on income distributed on or after 1st June, 2013 and as such income distributed before 1st June, 2013 will be liable for tax @ 12.5% only.

With this amendment, the Monthly Income Plan (MIPs) of Mutual Funds where a large number of retired people used to invest so as to receive monthly dividend, will get seriously affected. These investors now need to move to a Systematic Withdrawal Plan. If they do so, they would have to pay long term capital gains tax which is 20% if indexation benefits are availed and 10% if indexation benefits are not availed. Systematic Withdrawal Plan in substance is not different from the Monthly Income Dividend Plan. In the Monthly Income Plan, one receives income earned on units by way of dividend and, in the Systematic Withdrawal Plan, the value of the units appreciates by the income earned during the month and a part of the units equivalent to such appreciation in the value of the units are encashed.

The Finance Bill, 2013 proposes to introduce a new Section 80EE to provide deduction in respect of the interest payable on loan taken by an individual from a bank or a housing finance company for the purpose of acquisition of a residential house property. This deduction is restricted to only ₹1 lakh and that too for one assessment year i.e. assessment year 2014-15 in respect of the housing loan sanctioned from 1st April, 2013 to 31st March, 2014.

6. **Security Transaction Tax (STT) being reduced on future in securities**
The Finance Bill, 2013 proposes to reduce the security transaction tax rate. There will be no STT payable on the delivery based purchases of units of an equity oriented Fund. On delivery-based sale of units of an equity-oriented Fund, STT payable has been reduced from 0.1% to 0.001%. The STT rate on sale of futures in securities has been reduced from 0.017% to 0.01% and on sale of a unit of equity oriented fund to the Mutual Fund, the rate has been reduced from 0.25% to 0.001%. These changes in STT rate shall be effective only from 1st June, 2013.

7. **Commodity Transaction Tax (CTT) introduced on commodity derivatives other than agricultural commodities**
The Finance Bill, 2013 proposes to levy commodity transaction tax on commodity derivatives at the rate of 0.01%. This tax shall be payable by the seller at the time of sale of commodity derivatives, in respect of commodities other than agricultural commodities traded in recognised associations (exchange). The commodity derivatives shall mean –
   i. A contract for delivery of goods which is not a ready delivery contract; or
   ii. A contract for differences which derives its value from prices –
      a) of such underlying goods;
      b) of related services and rights, such as warehousing and freight; or
      c) with reference to weather and similar events and activities.
      having a bearing on the commodity sector.

The value of taxable commodity transaction shall be the price at which the commodity derivative is traded. This tax is to be collected by the recognised associations (exchange) from the seller and is to be paid within seven days of the month, following the month in which the same is collected. All the provisions applicable regarding security transaction tax in this regard shall be applicable. It is to be noted that, this commodity transaction tax shall be applicable only on commodity other than agricultural commodity and shall be applicable from the date, as the Central Government shall notify in the official gazette which in any case will be after the Finance Act, 2013 is notified. A corresponding amendment is being made by inserting clause (xvi) in Section 36(1), to allow deduction of the commodity transaction tax so paid in the course of the business while computing profit and gains of business or profession, if income from such commodity transaction is included in the income. It may also be relevant to note that the Finance Bill, 2008 had also proposed to levy commodity transaction tax but the same was not implemented.

Levy of Commodity Transaction Tax (CTT) on non-agricultural commodities will increase cost substantially and accordingly the investors and punters in commodities may shift to agricultural commodities' futures. It is interesting to note that the Security Transaction Tax on equity futures has been reduced from ₹1,700 per crore to ₹1,000 per crore, whereas a new CTT of ₹1,000 per crore has been levied on commodity futures. The currency futures, of which the market is also quite big, there is no such transaction tax at present.

B. Exemptions/Deductions

1. One time benefit of interest of ₹100,000 on acquiring first home by an individual

The Finance Bill, 2013 proposes to introduce a new Section 80EE, to provide deduction in respect of the interest payable on loan taken by an individual from a bank or a housing finance company, for the purpose of acquisition of a residential house property. This deduction is restricted to only ₹1 lakh and that too for one assessment year, i.e. assessment year 2014-15 in respect of the housing loan sanctioned from 1st April, 2013 to 31st March, 2014. It is to be noted that it is a one time exemption available for one assessment year of ₹1 lakh only. However, in case one is not able to take full deduction of ₹1 lakh in the assessment year 2014-15, then the deduction of the balance amount of ₹1 lakh can be claimed in the subsequent assessment year, i.e. 2015-16. One should not get confused with the yearly deduction of interest of ₹1.5 lakh, which is available under Section 24(a) in respect of self occupied property. Thus, deduction in the first year i.e. assessment year 2014-15 can be up to ₹2.5 lakh in respect of interest on housing loan. However, in the subsequent year, despite the interest on housing loan being more than ₹1.5 lakh, the deduction available will be only of ₹1.5 lakh under Section 24(a) and no deduction shall be available under this new Section 80-EE. It is to be further noted that for claiming this new deduction of ₹1,00,0000, the value of the residential house property should not exceed ₹40 lakh. Further, the assessee should not have any residential house property on the date of the sanction of the loan. The amount of the loan sanctioned should not exceed ₹25 lakh. It is to be further noted that the date of sanction of loan is sacrosanct for this deduction. The benefit is available only in respect of the loan sanctioned between 1st April, 2013 to 31st March, 2014. Any loan sanctioned before 1st April, 2013 will not be eligible loan. However, loan sanctioned before 1st April, 2014 will be eligible though the house may be acquired after 1st April, 2014. This deduction shall be available to an individual only and not to an HUF.

Presently under Section 80-GGB of the Income-tax Act, deduction is allowed to an Indian company in respect of the sum contributed to any political party, while computing its total income. Similarly under Section 80-GGC deduction is allowed to an individual, HUF, partnership firm, LLP in respect of contribution to any political party. The Finance Bill, 2013 proposes to insert a condition that no deduction under these sections shall be allowed in respect of any sum contributed by way of cash.

2. Deduction for investment in Rajiv Gandhi Equity Saving Scheme to be for three years

The Finance Act, 2012 has introduced a new Section 80CCG to allow deduction of 50% of the amount invested in equity shares to the extent of ₹25,000. This deduction was available to a new retail investor only for one assessment year and whose gross total income does not exceed ₹10 lakh.

The Finance Bill, 2013 proposes to extend the benefit of this scheme from one year to three consecutive assessment years with the result that a new retail investor can make investment of ₹50,000 in each of the three years and claim 50% deduction of such investment in each of the three assessment years. Further, the restriction of gross total income to not to exceed ₹10 lakh is being increased to ₹12 lakh. The scope of investment which was limited to listed equity shares is also being expanded so as to include listed units of an equity oriented fund. Now, the new retail investor can also make the investment in the equity oriented fund of the mutual fund and claim benefit of this scheme.

3. **Scope of Section 80-D in respect of Health Insurance Premium expanded to include other schemes**
As per the provision of Section 80-D, a deduction of ₹15,000 is allowed in respect of the amount paid to effect or keep in force an insurance on the health of the assessee or his family or any contribution made to Central Government Health Scheme (CGHS). The Finance Bill, 2013 proposes to widen the scope so as to include such other schemes as may be notified by the Central Government from time to time. This is being done to cover contribution being made under other Health Schemes which are similar to the CGHS.

4. **Person with disability or disease may contribute higher percentage of insurance premium**
The Finance Bill, 2013 proposes to amend the provision of Section 10(10D) so as to allow higher contribution up to 15% of the actual capital sum assured under a life insurance policy to a person with disability or severe disability or to persons suffering from disease or ailment as may be specified in Rule 11DD. The Finance Act, 2003 has introduced a condition under Section 10(10D) to the effect that the amount received on maturity of an insurance policy shall be exempt only when the premium paid for such policy does not exceed 20% of the actual capital sum assured in any year. This condition was inserted to discourage one time life insurance premium policies, whereby to take benefit of Section 10(10D), the entire premium was being paid in one year and later on the maturity amount with bonus was being claimed as exempt under Section 10(10D). The Finance Act, 2012 has further reduced this amount from 20% to 10% of the capital sum assured in any year so as to be eligible for exemption. This Finance Bill, 2013, considering the fact that the premium paid in respect of persons who suffers from severe disability or disease or ailment is higher, has proposed to relax this condition so as to allow contribution up to 15% of the capital sum assured in any one year. It may be noted that this increase in ceiling from 10% to 15% of the capital sum assured shall be applicable only for the policies issued on or after the 1st day of April, 2013.

Corresponding amendment has been proposed in Section 80-C, to allow deduction in the case of a person with disability or suffering from disease or ailment as is not in excess of 15% of the actual capital sum assured.

5. **Donation to political parties not to be exempt when paid in cash**
Presently under Section 80-GGB of the Income-tax Act, deduction is allowed to an Indian company in respect of the sum contributed to any political party, while computing its total income. Similarly under Section 80-GGC, deduction is allowed to an individual, HUF, partnership firm, LLP in respect of contribution to any political party.

The Finance Bill, 2013 proposes to make a very interesting amendment by inserting a new clause (iia) under Section 40(a) to provide that any amount paid by way of royalty, license fee, services fee, privilege fee, service charge or any other charge by whatever name called, levied exclusively on or which is appropriated directly or indirectly from a State Undertaking by the State Government will not be eligible expenditure while computing its income.

The Finance Bill, 2013 proposes to insert a condition that no deduction under these sections shall be allowed in respect of any sum contributed by way of cash. Thus, the contribution to political parties has to be by way of cheque or draft. It is interesting to note that the restriction is with reference to payment in cash as against provisions of Section 40A(3), Section 269SS and Section 269T, where there is a requirement not to make any payment otherwise than by way of an account payee cheque or an account payee draft.

6. **Special provision regarding taxation of Securitisation Trust**
The Finance Bill, 2013 proposes to give a special status to the trust formed to undertake securitisation activities which are regulated by SEBI or RBI. The income of such trust shall be exempt under Section 10(23DA) of the Income-tax Act. However, such trust will be liable to pay additional income tax on the income distributed to its investors on the line of dividend distribution tax. The tax rate shall be 25% in the case of distribution being made to the individual and HUF and 30% in other cases. These rates are the same as proposed under Section 115-R in respect of debt mutual fund. The distributed income received by the investor will be exempt from tax.

This provision shall be effective from 1st June, 2013.

7. **Deduction under Section 80JJAA for additional wages for workmen employed for manufacture of goods in factory as against industrial undertaking**
The existing provisions of Section 80JJAA which provides deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee for three years, is being substituted so as to restrict the Indian company deriving profit from manufacture of goods in its factory as against existing provision which allows deduction to any industrial undertaking engaged in the manufacture or production of an article or thing. Thus, the deduction is being limited to a factory as against industrial undertaking at present. This amendment has been

proposed on the ground that the incentive under this provision was intended for employment of blue collar employees in the manufacturing sector and not for other employees in other sectors.

C. Business Income

1. Investment Allowance of 15% on investment of more than ₹100 crore in Plant and Machinery

The Finance Bill, 2013 proposes to allow a deduction of 15% as investment allowance on the aggregate amount of the actual cost of the new plant and machinery acquired and installed during the period beginning 1st April, 2013 and ending on 31st March, 2015 under a new Section 32AC. This benefit shall be available to a company only which is engaged in the business of manufacture of an article or thing and which invests more than ₹100 crore in the new plant and machinery. As per the proposed amendment, if a company, in the assessment year 2014-15, i.e. during the period from 1st April, 2013 to 31st March, 2014, invests more than ₹100 crore in the plant and machinery, it can claim the benefit of 15% investment allowance in assessment year 2014-15. Such company if it further invests in plant and machinery in the assessment year 2015-16, i.e. during the period from 1st April, 2014 to 31st March, 2015, it can claim the 15% investment allowance in respect of further additions it has made during the financial year 2014-15 in assessment year 2015-16. In case the company has invested less than ₹100 crore in the financial year 2013-14, it shall not be eligible to claim investment allowance in assessment year 2014-15. However, in case in the financial year 2014-15, it makes further investment so that the total investment including the investment made in the financial year 2013-14 is more than ₹100 crore, then it shall be entitled to claim investment allowance of 15% on the total investment in plant and machinery including that of the financial year 2013-14. It is to be noted that this benefit is available only to a company and not to an individual, HUF, partnership firm, LLP, etc. Further, this benefit shall be available only when the company is engaged in the business of manufacture of an article or thing. Hence service industry, traders are outside this ambit. Power companies will also have a dispute on the issue whether power is an article or a thing and accordingly, whether it can be said that power companies are engaged in the business of manufacture of an article or a thing. The minimum amount of investment of ₹100 crore to claim this benefit is too high and only a few large companies will be in a position to claim this benefit. Further, the investment allowance will not reduce the book profit and as such the liability to pay Minimum Alternate Tax will still be there.

The Finance Minister in his Budget speech has stated that no large economy can be truly developed without a robust manufacturing sector. Accordingly, this proposal is being introduced to attract new investment and to quicken the implementation of projects. He has also hoped that there will be enormous spill over benefits to small and medium enterprises.

The objective, as stated by the Finance Minister, is to promote the manufacturing sector which has lagged behind as is evident from the figures of the GDP of manufacturing sector. Accordingly, it will be ideal that this minimum requirement of ₹100 crore is reduced, if not less, to ₹10 crore so that a large number of enterprises become eligible. Further, there is no need to restrict the benefit to corporate entities only.

There is a further condition attached that the new plant and machinery so acquired and installed shall not be sold or transferred otherwise than on amalgamation or demerger for a period of five years and in case of such transfer, the amount of deduction allowed in respect of such plant and machinery shall be deemed to be the income of the year in which such sale or transfer is effected. The condition of not transferring the new plant and machinery of more than ₹100 crore for a period of five years is too impractical. If plant and machinery of more than ₹100 crore is installed or acquired, there is bound to be some replacement over a period of five years of some of the machinery. Accordingly, it may not be advisable to put a condition to not to transfer even a small part of the plant and machinery. A leverage to transfer or replace 10% to 25% of the total cost of plant and machinery may be provided, so as to avoid practical difficulties on this aspect. Further, the period of five years is too long, given the fact that these days technology changes very fast and plant and machinery gets outdated and becomes obsolete within a short span. Ideally, this period should not be more than three years.

Further, to give a boost to the manufacturing sector, it will be better that the depreciation rate for plant and machinery, which were reduced in the year 2005 from 33.33% to 15%, be again increased to 33.33% across the board for all plant and machinery used in manufacture or production of an article or thing. This will really encourage more investment in the plant and machinery and will not also effect the revenue, as depreciation over a period cannot exceed the actual cost.

2. Sale of property held as stock in trade to be valued at Circle rate for business income also

The Finance Bill, 2013 proposes to introduce a new Section 43CA on the line of Section 50C, so as to compute income of the person engaged in the business of real estate in respect of the property sold on the basis of the value adopted for the payment of the stamp duty based on the circle rate notified by the State Government. The Finance Act, 2002 has introduced Section 50C to provide that in case of transfer of land or building or both, if the consideration received is less than the value adopted or assessed by any State Government for the purpose of levy of stamp duty, the value adopted for

stamp duty shall be deemed to be the full value of the consideration received for computing capital gain under Section 48 of the Income-tax Act. This provision was limited to computing capital gain under Section 45 of the Income-tax Act and was not applicable where the land and building was being sold in business like builder, developer etc. The Finance Bill, 2013 now is expanding the scope and, accordingly in the case of a builder or a developer also, if the sale consideration stated is less than the value adopted for the purpose of payment of stamp duty, then the value so adopted will be taken as full value of consideration while computing business income.

As is the case under Section 50C, an option is being given to the assessee that, in case he claims that the value adopted for the purpose of stamp duty exceeds the fair market value as on the date of transfer of the property, the Assessing Officer may refer the valuation of the property to the valuation officer. If the fair market value determined by the valuation officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be the full value of the consideration received. However, if the fair market value determined by the valuation officer is more than the value adopted for stamp duty purposes, the Assessing Officer shall not adopt the fair market value determined by the valuation officer, but will take the value adopted for stamp duty purposes as the consideration. Thus, in case the property is referred for valuation, the Assessing Officer cannot increase the value, but if the valuation is less than the stamp duty value, the same will get reduced.

Further in order to address the issue of change in circle rate consequent to the time gap between the date when the agreement to sell is entered into and the date when the registration is effected it has been provided that the value to be adopted for the purpose of computing profit and gains of business or profession shall be the stamp duty value on the date of the agreement to sell. However, in order to avoid any manipulation it has been provided that this benefit of agreement to sell shall be available only when the consideration or part of the consideration has been received by any mode other than cash on or before the date of the agreement for transfer of the property. Thus the agreement to sell where consideration has been received in cash only will not be valid for determination of the date applicable for circle rate.

It is to be noted that, under this Section 43CA, in the case of a person selling immovable property as stock-in-trade, the circle rate applicable as on the date of agreement to sell will be applicable. However, for a person selling immovable property as a capital asset, the capital gain would be computed on the basis of the circle rate applicable on the date of registration, not on the date of entering into agreement to sell. No corresponding amendment has been proposed to this effect in existing Section 50C. While selling property as a capital asset also there is every possibility that the circle rate may get changed between the times when the agreement to sell is entered with the prospective buyer and the date when the property is registered in the name of the buyer. Thus, there is a need to add corresponding provision under Section 50C also.

3. Clarificatory amendment regarding provision for bad debt in case of banks

The Finance Bill, 2013 proposes to introduce a clarificatory amendment regarding bad debts written off and the provision for bad debts. Presently, under Section 36(1)(vii), deduction is allowed in respect of bad debts actually written off. Further, under Section 36(1)(viia) deduction is allowed to the banks in respect of provision for bad and doubtful debts which include rural advances and other advances. As per Section 36(2)(v), it has been provided that actual bad debts allowable under Section 36(1)(vii) first needs to be debited to the provision made under Section 36(1)(viia) and any amount of the actual debt over and above the provision under Section 36(1)(viia) shall only be eligible for deduction. However, considering some judicial interpretations whereby it has been held that the actual bad debt is to be debited to the provisions which is limited to rural advances and not the total provision for bad debts this amendment is being made. Accordingly while claiming any deduction under Section 36(1)(vii) first the amount available in the provision under Section 36(1)(viia) needs to be adjusted and any bad debt actually written off in excess thereof shall only be eligible for deduction under Section 36(1)(vii).

4. License Fee, Royalty, etc. levied by State Government on State Government Undertakings not eligible for deduction

The Finance Bill, 2013 proposes to make a very interesting amendment by inserting a new clause (iia) under Section 40(a) to provide that any amount paid by way of royalty, license fee, services fee, privilege fee, service charge or any other charge by whatever name called, levied exclusively on or which is appropriated directly or indirectly from a State undertaking by the

The Finance Bill, 2013 proposes to reintroduce an amendment by substituting existing clause (vii)(b) of Section 56(2) with a new clause so as to tax the difference in the stamp duty value of the property purchased and the actual consideration paid, if such difference exceed ₹ 50,000, as income from other sources of the buyer being individual or HUF.

State Government will not be eligible expenditure while computing its income. The memorandum explaining the provisions in the Finance Bill, 2013 states that this is being done to protect the tax base since disputes have arisen about deductibility of such expenditure while computing income of such undertakings.

It has also been stated that the undertakings are separate legal entities than the State and as such are liable to income tax. This amendment shows the difference in the thought process of the Central Government and the State Governments and also ignores the fact that these State Government undertakings have been created to carry out the State responsibility in a more professional and efficient manner. The scope and the area of these undertakings by and large is the State function. The State Government in order to have a better administration has created these undertakings and has provided them with statutory functions and also the State assets by way of land and other infrastructure. The income arising to these undertakings cannot be considered to be business income in the sense on which tax can be levied. Accordingly, the denial of the deduction in respect of an amount which is statutorily required to be paid, may not be justified. The State Government having delegated a sovereign function to these undertakings for better management and recovering a fee or royalty for the function delegated to such undertakings are entitled to the same and should not be assumed to be a tax avoidance device.

5. **Further extension for setting up power generation, transfer or distribution undertaking by one year**

The power industry continues to get extension year after year. The Finance Bill, 2013, on the line of the Finance Act, 2012, proposes to extend the terminal date by another one year for claiming exemption under Section 80-IA(4) in respect of undertakings engaged in generation and distribution of power; or which starts transmission or distribution; or which undertakes substantial renovation and modernisation of existing network of transmission or distribution upto 31st March, 2014. Accordingly, all such undertakings which become operational by 31st March, 2014 will be eligible to claim exemption for 10 consecutive assessment years out of the 15 assessment years from the year of its operation.

6. **Dividend distribution tax of 20% on buy back of shares of unlisted companies**

The Finance Bill, 2013 proposes to introduce a new Section 115-QA to levy dividend distribution tax on an Indian company on buy back of its shares not listed in any recognised stock exchange. The tax payable shall be at the rate of 20% on the distributed income i.e. the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. Corresponding amendment is being made in Section 10 by inserting Clause (34A) to exempt income arising to a shareholder on buy back of shares of unlisted companies on which distribution tax has been paid under the above Section 115-QA. This amendment is being proposed considering the fact that the consideration received by a shareholder on buy back of shares by the company at present is taxable as capital gain under Section 46A of the Act. In view of this, many companies instead of paying dividend on which dividend distribution tax is payable, buyback the shares and the shareholder in turn either claim exemption of the capital gain under various provisions of the Income-tax Act or such capital gain is taxed at a lower rate. To address this issue it has been proposed that company on such buyback of shares shall pay distribution tax. It is to be noted that this tax is payable on the difference between the consideration paid by the company for buy back of shares and the amount received by the company for issue of such shares irrespective of the fact whether the company has accumulated profits or not. Thus this proposed provision goes even beyond Section 2(22)(e) of the Act whereby amount advanced is considered to be deemed dividend only to the extent of accumulated profits.

This amendment shall be effective from 1st June, 2013 and accordingly any buy back of unlisted shares by such companies, before 1st June, 2013 shall not be liable for this new additional income tax.

The Finance Bill, 2013 proposes to clarify the existing provision in Section 153 regarding extension of time period for completion of assessment in case where reference for exchange of information is made abroad by a competent authority under Double Taxation Avoidance Agreement referred to in Section 90 or under Section 90A.

7. **Key Man Insurance Policy**

The Finance Bill, 2013 proposes to plug another loophole in respect of key man insurance policies so as to provide that the benefit of exemption under Section 10(10D) shall also not be available in respect of a key man insurance policy which has been assigned to any person during its term with or without consideration and such policies shall continue to be treated as a key man insurance policy. This amendment is being made considering the fact that key man insurance policy is assigned before its maturity to the key man and it is claimed that after such assignment the policy is no longer a key man insurance policy and accordingly not excluded from the exemption provided under Section 10(10D).

8. Trading in Commodity Derivatives not to be speculative transaction

The Finance Minister, while proposing to levy CTT on non-agricultural commodities futures contract, has also proposed that trading in commodity derivatives will not be considered as a speculative transaction. However, no corresponding amendment has been proposed in Section 43(5) by the Finance Bill, 2013. It appears that while debating the issue later to levy CTT, it was thought fit to give a concession by treating trading in commodity derivatives as non- speculative transactions. Accordingly suitable amendment will be proposed in Section 43(5) at the time of passage of the Finance Bill so as also to exclude eligible transactions in respect of trading in commodity derivatives on the line on which trading in derivatives or securities have been excluded. It is to be further noted that though the CTT will be levied on non-agricultural commodity derivatives, the benefit of not treating the transaction in commodity derivatives as speculative by implementation will get extended to trading in agricultural commodity derivatives also. It is to be further noted that this benefit of treating the commodity derivatives as non-speculative will be effective from the date the same is notified by the Central Government. Losses, if any, before such notification in such commodity derivatives will be considered to be speculative losses and as such will not be eligible to be set off against the profit arising from such transactions after the notification date.

D. Capital Gain

1. Agricultural land outside municipal limit for the purpose of capital gain and agricultural income re-defined

At present, under the Income-tax Act, capital gain arising on transfer of agricultural land in India is not taxable as it does not fall in the definition of the capital asset under Section 2(14)(iii) of the Income-tax Act. Similarly any rent or revenue derived from agricultural land (farm house) which is situated in India is considered to be agricultural income and not taxed in view of the provisions of Section 2(1A) of the Income-tax Act. For the purpose of claiming this exemption, as on date, in both these sections, it has been provided that such agricultural land should not be situated in any area within the jurisdiction of the municipality or a cantonment board and which has a population of not less than ten thousand or in an area which is not more than 8 KMs from the local limit of any municipality or a cantonment board as may be notified by the Central Government having regard to the extent of urbanisation of that area. Thus for claiming exemption under this provision, as on date, the land must fall outside the area notified by the Central Government. The Finance Bill, 2013 proposes to define the area in the Act itself rather than making a reference to the notification. Accordingly, it has been proposed that the said land should not be situated in the case of a municipality or a cantonment board which has a population of more than 10,000 but not exceeding 1 lakh within a distance of 2 kms. In the case where the population of the municipality or a cantonment board is more than 1 lakh but not exceeding 10 lakh, such land should not be situated within a distance of 6 kms. In the case of a municipality or a cantonment board which has a population of more than 10 lakh, such land should not be situated within a distance of 8 kms. All distances have to be measured from the local (outer) limit of the municipality or a cantonment board and are to be measured aerially. It has also been clarified that the population shall mean the population according to the last preceding census of which the relevant figures have been published before the 1st day of the previous year i.e. the taxable year, not the assessment year. This provision shall come into force from assessment year 2014-15 for which the previous year will start from 1st April, 2013. Accordingly, the persons having land which are covered within the meaning of agricultural land under the existing provisions and may not be covered within the meaning of agricultural land under the proposed amendment, if they sell the said agricultural land by 31st March, 2013, they can still claim exemption.

E. Income from Other Sources

1. Property purchased for inadequate consideration to be taxed as income from other sources

The Finance Bill, 2013 proposes to reintroduce an amendment by substituting existing Clause (vii)(b) of Section 56(2) with a new clause so as to tax the difference in the stamp duty value of the property purchased and the actual consideration paid, if such difference exceed ₹50,000, as income from other sources of the buyer being individual or HUF. It is to be noted that a similar provision was introduced by the Finance (No.2) Act, 2009 effective from 1st October, 2009. However, this provision was withdrawn retrospectively by the Finance Act, 2010. Under Section 50C, the seller is already required to compute capital gain on the basis of stamp duty value if the actual consideration is less than stamp duty value. As is the case under Section 50C for the seller, the buyer in case he disputes that the stamp duty valuation is higher than the fair market value on the date of the transfer, the Assessing Officer may refer the matter to the valuation officer. If the fair market value determined by the valuation officer is less than the value adopted for stamp duty purposes then such fair market value shall be adopted for this purpose. However, if the fair market value determined by the valuation officer is more than the stamp duty value then the Assessing Officer shall not be able to adopt such fair market value and will take the stamp duty value for this purpose in view of the provisions of Section 50C(3) which are applicable to this proposed section also. This amendment

by implication may address all those disputes which are recently arising on acquisition of immovable property whereby the Assessing Officer makes addition merely on the basis of the higher valuation made by the valuation officer without there being any material or evidence of any consideration being paid over and above the value stated in the sale deed.

The proposed amendment shall also address the issue which may arise consequent to the revision of the circle rate between the date on which the agreement to sell is entered and the date on which the sale deed is entered. It is being provided that in such a case the stamp duty value on the date of the agreement to sell shall be taken provided the consideration or a part thereof has been paid on or before the date of the agreement by a mode other than cash. This condition of payment at the time of the agreement to sell other than by cash is being introduced to avoid any doubt about the date of the agreement to sell. It is to be noted that this amendment does not make a distinction of acquisition of property for personal purposes or in the course of business. Accordingly it can have far reaching implications in respect of persons engaged in the business of real estate if the purchases have been made at a value less than the stamp duty value. However, it is also to be noted that this provision is applicable only in the case of an individual and HUF and accordingly this provision will not be applicable where the property is purchased by a partnership firm or an LLP or a company.

F. Assessment

1. Return to be defective if tax with interest is not paid before filing of return

The Finance Bill, 2013 proposes to insert a new Clause (aa) in explanation below Section 139(9) so as to provide that if tax together with interest payable in accordance with the provisions of Section 140A has not been paid on or before the date of furnishing of the return, the same will be treated as a defective return.

As per the provisions of Section 139(9), the Assessing Officer in such a situation will intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such further period on an application the Assessing Officer may in his discretion allow. In case the defect is not so rectified within the period so allowed, the return shall be treated as invalid return and it shall be considered that assessee has failed to furnish the return. However, the proviso to this section also states that where assessee rectifies the defect after the expiry of the period allowed to him but before the assessment is made, the assessing officer can condone the delay and treat the return as a valid return.

With this amendment it will not be possible to file return without paying full taxes with interest.

This provision shall be applicable from 1st June, 2013.

In case of failure to furnish the information, presently penalty at the rate of ₹100 per day is leviable under Section 271FA. The Finance Bill, 2013 proposes to raise the penalty, in cases where the income tax authority has called for the information under sub-section (5) of Section 285BA and the same is not furnished, from ₹100 per day to ₹500 per day.

2. Scope of directing special audit under Section 142(2A) being widened

At present under Section 142(2A) of the Income-tax Act, the Assessing Officer can direct the assessee to get the accounts audited if he is of the opinion having regard to the nature and complexity of the accounts and the interest of the revenue, it is necessary so to do. The Finance Bill, 2013, proposes to widen the ambit so as to provide that the assessing officer can direct special audit not only having regard to the nature and complexity of the accounts but also having regard to the volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee.

This amendment shall be applicable from 1st June, 2013.

3. Extension of period of limitation where reference for exchange of information is made abroad or where order of special audit is quashed by the court

The Finance Bill, 2013 proposes to clarify the existing provision in Section 153 regarding extension of time period for completion of assessment in case where reference for exchange of information is made abroad by a competent authority under Double Taxation Avoidance Agreement referred to in Section 90 or under Section 90A. It is being clarified that where more than one reference for exchange of information is made the period to be excluded shall be the period from the date on which a reference or first of the references for exchange of information is made to the date on which the information requested is last received by the Commissioner or a period of one year whichever is less while computing the period of limitation under Section 153 of the Income-tax Act. Thus the maximum extension in case of exchange of information is limited to a period of one year.

Further, it is being proposed that the period of limitation for completion of assessment and reassessment shall stand extended in case the direction of the assessing officer for special audit under Section 142(2A) is set asided by the Court. The extension shall be for the period commencing from the date on which the assessing

officer directs the assessee for special audit and ending with a date on which orders setting aside such direction is received by the Commissioner while computing the period of limitation for the purpose of Section 153. A corresponding amendment has been proposed in Section 153B of the Income-tax Act regarding reassessment consequent to the search.

This amendment shall be effective from 1st June, 2013.

4. **Tax due from a company/LLP to include interest and penalty in case of recovery from directors/partners**
Provisions of Section 179 whereby tax due from a private company can be recovered from the director is being amended to clarify that the tax due shall also include interest and penalty thereon as well as any other sum payable under the Act. Similar amendment is being made under Section 167C of the Income-tax Act for recovery of tax from partners in respect of liability of LLP.

This amendment shall be effective from 1st June, 2013.

5. **Existing liability under Section 132B not to include advance tax payable**
A clarificatory amendment is proposed to be introduced by inserting Explanation 2 in Section 132B to clarify that existing liability stated in Section 132B does not include advance tax payable in accordance with the provisions of Chapter XVIIC. This is being done to ensure the recovery of not only outstanding tax, interest and penalty but also to provide for recovery of taxes/interest/penalty which may arise subsequent to the assessment pursuant to search.

This amendment shall be effective from 1st June, 2013.

6. **Penalty for non-furnishing of AIR information on requisition by the assessing officer increased from ₹100 to ₹500 per day**
Presently under Section 285BA, there is an obligation to furnish annual information return in respect of certain transactions stated therein. Further in terms of Section 285-BA(5), the income tax authority has power to call for such information where a person has not furnished the AIR information. In case of failure to furnish the information, presently penalty at the rate of ₹100 per day is leviable under Section 271FA. The Finance Bill, 2013 proposes to raise the penalty, in cases where the income tax authority has called for the information under sub-section (5) of Section 285BA and the same is not furnished, from ₹100 per day to ₹500 per day.

7. **Electronic filing of annexure-less Wealth Tax Return**
Provisions of Wealth Tax Act are being amended to facilitate electronic filing of annexure-less return of net wealth. The amendment proposed is on the line similar to the amendment made earlier to facilitate electronic filing in Income-tax Act under Section 139C and 139D.

This amendment is being made with effect from 1st June, 2013, and, accordingly, return of wealth tax for assessment year 2013-14 now can be filed electronically.

The Finance Bill, 2013 proposes to reintroduce provision making it obligatory to deduct tax at source under a new Section 194-IA so as to provide that every buyer at the time of making payment or crediting of any sum as consideration for transfer of immovable property other than agricultural land shall deduct tax at source at the rate of 1% of such sum where the total amount of the consideration for the transfer of the immovable property is ₹50 lakh or more.

G. Tax Deduction at Source

1. **Tax to be deducted at source by buyer on purchase of immovable properties**
The Finance Bill, 2013 proposes to reintroduce provision making it obligatory to deduct tax at source under a new Section 194-IA so as to provide that every buyer at the time of making payment or crediting of any sum as consideration for transfer of immovable property other than agricultural land shall deduct tax at source at the rate of 1% of such sum where the total amount of the consideration for the transfer of the immovable property is ₹50 lakh or more. This provision is being introduced on the reasoning that despite there being a statutory requirement of furnishing Permanent Account Number in the documents relating to the sale of the property, in majority of the cases, such PAN is not being furnished. A similar provision was introduced by the Finance Bill, 2012 whereby an obligation was also cast on the registering officer to not to register any document unless the buyer furnishes the proof of deduction of income tax. However, in the new provision introduced in this Finance Bill, 2013 there is no such obligation on the registering officer. Under the proposed provision, there is an obligation on every buyer irrespective of the status, i.e. individual, HUF, partnership firm, company, to deduct tax at source at the rate of 1%. This deduction has to be made at the time of making payment or credit whichever is earlier. Thus, even at the time of giving earnest money or an advance money or an installment, tax will be required to be deducted and deposited in accordance with the provisions of the Act. Further, it will be also important that the seller has a Permanent Account Number as otherwise in view of the provisions of Section 206AA of the Act the tax will be required

to be deducted at the rate of 20% instead of 1%. The only exclusion is where the consideration is less than ₹50 lakh or agricultural land as defined under Section 2(14)(iii) the definition of which is also proposed to be changed in this Finance Bill, 2013.

This provision may have a lot of practical difficulties in view of the fact that, this will be applicable to an individual buying property who may not be having TAN. Further, tax will be required to be deducted from each payment. In the case of a developer, each customer will be deducting tax at the time of making each payment and it will be a very voluminous task to issue and collect tax certificates. Further, the issue of reconciliation will also be cumbersome considering the fact that the tax will get deducted even on advance payment and income consequent to the sale may accrue in subsequent year or years.

This provision will be applicable from 1st June, 2013 and accordingly all transactions on or after 1st June, 2013, where the consideration is not less than ₹50 lakh, shall be covered under this provision.

H. International Taxation

1. Tax Residency Certificate necessary but not sufficient – GAAR being revived from backdoor

The Finance Bill, 2013 proposes to insert a new sub-section (5) in Section 90 and Section 90A to the effect that for claiming any relief under the Double Taxation Avoidance Agreement, the tax residency certificate as referred to in sub-section (4) of Section 90 and 90A shall be necessary but not a sufficient condition. It has been stated that in the memorandum explaining the provisions in the Finance Bill 2013, that this position that tax residency certificate is necessary but not sufficient condition was earlier mentioned in the memorandum explaining the provisions in the Finance Bill, 2012 while inserting sub-section (4) regarding the requirement of the tax residency certificate.

This amendment, however, has a far reaching implication as the Mauritius tax route will again come under threat because of this provision. This amendment will also dilute the most quoted circular No. 789 dated 13th April, 2000 of CBDT which was quashed by the Delhi High Court, but in an appeal filed by the Union of India, the Supreme Court upheld the validity of the circular in the famous case of Azadi Bachao Andolan 263 ITR 706 (SC). With this proposed amendment, the tax officer will now be able to raise the same dispute which was raised in the year 2000. The officer may ask a foreign institutional investor (FII), besides submitting tax residency certificate, to establish that it has actual residence in Mauritius. It is to be noted that the whole controversy of GAAR has arisen mainly because GAAR was intended to challenge the issue of residency and consequently withdraw the benefit available under the Mauritius Treaty. Despite India having tax treaties with 84 countries, the most important treaties are that of Mauritius and Singapore, as it affects the major foreign investment inflow in India since capital gains realised by the residents of these jurisdictions are exempt under this treaty. The proposed amendment in fact is a backdoor entry of the controversial GAAR provision which otherwise, in view of the hue and cry and serious outflow of FII investment during the year, are proposed in this Finance Bill, 2013 to be postponed by another two years. This amendment will also water down the Supreme Court judgment in the case of Azadi Bachao Andolan and CBDT Circular No.789 dt. 13th April, 2000 by which it has been clarified:

> *"The provisions of the Indo-Mauritius DTAC of 1983 apply to 'residents' of both India and Mauritius . Article 4 of the DTAC defines a resident of one State to mean any person who, under the laws of that State is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. Foreign Institutional Investors and other investment funds etc. which are operating from Mauritius are invariably incorporated in that country. These entities are 'liable to tax' under the Mauritius Tax law and are therefore to be considered as residents of Mauritius in accordance with the DTAC.*
>
> *Prior to 1st June, 1997, dividends distributed by domestic companies were taxable in the hands of the shareholder and tax was deductible at source under the Income-tax Act, 1961. Under the DTAC, tax was deductible at source on the gross dividend paid out at the rate of 5% or 15% depending upon the extent of shareholding of the Mauritius resident. Under the Income-tax Act, 1961, tax was deductible at source at the rates specified under Section 115A etc. Doubts have been raised regarding the taxation of dividends in the hands of investors from Mauritius. It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.*
>
> *The test of residence mentioned above would also apply in respect of income from capital gains on sale of shares. Accordingly, FIIs etc., which are resident in Mauritius would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of article 13."*

It may be interesting to note that, in this Finance Bill, 2013, this amendment is the only amendment which is being proposed retrospectively, i.e. from assessment year 2013-14.

2. General Anti Avoidance Rules (GAAR)—being postponed by two years

The Finance Bill, 2013 proposes to postpone the GAAR by another two years and to substitute the existing

provision of Chapter XA and Section 144BA regarding General Anti Avoidance Rules (GAAR). The amended provisions are on the line of the expert committee's recommendations, of which the announcement was made on 14th January, 2013. The salient features of this amendment are:

"(A) The provisions of Chapter X-A and Section 144BA will come into force with effect from 1st April, 2016 as against the current date of 1st April, 2014. The provisions shall apply from the assessment year 2016-17 instead of assessment year 2014-15.

(B) An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision of Section 96 providing that it should be "the main purpose or one of the main purposes" has been proposed to be amended accordingly.

(C) The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The current provisions of Section 97 which provided that these factors would not be relevant has been proposed to be amended accordingly.

(D) An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A. The current provisions as contained in Section 97 are proposed to be amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.

(E) The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision of Section 144BA ,that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service has been proposed to be amended accordingly.

(F) The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The current provisions of Section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been proposed to be amended accordingly.

(G) The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years. The provisions of Section 144BA have been proposed to be amended accordingly.

(H) The two separate definitions in the current provisions of Section 102, namely, "associated person" and "connected person" will be combined and there will be only one inclusive provision defining a 'connected person'. The provisions of Section 102 have been proposed to be amended accordingly.

This amendment will be effective from 1st April, 2016 and, accordingly, shall be applicable from assessment year 2016-17.

It is to be noted that the Finance Minister in his Budget speech has stated that the recommendation of the Shome Committee has been accepted but following major recommendations of the Shome Committee have not been incorporated in the amendment proposed in the Finance Bill, 2013:

i) The monetary threshold limit of ₹3 crore for invoking GAAR;
ii) Grand-fathering provision in respect of investment made on or before 30th August, 2010;
iii) The applicability of the GAAR where a part of the arrangement is an impermissible avoidance agreement to be restricted to that part only and not to the whole arrangement;
iv) The provisions of GAAR to ensure that same income is not taxed twice in the hands of the same tax payer in the same year or in different assessment years.

3. Dividend received from foreign companies to continue to be taxed at concessional rate of 15% for one more year

The Finance Bill, 2013 proposes to extend the benefit of Section 115BBD by another one year the concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company in which it has shareholding of 26% or more. This provision was introduced by the Finance Act, 2011 to attract more repatriation of income earned by a subsidiary of Indian companies for a period of one year. The Finance Act, 2012 has extended the period to another one year. With this further extension by the Finance Bill, 2013 this benefit will continue to be available for dividend received in the financial year 2013-14, i.e. assessment year 2014-15.

4. **Dividend received by Indian company from foreign subsidiary to be exempt from dividend distribution tax**
Presently, under the Income Tax provisions, every Indian company in addition to paying tax at the rate of 30% on its income is required to pay dividend distribution tax at the rate of 15% on the amount of dividend distributed, at the time of distribution of dividend. However, there is an exemption in respect of the dividend distributed to the extent of the dividend received from an Indian subsidiary company which has paid the dividend distribution tax on such dividend. Similar exemption is proposed to be extended by this Finance Bill, 2013 in respect of the dividend received from a foreign subsidiary company on which tax has been paid under Section 115-BBD of the Income-tax Act. This amendment is being introduced to remove the cascading effect in respect of the dividend received by an Indian company from a similarly placed foreign company. This exemption can be subject matter of tax planning so as to take benefit of tax at the rate of 15% as against normal tax of 30%. Presently, if a resident individual receives an income from abroad say UAE, the same will get taxed at the rate of 30%. But if this income is received by an Indian company by way of dividend from its subsidiary in UAE, then such dividend income will get taxed at the rate of 15%. The Indian company in turn can pay dividend to its individual shareholders out of such dividend received without paying dividend distribution tax in view of the proposed amendment. Thus, the income from UAE will reach in the hands of the individuals by paying tax at the rate of 15% as against normal tax rate of 30%.

It is to be noted that the existing provisions and the proposed amendment allows deduction only in respect of the dividend received from a subsidiary company on which dividend distribution tax has been paid. The dividend received from a company which is not a subsidiary company continues to bear the cascading effect as the company is required again to pay dividend distribution tax on the income distributed despite the fact that such income comprised of the dividend received from another company on which dividend distribution tax has been paid. It is being realised that subjecting again dividend distribution tax has a cascading effect there is no reason why there should be a distinction of the dividend received from a subsidiary company or a non-subsidiary company. Further, the contention that only such company shall be considered as a subsidiary company if such other company holds more than 50% of the equity share capital of the company also is not in line with the exemption provided under Section 115BBD in respect of dividend received from a foreign company whereby holding 26% or more equity is considered to be eligible for concessional rate of 15% tax.

This amendment shall be effective from 1st June, 2013 and, accordingly, if any Indian company distributes dividend on or after 1st June, 2013, it shall be eligible to, deduct the amount of the dividend received by it from a foreign subsidiary company while computing its liability of paying dividend distribution tax.

The Finance Bill, 2013 proposes to extend the benefit of Section 115BBD by another one year the concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company in which it has shareholding of 26% or more.

5. **Tax on royalty or fee for technical services increased to 25%**
Presently, under Section 115-A of the Income-tax Act, the tax rate applicable in the case of a non-resident on income by way of royalty or fee for technical services is 10% if the agreement for such royalty or fee for technical services is entered on or after 1st June, 2005. The Finance Bill, 2013 proposes to increase this from 10% to 25%. This is being done on the ground that as per the Double Taxation Avoidance Agreement (DTAA) entered into by India with other countries, the tax rate provided in the DTAA is more than the tax rate of 10% under this normal provision of the Act. Accordingly, there is no justification to keep the tax rate under the normal tax provision lower than the tax rate applicable as per the Treaty. However, this justification for enhancement of tax rate does not take into account the fact that India has reduced the tax rate on royalty and fee for technical services from 30% to 20% in the year 1997 and from 20% to 10% in the year 2005 to attract more investment and technology despite the fact that the tax rate applicable on royalty or fee for technical services under DTAA at that time were also more than the 10%. It is not that post 1997 or post-2005, the tax rates under DTAA on royalty or fee for technical services has been increased necessitating increase in the normal provision of the Income-tax Act.

6. **Concessional rate of 5% on interest on ECB borrowing being extended to rupee denominated long-term infrastructure bond:**
The Finance Bill, 2013 proposes to extend the scope of Section 194-LC in respect of a borrowing by an Indian company in foreign currency from a source outside India by issue of long-term infrastructure bond whereby concessional rate of tax of 5% is applicable on the interest payment to a non-resident person. As per the proposal the concessional rate of 5% shall be applicable in respect of the long term infrastructure bonds issued by an Indian company which are denominated in Rupee. However, for claiming this concessional rate of 5%, the non-resident is required to deposit foreign currency in designated bank account and such money converted

into Rupee is utilised for subscribing to the long-term infrastructure bond issue of an Indian company. The interest income arising thereon shall be taxable at the rate of 5%.

This provision shall be applicable from 1st June, 2013.

7. **No clarity on retrospective amendment relating to indirect transfer**

Last year, the Finance Act, 2012 had made far reaching retrospective amendments to Section 2 and Section 9 in relation to indirect transfers in order to undo the judgment of the Supreme Court in the case of Vodafone. In view of the severe adverse impact on FII and FDI, the Government asked the Shome Committee to revisit these amendments. The Shome Committee has made recommendations to not to make retrospective amendment. The Finance Bill, 2013 is silent on this issue. The Vodafone case controversy still continues to be a major issue with the foreign investors in view of the retrospective amendments which led to uncertainty in the law. The Finance Minister in his Budget speech though has stated that he will improve communication of policies to remove any apprehension or distrust in the minds of investors but in the absence of any categorical statement about the retrospective amendment in the law, fears about undue regulatory burden and application of tax law continue with the foreign investors.

I. Miscellaneous

1. **Pass through status to alternative investment fund on the line of venture capital fund**

Venture capital fund/venture capital company registered with SEBI as Category-I – Alternative Investment Fund under the Alternative Investment Fund regulations have been granted pass through status on the line of pass through status granted under Section 10(23FB) to venture capital company and venture capital fund from investment in a venture capital undertaking. However the income arising or received by a person out of the investment made in such Fund shall be taxable in his hands under Section 115-U of the Income-tax Act. Under this Section 115-U, the income paid by a special fund is deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it has been received by, or had accrued or arisen to the company or fund during the previous year as the case may be.

2. **Income of investor protection fund of depository to be exempt**

The Finance Bill, 2013 proposes to introduce a new sub-section (23ED) in Section 10 to exempt income of the investor protection fund of depository similar to the exemption provided under Section 10(23EA) of income received by an investor protection fund set up by the recognised Stock Exchange. The exemption will be available to such investor protection fund which is set up by the depository in accordance with the regulations prescribed by the SEBI. Further, it has been provided that any amount standing to the credit of the fund if it is shared wholly or partly with a depository then exemption will not be available in respect of the amount so shared and the same will be deemed to be the income in which such amount is shared. Thus, the investor fund so created by the depository has to be maintained exclusively and is not to be shared with the depository.

The Finance Bill, 2013 proposes to insert a new sub-section (5) in Section 90 and Section 90A to the effect that for claiming any relief under the Double Taxation Avoidance Agreement, the tax residency certificate as referred to in sub-section (4) of Section 90 and 90A shall be necessary but not a sufficient condition.

3. **Income of National Financial Holding Company Ltd. to be exempt**

The Finance Bill, 2013 has proposed to insert a new sub-section (49) in Section 10 to provide that the income of National Financial Holding Company Ltd. which is a company set up by the Central Government shall be exempt commencing from the assessment year 2014-15. This exemption is continuation of the exemption provided to the specified undertaking of the Unit Trust of India which has been wound up and is succeeded by this new company called National Financial Holding Company Ltd.

4. **Time period for recognised fund to obtain exemption from Provident Fund Commission being extended**

As per the existing provisions, for a Provident Fund to obtain recognition under the Income-tax Act, such Provident Fund should be notified by the Central Provident Fund Commissioner under Section 1(4) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and such Fund should have exemption under Section 17 of the said Act. The Finance Act, 2006 had inserted that this notification and the approval should be obtained by 31st March, 2007 by the existing Provident Fund, otherwise recognition of such fund shall be withdrawn. Considering the fact that such notification and approval has not been granted so far by the Provident Fund Commissioner to a large number of Funds, year after year, this deadline is being extended. The Finance Bill, 2013 proposes to extend this deadline of notification and obtaining exemption from the Provident Fund Commissioner from 31st March, 2013 to 31st March, 2014. ■