FINANCE BILL, 2013

PROVISIONS RELATING TO DIRECT TAXES

Introduction

The provisions of the Finance Bill, 2013 relating to direct taxes seek to amend the Income-tax Act, Wealth-tax Act and Finance (No.2) Act, 2004, *inter alia*, in order to provide for –

A. Tax rates

B. Additional Resource Mobilisation

C. Measures to Promote Socio-economic Growth

D. Relief and Welfare Measures

E. Widening of Tax Base and Anti Tax Avoidance Measures

F. Rationalisation Measures

2. The Finance Bill, 2013 seeks to prescribe the rates of income-tax on income liable to tax for the assessment year 2013-14; the rates at which tax will be deductible at source during the financial year 2013-14 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of "advance tax", deduction of income-tax from, or payment of tax on 'Salaries' and charging of income-tax on current incomes in certain cases for the financial year 2013-14.

3. The substance of the main provisions of the Bill relating to direct taxes is explained in the following paragraphs:-

DIRECT TAXES

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2013-14.

In respect of income of all categories of assessees liable to tax for the assessment year 2013-14, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2012, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

(1) Surcharge on income-tax—

Surcharge shall be levied in respect of income liable to tax for the assessment year 2013-14, in the following cases:—

(a) in the case of a domestic company having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of five per cent. of such income tax.

(b) in the case of a company, other than a domestic company, having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of two per cent. of such income tax.

However, marginal relief shall be allowed in all these cases to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.

Also, in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, 1961 (hereinafter referred to as 'Income-tax Act') and where such income exceeds one crore rupees, surcharge at the rates mentioned above shall be levied and marginal relief shall also be provided.

(2) Education Cess —

For assessment year 2013-14, additional surcharge called the "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

II. Rates for deduction of income-tax at source during the financial year 2013-14 from certain incomes other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2013-14 from certain incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2012, for the purposes of deduction of income-tax at source during the financial year 2012-13, except that in case of certain payments made to a non-resident (other than a company) or a foreign company, in the nature of income by way of royalty or fees for technical services, the rate shall be twenty-five percent of such income.

(1) Surcharge—

The amount of tax so deducted, in the case of a non-resident person (other than a company), shall be increased by a surcharge at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees . The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees and it shall be increased by a surcharge at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

"Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent. respectively, of income tax including surcharge wherever applicable, in the cases of persons not resident in India including companies other than domestic company.

III. Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2013-14.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2013-14 and also for computation of "advance tax" payable during the said year in the case of all categories of assessees have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the financial year 2013-14 on current incomes in cases where accelerated assessments have to be made , for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person.

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:-

(i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or Hindu undivided family or every association of persons or body of individuals , whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) are as under :—

Upto Rs. 2,00,000	Nil.
Rs. 2,00,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

(ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Upto Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs.10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

(iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at anytime during the previous year,—

Upto Rs. 5,00,000	Nil.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees .

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2012-13.

The amount of income-tax shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees .

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for financial year 2012-13.

The amount of income-tax shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a firm having a total income exceeding one crore rupees .

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the financial year 2012-13.

The amount of income-tax shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees .

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the financial year 2012-13.

The existing surcharge of five per cent in case of a domestic company shall continue to be levied if the total income of the domestic company exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of ten percent shall be levied if the total income of the domestic company exceeds ten crore rupees. In case of companies other than domestic companies, the existing surcharge of two per cent. shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of five percent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees, shall not exceed the total amount payable as income-tax on a total income of one crore rupees, by more than the amount of income that exceeds one crore rupees. The total amount payable as income-tax and surcharge on total income exceeding ten crore rupees, shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

In other cases (including sections 115-O, 115QA, 115R or 115TA) the surcharge shall be levied at the rate of ten percent.

For financial year 2013-14, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such Cess.

[Clause 2 & First Schedule]

B. ADDITIONAL RESOURCE MOBILISATION

Commodities Transaction Tax

A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered into in a recognised association.

It is proposed to define ‘taxable commodities transaction’ to mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.

The tax is proposed to be levied at the rate, given in the Table below, on taxable commodities transactions undertaken by the seller as indicated hereunder:-

TABLE

S.No.	Taxable commodities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
1.	Sale of commodity derivative	0.01 per cent	Seller

The provisions with regard to collection and recovery of CTT, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution, filing of appeal, power to the Central Government, etc. have also been provided.

This tax is proposed to be levied from the date on which Chapter VII of the Finance Bill, 2013 comes into force by way of notification in the Official Gazette by the Central Government.

Further, it is proposed to amend section 36 of the Income-tax Act to provide that an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.

It is also proposed to insert an Explanation to provide that for the purposes of this clause, the expressions “commodities transaction tax” and “taxable commodities transaction” shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2013.

This amendment in section 36 of the Income-tax Act will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clauses 6, 105 to 124]

Taxation of Income by way of Royalty or Fees for Technical Services

Section 115A of the Income-tax Act provides for determination of tax in case of a non-resident taxpayer where the total income includes any income by way of Royalty and Fees for technical services (FTS) received under an agreement entered after 31.03.1976 and which are not effectively connected with permanent establishment, if any, of the non-resident in India. The tax is payable on the gross amount of income at the rate of

(i) 30% if income by way of royalty or FTS is received in pursuance of an agreement entered on or before 31.05.1997;

(ii) 20% if income by way of royalty or FTS is received in pursuance of an agreement entered after 31.05.1997 but before 01.06.2005; and

(iii) 10% if income by way of royalty or FTS is received in pursuance of an agreement entered on or after 01.06.2005.

India has tax treaties with 84 countries, majority of tax treaties allow India to levy tax on gross amount of royalty at rates ranging from 10% to 25%, whereas the tax rate as per section 115A is 10%. In some cases, this has resulted in taxation at a lower rate of 10% even if the treaty allows the income to be taxed at a higher rate.

In order to correct this anomaly, the tax rate in case of non-resident taxpayer, in respect of income by way of royalty and fees for technical services as provided under section 115A, is proposed to be increased from 10% to 25%. This rate of 25% shall be applicable to any income by way of royalty and fees for technical services received by a non-resident, under an agreement entered after 31.03.1976, which is taxable under section 115A.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 25]

C. MEASURES TO PROMOTE SOCIO-ECONOMIC GROWTH

Incentive for acquisition and installation of new plant or machinery by manufacturing company

In order to encourage substantial investment in plant or machinery, it is proposed to insert a new section 32AC in the Income-tax Act to provide that where an assessee, being a company,—

(a) is engaged in the business of manufacture of an article or thing; and

(b) invests a sum of more than Rs.100 crore in new assets (plant or machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015,

then, the assessee shall be allowed—

(i) for assessment year 2014-15, a deduction of 15% of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14, if the cost of such assets exceeds Rs.100 crore;

(ii) for assessment year 2015-16, a deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1st April, 2013 and ending on 31st March, 2015, as reduced by the deduction allowed, if any, for assessment year 2014-15.

The phrase "new asset" has been defined as new plant or machinery but does not include—

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle;

(v) ship or aircraft; or

(vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

It is further proposed to provide suitable safeguards so as to restrict the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply in a case of amalgamation or demerger but shall continue to apply to the amalgamated company or resulting company, as the case may be.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 5]

Extension of the sunset date under section 80IA for the power sector

Under the existing provisions contained in the clause (iv) of subsection (4) of section 80IA, a deduction of profits and gains is allowed to an undertaking which, –

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2013;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2013;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2013.

With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 17]

D. RELIEF AND WELFARE MEASURES

Rebate of Rs 2000 for individuals having total income up to Rs 5 lakh

With a view to provide tax relief to the individual tax payers who are in lower income bracket, it is proposed to provide rebate from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed five lakh rupees. The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of two thousand rupees, whichever is less. Consequently any individual having income up to Rs 2,20,000 will not be required to pay any tax and every individual having total income above Rs. 2,20,000/- but not exceeding Rs. 5,00,000/- shall get a tax relief of Rs. 2000/-.

Section 87 has also been consequentially amended.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clauses 19 & 20]

Deduction in respect of interest on loan sanctioned during financial year 2013-14 for acquiring residential house property

Under the existing provisions of section 24 of the Income-tax Act, income chargeable under the head 'Income from House Property' is computed after making the deductions specified therein. The deductions specified under the aforesaid section are as under:-

i. A sum equal to thirty per cent of the annual value;

ii. Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

It has also been provided that where the property consists of a house or part of a house which is in the occupation of the owner for the purposes of his own residence or cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, then the amount of deduction as mentioned above shall not exceed one lakh fifty thousand rupees subject to the conditions provided in the said section.

Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property.

The proposed new section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

It is further provided that the deduction under the proposed section shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

It is also provided that the deduction shall be subject to the following conditions:- (i) the loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014; (ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees; (iii) the value of the residential house property does not exceed forty lakh rupees; (iv) the assessee does not own any residential house property on the date of sanction of the loan.

It is also provided that where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act for the same or any other assessment year.

It is also proposed to define the term “financial institution”.

This amendment will take effect from 1st April, 2014 and accordingly apply in relation to the assessment year 2014-15 and subsequent assessment year.

[Clause 13]

Raising the limit of percentage of eligible premium for life insurance policies of persons with disability or disease

Under the existing provisions contained in clause (10D) of section 10, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt, subject to the condition that the premium paid for such policy does not exceed ten per cent of the ‘actual capital sum assured’. Similarly as per the existing provisions contained in sub-section (3A) of section 80C, the deduction under the said section is available in respect of any premium or other payment made on an insurance policy of up to ten per cent of the ‘actual capital sum assured’.

The above limit of ten per cent was introduced through the Finance Act, 2012 and applies to policies issued on or after 1st April, 2012. Some insurance policies for persons with disability or suffering from specified diseases provide for an annual premium of more than ten per cent of the actual capital sum assured. Due to the limit of ten per cent, these policies are ineligible for exemption under clause (10D) of section 10. Moreover, the deduction under section 80C is eligible only to an extent of the premium paid up to 10 % of the ‘actual capital sum assured’.

It is proposed to provide that any sum including the sum allocated by way of bonus received under an insurance policy issued on or after 01.04.2013 for the insurance on the life of any person who is

(i) a person with disability or a person with severe disability as referred to in section 80U, or

(ii) suffering from disease or ailment as specified in the rules made under section 80DDB,

shall be exempt under clause (10D) of section 10 if the premium payable for any of the years during the term of the policy does not exceed 15% of the actual capital sum assured.

It is also proposed to amend sub-section (3A) of section 80C so as to provide that the deduction under the said section on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person referred to above shall be allowed to the extent the premium paid does not exceed 15% of the actual capital sum assured.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clauses 4 & 10]

Deduction for contribution to Health Schemes similar to CGHS

The existing provisions of section 80D, inter alia, provide that the whole of the amount paid in the previous year out of the income chargeable to tax of the assessee, being an individual, to effect or to keep in force an insurance on his health or the health of the family or any contribution made towards the Central Government Health Scheme (CGHS) or any payment made on account of preventive health check-up of the assessee or his family, as does not exceed in the aggregate fifteen thousand rupees, is allowed to be deducted in computing the total income of the assessee.

It has been noticed that there are other health schemes of the Central and State Governments, which are similar to the CGHS but no deduction for such schemes is available to the subscribers of such schemes. In order to bring such schemes at par with the CGHS, it is proposed to amend section 80D, so as to allow the benefit of deduction under this section within the said limit, in respect of any payment or contribution made by the assessee to such other health scheme as may be notified by the Central Government.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 12]

Expanding the scope of deduction and its eligibility under section 80CCG

The existing provisions of section 80CCG, inter-alia, provide that a resident individual who has acquired listed equity shares in accordance with the scheme notified by the Central Government, shall be allowed a deduction of fifty per cent of the amount invested in such equity shares to the extent that the said deduction does not exceed twenty five thousand rupees. The deduction is a one-time deduction and is available only in one assessment year in respect of the amount so invested. The deduction is available to a new retail investor whose gross total income does not exceed ten lakh rupees. Rajiv Gandhi Equity Savings Scheme has been notified under section 80CCG.

With a view to liberalize the incentive available for investment in capital markets by the new retail investors, it is proposed to amend the provisions of section 80CCG so as to provide that investment in listed units of an equity oriented fund shall also be eligible for deduction in accordance with the provisions of section 80CCG. It is proposed to provide that "equity oriented fund" shall have the meaning assigned to it in clause (38) of section 10.

It is further proposed to provide that the deduction under this section shall be allowed for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units were first acquired by the new retail investor whose gross total income for the relevant assessment year does not exceed twelve lakh rupees.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 11]

Exemption to income of Investor Protection Fund of depositories

Under the provisions of SEBI (Depositories and Participants) Regulations, 1996, as amended in 2012, the depositories are mandatorily required to set up an Investor Protection Fund.

Under the existing provisions, section 10(23EA) provides that income by way of contributions from a recognised stock exchange received by a Investor Protection Fund set up by the recognised stock exchange shall be exempt from taxation .

On similar lines, it is proposed that income, by way of contribution from a depository, of the Investor Protection Fund set up by the depository in accordance with the regulations prescribed by SEBI will not be included while computing the total income subject to same conditions as are applicable in respect of exemption to an Investor Protection Fund set up by recognised stock exchanges.

However, where any amount standing to the credit of the fund and not charged to income-tax during any previous year is shared wholly or partly with a depository, the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

[Clause 4]

One hundred per cent deduction for donation to National Children's Fund

Under the existing provisions of section 80G an assessee is allowed a deduction from his total income in respect of donations made by him to certain funds and institutions. The deduction is allowed at the rate of fifty per cent of the amount of donations made except in the case of donations made to certain funds and institutions specified in clause (i) of sub-section (1) of section 80G, where deduction is allowed at the rate of one hundred per cent. In the case of donations made to the National Children's Fund, deduction is allowed at the rate of fifty per cent of the amount so donated.

Donations to Funds which are of national importance have been generally provided a deduction of one hundred per cent of the amount donated. Since the National Children's Fund is also a Fund of national importance, it is proposed to allow hundred per cent deduction in respect of any sum paid to the Fund in computing the total income of an assessee.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

[Clause 14]

Exemption to National Financial Holdings Company Limited

The Specified Undertaking of Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as the successor of Unit Trust of India (UTI). Exemption from Income-tax was available to SUUTI in respect of its income up to 31st March, 2014.

SUUTI has been wound up and is succeeded by a new company wholly owned by the Central Government. It has been incorporated on 7th June, 2012 as National Financial Holdings Company Limited (NFHCL).

In order to provide the exemption on the lines of SUUTI to NFHCL, it is proposed to amend section 10 to grant exemption to National Financial Holdings Company Limited in respect of its income accruing, arising or received on or before 31.03.2014.

This amendment will take effect retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and assessment year 2014-15.

[Clause 4]

Lower rate of tax on dividends received from foreign companies

Section 115BBD of Income-tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% if such dividend is included in the total income for the Financial Year 2012-13 i.e. Assessment Year 2013-14.

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

In order to continue the tax incentive for one more year, it is proposed to amend section 115BBD to extend the applicability of this section in respect of income by way of dividends received from a specified foreign company in Financial Year 2013-14 also, subject to the same conditions.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15.

[Clause 26]

Removal of the cascading effect of Dividend Distribution Tax (DDT)

Section 115-O of the Income-tax Act provides for taxation of distributed profits of a domestic company. It provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits, shall be liable to be taxed at the rate of 15%. The tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients.

Section 115BBD of Income Tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15%.

Section 115-O provides that the tax base for DDT (i.e. the dividend payable in case of a company) is to be reduced by an amount of dividend received from its subsidiary if such subsidiary has paid the DDT which is payable on such dividend . This ensured removal of cascading effect of DDT in a multi-tier structure where dividend received by a domestic company from its subsidiary (which is also a domestic company) is distributed to its shareholders.

It is proposed to amend section 115-O in order to remove the cascading effect in respect of dividends received by a domestic company from a similarly placed foreign subsidiary (ie the foreign company in which domestic company holds more than fifty percent of equity share capital). It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act.

This amendment will take effect from 1st June, 2013.

[Clause 27]

Concessional rate of withholding tax on interest in case of certain rupee denominated long-term infrastructure bonds

The existing provisions of section 194LC provide that if an Indian company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the Central Government, then the interest payment to a non-resident person would be subject to a concessional rate of tax @ 5%.

In order to facilitate subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), it is proposed to amend section 194LC of the Income-tax Act so as to provide that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilised for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of this section, the borrowing by the company shall be deemed to be in foreign currency. The benefit of reduced rate of tax would, therefore, be available to such non-resident in respect of the interest income arising on such subscription subject to other conditions provided in the section.

The designated bank account should be solely for the purpose of deposit of money in foreign currency and such money is to be used, after conversion, for subscription to a rupee denominated long-term infrastructure bond issue of an Indian company.

This amendment will take effect from 1st June, 2013.

[Clause 43]

Taxation of Securitisation Trusts

Section 161 of the Income-tax Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust.

The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act. The taxation at the level of trust due to existing provisions was considered to be restrictive particularly where the investors in the trust are persons which are exempt from taxation under the provisions of the Income-tax Act like Mutual Funds.

In order to facilitate the securitisation process, it is proposed to provide a special taxation regime in respect of taxation of income of securitisation entities, set up as a trust, from the activity of securitisation. It is proposed to amend section 10 and also insert a new Chapter XII-EA for providing a special tax regime. The salient features of the special regime are :-

(i) In case of securitisation vehicles which are set up as a trust and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

(ii) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the line of distribution tax levied in the case of mutual funds. The additional income-tax shall be levied @ 25% in case of distribution being made to investors who are individual and HUF and @ 30% in other cases. No additional income-tax shall be payable if the income distributed by the securitisation trust is received by a person who is exempt from tax under the Act.

(iii) Consequent to the levy of distribution tax, the distributed income received by the investor will be exempt from tax.

(iv) The securitisation trust will be liable to pay interest at the rate of one percent. for every month or part of the month on the amount of additional income-tax not paid within the specified time .

(v) The person responsible for payment of income or the securitisation trust will be deemed to be an assessee in default in respect of amount of tax payable by him or it in case the additional income-tax is not paid to the credit of Central Government.

This amendment will take effect from 1st June, 2013.

[Clauses 4 & 30]

Securities Transaction Tax (STT)

Securities Transaction Tax (STT) on transactions in specified securities was introduced vide Finance (No.2) Act, 2004.

It is proposed to amend section 98 of the Finance (No.2) Act, 2004 to reduce STT rates in the taxable securities transactions as indicated hereunder:-

TABLE

Sl.No.	Nature of taxable securities transaction	Payable by	Existing Rates (in per cent)	Proposed Rates (in per cent)
(1)	(2)	(3)	(4)	(5)
1.	Delivery based purchase of units of an equity oriented fund entered into in a recognised stock exchange	Purchaser	0.1	Nil
2.	Delivery based sale of units of an equity oriented fund entered into in a recognised stock exchange	Seller	0.1	0.001
3.	Sale of a futures in securities	Seller	0.017	0.01
4.	Sale of a unit of an equity oriented fund to the mutual fund	Seller	0.25	0.001

The proposed amendments in the rates of securities transaction tax will be effective from 1st June, 2013 and will accordingly apply to any transaction made on or after that date.

[Clause 125]

Pass through Status to certain Alternative Investment Funds

Existing provisions of section 10(23FB) of the Income-tax Act provide that any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall be exempt from taxation. Section 115U of the Income-tax Act provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner as if the person had made direct investment in the VCU.

These sections provide a tax pass through status (i.e. income is taxable in the hands of investors instead of VCF/VCC) only to the funds which satisfy the investment and other conditions as are provided in SEBI (Venture Capital Fund) Regulations, 1996. Further the pass through status is available only in respect of income which arises to the fund from investment in VCU, being a company which satisfies the conditions provided in SEBI (Venture Capital Fund) Regulations, 1996.

The SEBI(Alternative Investment Funds) Regulations, 2012 (AIF regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF regulations) from 21st May, 2012.

In order to provide benefit of pass through to similar venture capital funds as are registered under new regulations and subject to same conditions of investment restrictions in the context of investment in a venture capital undertaking, it is proposed to amend section 10(23FB) to provide that–

(i) The existing VCFs and VCCs (i.e. which have been registered before 21/05/2012) and are regulated by the VCF regulations, as they stood before repeal by AIF regulations, would continue to avail pass through status as currently available.

(ii) In the context of AIF regulations, the Venture Capital Company shall be defined as a company and Venture capital fund shall be defined as a fund set up as a trust, which has been granted a certificate of registration as Venture Capital Fund being a sub-category of Category I Alternative Investment Fund and satisfies the following conditions:-

  (a) That at least two-thirds of its investible funds are invested in unlisted equity shares or equity linked instruments of venture capital undertaking.

  (b) No investment has been made by such AIFs in a VCU which is an associate company.

  (c) Units of a trust set up as AIF or shares of a company set up as AIF, are not listed on a recognised stock exchange.

(iii) In the context of AIF regulations, the Venture Capital Undertaking shall be defined as it is defined in the Alternative Investment Funds Regulations.

This amendment will take effect retrospectively from 1st April, 2013 and will accordingly apply in relation to assessment year 2013-14 and subsequent assessment years.

[Clause 4]

E. WIDENING OF TAX BASE AND ANTI TAX AVOIDANCE MEASURES

Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land)

There is a statutory requirement under section 139A of the Income-tax Act read with rule 114B of the Income-tax Rules, 1962 to quote Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of Rs.5 lakh or more. However, the information furnished to the department in Annual Information Returns by the Registrar or Sub-Registrar indicate that a majority of the purchasers or sellers of immovable properties, valued at Rs.30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of the property.

Under the existing provisions of the Income-tax Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties. In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1% of such sum.

In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakh rupees.

This amendment will take effect from 1st June, 2013.

[Clause 42]

Additional Income-tax on distributed income by company for buy-back of unlisted shares

Existing provisions of Section 2(22)(e) provide the definition of dividends for the purposes of the Income-tax Act. Section 115-O provides for levy of Dividend Distribution Tax(DDT) on the company at the time when company distributes , declares or pays any dividend to its shareholders. Consequent to the levy of DDT the amount of dividend received by the shareholders is not included in the total income of the shareholder.

The consideration received by a shareholder on buy-back of shares by the company is not treated as dividend but is taxable as capital gains under section 46A of the Act.

A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains.

Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

In order to curb such practice it is proposed to amend the Act, by insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares.

These amendments will take effect from 1st June, 2013.

[Clauses 4 & 28]

Computation of income under the head "Profits and gains of business or profession" for transfer of immovable property in certain cases

Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such value (stamp duty value) is taken as full value of consideration under section 50C of the Income-tax Act. These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade.

It is proposed to provide by inserting a new section 43CA that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business of profession".

It is also proposed to provide that where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by any mode other than cash on or before the date of the agreement.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 8]

Taxability of immovable property received for inadequate consideration

The existing provisions of sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, inter alia, provide that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

Considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 9]

F. RATIONALISATION MEASURES

GENERAL ANTI-AVOIDANCE RULE (GAAR)

The General Anti Avoidance Rule (GAAR) was introduced in the Income-tax Act by the Finance Act, 2012. The substantive provisions relating to GAAR are contained in Chapter X-A (consisting of sections 95 to 102) of the Income-tax Act. The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. The provisions of Chapter X-A as well as section 144BA would have come into force with effect from 1st April, 2014.

A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government with broad terms of reference including consultation with stakeholders and finalising the GAAR guidelines and a road map for implementation. The Expert Committee's recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR. The major recommendations of the Expert Committee have been accepted by the Government, with some modifications. Some of the recommendations accepted by the Government require amendment in the provisions of Chapter X-A and section 144BA .

In order to give effect to the recommendations the following amendments have been made in GAAR provisions currently provided in the Act:-

(A) The provisions of Chapter X-A and section 144BA will come into force with effect from April 1, 2016 as against the current date of April 1, 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.

Consequential amendments in other sections relating to procedural matters are also proposed.

These amendments will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

[Clauses 21, 22,23, 24,34,35,36,37,38,39,44,45,46,47 & 49]

Rationalisation of tax on distributed income by the Mutual Funds

Under the existing provisions of section 115R any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to additional income-tax. In case of any distribution made by a fund other than equity oriented fund to a person who is not an individual and HUF, the rate of tax is 30% whereas in case of distribution to an individual or an HUF it is 12.5% or 25% depending on the nature of the fund.

In order to provide uniform taxation for all types of funds, other than equity oriented fund, it is proposed to increase the rate of tax on distributed income from 12.5% to 25% in all cases where distribution is made to an individual or a HUF.

Further in case of an Infrastructure debt fund (IDF) set up as a Non-Banking Finance Company (NBFC) the interest payment made by the fund to a non-resident investor is taxable at a concessional rate of 5%. However in case of distribution of income by an IDF set up as a Mutual Fund the distribution tax is levied at the rates described above in the case of a Mutual Fund.

In order to bring parity in taxation of income from investment made by a non-resident Investor in an IDF whether set up as a IDF-NBFC or IDF-MF, it is proposed to amend section 115R to provide that tax @ 5% on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

This amendment will take effect from 1st June, 2013.

[Clause 29]

Enabling provisions for facilitating electronic filing of annexure-less return of net wealth

Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth as on the valuation date in the prescribed form and verified in the prescribed manner setting forth particulars of the net wealth and such other particulars as may be prescribed. Currently, certain documents, reports are required to be furnished along with the return of net wealth under the provisions of Wealth-tax Act read with the provisions of Wealth-tax Rules.

Sections 139C and 139D of the Income-tax Act contain provisions for facilitating filing of annexure-less return of income in electronic form by certain class of income-tax assessees. In order to facilitate electronic filing of annexure-less return of net wealth, it is proposed to insert new sections 14A and 14B in the Wealth-tax Act on similar lines.

Consequently, it is also proposed to amend provisions of section 46 of the Wealth-tax Act which provides for rule making powers of the Board.

These amendments will take effect from 1st June, 2013.

[Clauses 52 & 53]

Disallowance of certain fee, charge, etc. in the case of State Government Undertakings

The existing provisions of section 40 specifies the amounts which shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”. The non-deductible expense under the said section also includes statutory dues like fringe benefit tax, income-tax, wealth-tax, etc.

Disputes have arisen in respect of income-tax assessment of some State Government undertakings as to whether any sum paid by way of privilege fee, license fee, royalty, etc. levied or charged by the State Government exclusively on its undertakings are deductible or not for the purposes of computation of income of such undertakings. In some cases, orders have been issued to the effect that surplus arising to such undertakings shall vest with the State Government. As a result it has been claimed that such income by way of surplus is not subject to tax. It is a settled law that State Government undertakings are separate legal entities than the State and are liable to income-tax.

In order to protect the tax base of State Government undertakings vis-à-vis exclusive levy of fee, charge, etc. or appropriation of amount by the State Governments from its undertakings, it is proposed to amend section 40 of the Income-tax Act to provide that any amount paid by way of fee, charge, etc., which is levied exclusively on, or any amount appropriated, directly or indirectly, from a State Government undertaking, by the State Government, shall not be allowed as deduction for the purposes of computation of income of such undertakings under the head “Profits and gains of business or profession”. It is also proposed to define the expression “State Government Undertaking” for this purpose.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 7]

Amendment in the definition of Capital Asset

The existing provisions contained in clause (14) of section 2 of the Income-tax Act define the term “capital asset” as property of any kind held by an assessee, whether or not connected with his business or profession. Certain categories of properties including agricultural land have been excluded from this definition. Sub-clause (iii) of clause (14) of section 2 provides that (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand according to last preceding census, or (b) agricultural land situated in any area within such distance not exceeding eight kilometers from the local limits of any municipality or cantonment board, as notified by the Central Government having regard to the extent and scope of urbanization and other relevant factors, forms part of capital asset.

It is proposed to amend item (b) of sub-clause (iii) of clause (14) of section 2 so as to provide that the land situated in any area within the distance, measured aerially (shortest aerial distance), (I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or (II) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh, shall form part of capital asset.

It is also proposed to define the expression “population” to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Similar amendments are also proposed in clause (1A) of section 2 of the Income-tax Act, 1961 relating to the definition of “agricultural income” and in respect of the definition of “urban land” in the Wealth-tax Act, 1957.

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

[Clauses 3 & 51]

Keyman insurance policy

The existing provisions of clause (10D) of section 10, inter alia, exempt any sum received under a life insurance policy other than a keyman insurance policy. Explanation 1 to the said clause (10D) defines a keyman insurance policy to mean a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person.

It has been noticed that the policies taken as keyman insurance policy are being assigned to the keyman before its maturity. The keyman pays the remaining premium on the policy and claims the sum received under the policy as exempt on the ground that the policy is no longer a keyman insurance policy. Thus, the exemption under section 10(10D) is being claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person. The Courts have also noticed this loophole in law.

With a view to plug the loophole and check such practices to avoid payment of taxes, it is proposed to amend the provisions of clause (10D) of section 10 to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy.

The above amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessments years.

[Clause 4]

Contribution not to be in cash for deduction under section 80GGB & section 80GGC

Under the existing provisions of section 80GGB, any sum contributed by an Indian company to any political party or an electoral trust in the previous year, is allowed as deduction in computing the total income of such Indian company. A similar deduction is available to an assessee, being any person other than local authority and artificial juridical person under section 80GGC. There is no specific mode provided for making such contribution.

With a view to discourage cash payments by the contributors, it is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under section 80GGB and 80GGC in respect of any sum contributed by way of cash.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clauses 15 & 16]

Clarification of the phrase “tax due” for the purposes of recovery in certain cases

Section 179 of the Income-tax Act provides that where the tax due from a private company cannot be recovered from such company, then the director (who was the director of such company during the previous year to which non-recovery relates) shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part. This provision is intended to recover outstanding demand under the Act of a private company from the directors of such company in certain cases. However, some courts have interpreted the phrase ‘tax due’ used in section 179 to hold that it does not include penalty, interest and other sum payable under the Act.

In view of the above, it is proposed to clarify that for the purposes of this section, the expression “tax due” includes penalty, interest or any other sum payable under the Act. Amendments on the similar lines for clarifying the expression ‘tax due’ is proposed to be made to the provisions of section 167C.

These amendments will take effect from 1st June, 2013.

[Clauses 40 & 41]

Deduction for additional wages in certain cases

The existing provisions contained in section 80JJAA of the Income-tax Act provide for a deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

No deduction under this section is allowed if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking.

The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also. It is, therefore, proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to an Indian Company deriving profits from manufacture of goods in its factory. The deduction shall be of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

It is also proposed to provide that the deduction under this section shall not be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

[Clause 18]

Tax Residency Certificate

Section 90 of the Income Tax Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of –

(i) granting relief in respect of avoidance of double taxation,

(ii) exchange of information and

(iii) recovery of taxes.

Further section 90A of the Income-tax Act empowers the Central Government to adopt any agreement between specified associations for above mentioned purposes.

In exercise of this power, the Central Government has entered into various Double Taxation Avoidance Agreements (DTAAs) with different countries and has adopted agreements between specified associations for relief of double taxation. The scheme of interplay between DTAA and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the DTAA, is entitled to claim applicability of beneficial provisions either of DTAA or of the domestic law. Sub-section (4) of sections 90 and 90A of the Income-tax Act inserted by Finance Act, 2012 makes submission of Tax Residency Certificate containing prescribed particulars, as a condition for availing benefits of the agreements referred to in these sections.

It is proposed to amend sections 90 and 90A in order to provide that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A. This position was earlier mentioned in the memorandum explaining the provisions in Finance Bill, 2012, in the context of insertion of sub-section (4) in sections 90 & 90A.

These amendments will take effect retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

[Clauses 21 & 22]

Application of seized assets under section 132B

The existing provisions contained in section 132B of the Income-tax Act, *inter alia*, provide that seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default.

Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search.

Accordingly, it is proposed to amend the aforesaid section so as to clarify that the existing liability does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act.

This amendment will take effect from 1st June, 2013.

[Clause 31]

Return of Income filed without payment of self- assessment tax to be treated as defective return

The existing provisions contained in sub-section (9) of section 139 provide that where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days. If the defect is not rectified within the time allowed by the Assessing Officer, the return is treated as an invalid return. The conditions, the non-fulfillment of which renders the return defective, have been provided in the *Explanation* to the aforesaid sub-section.

Section 140A provides that where any tax is payable on the basis of any return, after taking into account the prepaid taxes, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return.

It has been noticed that a large number of assessees are filing their returns of income without payment of self-assessment tax.

It is, therefore, proposed to amend the aforesaid *Explanation* so as to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

This amendment will take effect from 1st June, 2013.

[Clause 32]

Direction for special audit under sub-section (2A) of section 142

The existing provisions contained in sub-section (2A) of section 142 of the Income-tax Act, inter alia, provide that if at any stage of the proceeding, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts.

It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

This amendment will take effect from 1st June, 2013.

[Clause 33]

Exclusion of time in computing the period of limitation for completion of assessments and reassessments

The existing provisions of section 153, inter alia, provide the time limit for completion of assessment and reassessment of income by the Assessing Officer.

Explanation to section 153 provides that certain periods specified therein shall be excluded while computing the period of limitation for the purposes of the said section.

Under the existing provisions of clause (iii) of *Explanation* 1 to section 153, the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assesee is required to furnish a report of such audit, is excluded in computing the period of limitation for the purposes of assessment or reassessment.

However, the existing provision does not provide for exclusion of time in case the direction of the Assessing Officer is set aside by the court.

It is proposed to amend clause (iii) of *Explanation 1* to section 153 so as to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

Similarly, the existing provisions contained in clause (viii) of *Explanation I* to section 153 provide for exclusion of the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less, in computing the period of limitation for the purposes of section 153.

At times more than one reference for exchange of information is made in one case and the replies from the foreign Competent Authorities are also received in parts. In such cases, there will always be a dispute for counting the period of exclusion i.e. whether it should be from the date of first reference for exchange of information made or from the date of last reference. Similar dispute may also arise with regard to the date on which the information so requested is received.

With a view to clarify the above situation, it is proposed to amend the aforesaid clause (viii) so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

Similar amendments are also proposed in the Explanation to section 153B of the Income-tax Act relating to time limit for completion of search assessment.

These amendments will take effect from 1st June, 2013.

[Clauses 37 & 38]

Penalty under section 271FA for non-filing of Annual Information Return

Section 285BA mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2) thereof. Sub-section (5) of the section empowers the Assessing Officer to issue notice if the annual information return has not been furnished by the due date.

The existing provisions contained in section 271FA of the Income-tax Act provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is proposed to amend the aforesaid section so as to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is further proposed to provide that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

This amendment will take effect from 1st April, 2014.

[Clause 48]

Extension of time for approval in Part A of the Fourth Schedule to the Income-tax Act, 1961

Rule 4 in Part A of the Fourth Schedule to the Income-tax Act provides for conditions which are required to be satisfied by a Provident Fund for receiving or retaining recognition under the Income-tax Act. One of the requirements of rule 4 as contained in clause (ea) is that the establishment has to be notified by the Central Provident Fund Commissioner under section 1(4) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [EPF & MP Act] and has obtained exemption under section 17 of the said Act.

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under the said rule 4 and the conditions which the Board may specify by rules.

The first proviso to sub-rule (1) of rule 3, inter alia, specifies that in a case where recognition under the Income-tax Act has been accorded to any provident fund on or before 31st March, 2006, but such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st March 2013, the recognition to such fund shall be withdrawn.

It has been noticed that a number of applications are yet to be processed by the Employees' Provident Fund Organization (EPFO) for grant of exemption under section 17 of EPF & MP Act. With a view to provide further time to the EPFO to decide on the pending applications seeking exemption under section 17 of the EPF & MP Act, it is proposed to amend the first proviso, so as to extend the time limit from 31st March, 2013 to 31st March, 2014.

This amendment will take effect retrospectively from 1st April, 2013.

[Clause 50]

Clarification for amount to be eligible for deduction as bad debts in case of banks

Under the existing provisions of section 36(1)(viia) of the Income-tax Act, in computing the business income of certain banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein. The limit specified under section 36(1)(viia)(a) of the Act restrict the claim of deduction for provision for bad and doubtful debts for certain banks (not incorporated outside India) and certain cooperative banks to 7.5% of gross total income (before deduction under this clause) of such banks and 10% of the aggregate average advance made by the rural branches of such banks. This limit is 5% of gross total income (before deduction under this clause) under sections 36(1)(viia)(b) and 36(1)(viia)(c) for a bank incorporated outside India and certain financial institutions.

Provisions of clause (vii) of section 36(1) of the Act provides for deduction for bad debt actually written off as irrecoverable in the books of account of the assessee. The proviso to this clause provides that for an assessee, to which section 36(1)(viia) of the Act applies, deduction under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act.

The provisions of section 36(1)(vii) of the Act are subject to the provisions of section 36(2) of the Act. The clause (v) of section 36(2) of the Act provides that the assessee, to which section 36(1)(viia) of the Act applies, should debit the amount of bad debt written off to the provision for bad and doubtful debts account made under section 36(1) (viia) of the Act.

Therefore, the banks or financial institutions are entitled to claim deduction for bad debt actually written off under section 36(1)(vii) of the Act only to the extent it is in excess of the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act. However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances.

Section 36(1)(viia) of the Act contains three sub-clauses, i.e. sub-clause (a), sub-clause (b) and sub-clause (c) and only one of the sub-clauses i.e. sub-clause (a) refers to rural advances whereas other sub-clauses do not refer to the rural advances. In fact, foreign banks generally do not have rural branches. Therefore, the provision for bad and doubtful debts account made under clause (viia) of section 36(1) and referred to in proviso to clause (vii) of section 36(1) and section 36(2)(v) applies to all types of advances, whether rural or other advances.

It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. There is no such distinction made in clause (viia) of section 36(1).

In order to clarify the scope and applicability of provision of clause (vii), (viia) of sub-section (1) and sub-section (2), it is proposed to insert an Explanation in clause (vii) of section 36(1) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account relates to all types of advances, including advances made by rural branches. Therefore, for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

[Clause 6]