SALIENT FEATURES OF THE FINANCE BILL, 2013

[Relating to Direct Taxes]

Published in 351 ITR (Journ.) p.61 (Part-5)

- *By S.K. Tyagi*

The Finance Bill, 2013, or the Union Budget, 2013-14, was presented in the Parliament on 28.2.2013. As regard the direct taxes, there are in all fifty one (51) amendments proposed in the Finance Bill, 2013, vide, clauses (3) to (53). Forty eight amendments have been proposed in the Income-Tax Act, 1961 (the Act), whereas three amendments have been proposed in the Wealth-Tax Act, 1957.

Save as otherwise provided in the aforesaid Bill, clauses (3) to (53) shall be deemed to have come into force on the first day of April, 2013, viz. from financial year 2013-14, relevant to assessment year 2014-15. It may be stated here that there are some amendments which will come into operation from certain specified dates, whereas some others will come into operation with retrospective effect. Therefore, an attempt has been made to provide the date with effect from which the amendment(s), in question, shall come into effect. The term '*Section*', in this Note shall mean the section of the Act.

The abbreviations FY, PY and AY stand for financial year, previous year and assessment year, respectively, in this Note.

In this Note, only the important amendments have been discussed and the same are as follows:-

1 Rates and Slabs of Income-tax

In the Union Budget, 2013-14, no change has been made in regard to basic exemption limit which is Rs.2,00,000. However, tax-rebate of Rs.2,000 has been provided in case of individuals having total income upto Rs.5,00,000. Consequently, any individual having income upto 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 tax relief of Rs.2,000.

No change has been made in regard to basic exemption, tax slabs and rates of income-tax, in respect of Individuals, HUFs, AOPs, etc. Accordingly, the tax slabs and rates of income-tax for such entities will be as follows :-

	Income (Rs.)		**Rate of tax**
(i)	Upto Rs.2,00,000	:	Nil
(ii)	Rs.2,00,001 to Rs.5,00,000	:	10%

(iii)	Rs.5,00,001 to Rs.10,00,000	:	20%
(iii)	Above Rs.10,00,000	:	30%

As regard senior citizens, no change has been made. Like in the past, the senior citizens remain divided into two categories, viz :-

(i) First category

The first category of senior citizens will include 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 relevant previous year (PY) / FY.

The basic exemption limit in respect of first category of senior citizens remains unchanged, viz. Rs.2,50,000.

(ii) Second category

The second category of senior citizens, viz. '*Very senior citizens*', will include every individual, being a resident in India, who is of the age of eighty years or more, at any time during the relevant PY / FY.

The basic exemption limit in respect of second category of senior citizens also remains unchanged, viz. at Rs.5,00,000.

As regard **companies**, both domestic companies and companies other than domestic companies, there is no change in the rate of tax, the same continuing to be 30%, of the total income.

Surcharge

As regard the aforesaid entities, viz. **individuals, HUFs, firms, AOPs, BOIs**, etc, there will be no surcharge in case the taxable income is upto Rs.1 crore.

However, in case taxable income exceeds Rs.1 crore, then surcharge will be levied at the rate of 10% on the amount of income-tax. Marginal relief will be provided in all such cases.

The surcharge in case of every **domestic company** having income above Rs.1 crore, but upto Rs.10 crore, shall be levied at the rate of 5% and in case the income exceeds Rs.10 crore, then the surcharge shall be levied at the rate of 10%.

Besides, in case of every company, other than a domestic company, viz. **a foreign company** having total income above Rs.1 crore, but not above Rs.10 crore, surcharge shall be levied at the rate of 2% of the income-tax chargeable. In case the income exceeds Rs.10 crore, surcharge shall be levied at the rate of 5% of the income-tax chargeable. However, marginal relief will be provided.

In other cases (including sections 115-O, 115QA, 115R, 115TA, etc), the surcharge will be applicable at the rate of 10% of the income-tax chargeable.

Education cess

Education cess will continue to be applicable at the same rate as in the past, viz. 3% of the amount of tax computed, inclusive of surcharge in all cases.

2. Amendment of section 2 – Definitions of agricultural income and urban land

I. Item B of clause (ii) of the proviso to section 2(1A)(c) – Agricultural income

The provision contained in section 2(1A) defines the term '*Agricultural income*'. Sub-clause (c) of the said section 2(1A), includes any income within the definition of '*Agricultural income*' which is derived from any building, on or in the immediate vicinity of the land and is used as dwelling house, store house or other out-building, as required by the receiver of the rent or revenue or the cultivator, in connection with such land. Clause (ii) of the proviso to the aforesaid sub-clause (c) provides that where the land is not assessed to land revenue or subject to a local rate, it should not be situated within the area specified in item (A) or Item (B) of clause (ii) of the proviso, to qualify income derived from any such building, as agricultural income.

The aforesaid item (B) of clause (ii) of the proviso to section 2(1A)(c), is to be amended, so as to provide that the income derived from such building, on or in the immediate vicinity of such land will not be agricultural income, if the land is situated in any area, within the distance measured aerially –

(i) not being more than 2 kms from the local limits of any Municipality or Cantonment Board, having a population of more than 10,000, but not exceeding 1,00,000, or

(ii) not being more than 6 kms from the local limits of any Municipality or Cantonment Board, having a population of more than 1,00,000, but not exceeding 10,00,000, or

(iii) not being more than 8 kms from the local limits of any Municipality or Cantonment Board, having a population of more than 10,00,000.

Thus, a more pragmatic approach has been adopted by segregating the distances on the basis of population, rather than condition of 8 kms.

An *Explanation* has also been inserted to define the expression '*Population*'. According to this *Explanation*, the expression '*Population*' will mean population according to the last preceding census of which the relevant figures have been published before the first day of the PY.

The aforesaid amendments will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

II. Section 2(14)(iii) - Capital asset

The existing provision of section 2(14) of the Act defines the term '*Capital asset*'. There are certain exclusions relating to the aforesaid definition of capital asset, as per clauses (i) to (vi). As per the aforesaid clause (iii), agricultural land is not to be treated as '*Capital asset*', except the land described in sub-clauses (a) and (b) of the aforesaid clause (iii). Any land situated in

any area within the distance not exceeding 8 kms from the local limits of Municipality or Cantonment Board, is included in the definition of capital asset.

The aforesaid sub-clause (b) of clause (iii) of section 2(14) is to be amended, so as to align the same with the aforesaid amendment, relating to agricultural income.

Similarly, amendments are to be made in respect of the definition of '*Urban land'* in the Wealth Tax Act, 1957.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

3. Amendment of certain clauses of section 10

I. Amendment of section 10(10D) – Raising the limit of premium vis-à-vis actual sum assured in respect of life insurance policies of persons with disability or disease

Under the existing provisions of section 10(10D), 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 in section 80C(3A), the deduction is available in respect of any premium or other payment made for an insurance policy up to ten per cent of the '*actual capital sum assured'*.

In order to provide some relief to the persons with disability or disease, a new proviso to sub-clause (d) of clause (10D) is to be inserted, so as to provide a higher limit of fifteen per cent, where the policy referred to in sub-clause (d) is for the insurance on the life of any person who is –

(i) a person with disability or 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.

Besides, sub-section (3A) of section 80C is also to be amended so as to provide that the deduction on account of premium paid in respect of a policy issued on or after 1.4.2013, for insurance on the life of the aforesaid person, shall be allowed to the extent the premium paid does not exceed fifteen per cent of the actual capital sum assured.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to the AY 2014-15 and subsequent AYs.

II. Other amendment of section 10(10D) - Relating to Keyman insurance policy

Section 10(10D), *inter-alia*, exempts any sum received under a life insurance policy other than a Keyman insurance policy.

Explanation 1 to 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.

The aforesaid *Explanation 1* is to be amended so as to provide that a Keyman insurance policy which has been assigned to a person during its term, with or without consideration, shall continue to be treated as a Keyman insurance policy for the purposes of section 10(10D).

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

[NB: The aforesaid amendment is intended to neutralize the impact of the judgement of Delhi High Court in the case of CIT Vs Rajan Nanda (2012) 349 ITR 8 (Del)]

III. New section 10(23DA) and new Chapter XII-EA – Taxation of Securitization Trusts

Section 161 of the 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 the trust.

The special purpose entities set up in the form of trust in order to undertake securitization activities were facing problems due to lack of special dispensation in respect of taxation under the 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 who are exempt from tax under the provisions of the Act, like Mutual Funds.

In the first place, a new clause (23DA) is to be inserted in section 10, so as to provide that any income of a Securitization Trust from the activity of securitization would be exempt from tax.

Further, in order to facilitate the securitization purposes a new Chapter XII-EA for providing a special tax regime in respect of taxation of income of securitization entities is to be inserted in the Act. The aforesaid Chapter XII-EA will consist of new sections 115TA, 115TB and 115TC.

The aforesaid newly inserted Chapter XII-EA is discussed elsewhere in a separate paragraph of the Note.

The aforesaid amendment will take effect from 1.6.2013.

IV. New section 10(23ED) – 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 of section 10(23EA), income by way of contributions from a recognized stock exchange received by an Investor Protection Fund set up by the recognized stock exchange, shall be exempt from taxation.

On similar lines, a new clause (23ED) is to be inserted in section 10 in order to provide 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 the SEBI will not be included while computing the total income subject to the same conditions as are applicable in respect of exemption to an Investor Protection Fund set up by recognized stock exchanges.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

V. Amendment of Explanation 1 to section 10(23FB) – Pass-through status to certain Alternative Investment Funds (AIFs)

The existing provisions of clause (23FB) of section 10 provides that any income of a venture capital company (VCC) or venture capital fund (VCF) set up to raise funds for investment in a venture capital undertaking (VCU), does not form part of total income. The definition of VCC, VCF and VCU, are provided in *Explanation 1* to the aforesaid clause (23FB).

The SEBI (Alternative Investment Fund) Regulations, 2012 (AIF Regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF Regulations) from 21.5.2012.

In order to provide the benefit of pass-through status to similar venture capital funds as are registered under new regulations and subject to the same conditions of investment restrictions, in the context of investment in a venture capital undertaking, the aforesaid *Explanation 1* is to be amended so as to include in the definition of VCC and VCF –

(i) existing VCCs or VCFs registered before 21.5.2012 under the VCF Regulations; and
(ii) a VCC defined as a company and VCF defined as a trust registered as category 1, AIF.

The VCC / VCF registered as category 1 AIF, would be required to satisfy the following conditions :

(i) at least two-thirds of the investible funds are invested in unlisted equity shares or equity linked instruments of venture capital undertaking;

(ii) the shares of VCC or units of VCF should not be listed on a recognized stock exchange

(iii) No investments are to be made in any VCU in which a director / substantial shareholder of an VCC or a trustee / settlor of an VCF, individually or collectively holds more than fifteen per cent of the paid-up equity share capital.

The aforesaid amendment will take effect retrospectively from 1.4.2013 and will, accordingly, apply in relation to AY 2013-14 and subsequent AYs.

VI. Other consequential amendments of section 10 of the Act

In view of the aforesaid amendments, of or insertions, in section 10 of the Act, the following consequential amendments are also made.

(i) New clause (34A)

A new clause (34A) is to be inserted in section 10 so as to provide for exemption in respect of any income arising to an assessee, being a shareholder, on account of buy-back of shares (not being listed on a recognized stock exchange) by the company as referred to in section 115QA.

The aforesaid amendment will take effect form 1.4.2014 and will, accordingly, apply in relation to the AY 2014-15 and subsequent AYs.

(ii) New clause (35A)

A new clause (35A) is to be inserted in section 10 so as to provide for exemption in respect of any income by way distributed income referred to in section 115TA received from a Securitization Trust by any person, being an investor of the said trust.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to the AY 2014-15 and subsequent AYs.

(iii) New clause (49)

A new clause (49) is to be inserted in section 10 so as to provide for exemption in respect of any income of the National Financial Holdings Company Ltd., being a company set up by the Central Government, of any PY, relevant to any AY commencing on or before 1.4.2014.

The aforesaid amendment will take effect retrospectively from 1.4.2013 and will, accordingly, apply in relation to AY 2013-14 and AY 2014-15.

4. New section 32AC – Incentive for deduction in respect of investment in new plant or machinery

In order to encourage substantial investment in plant or machinery, a new section 32AC is to be inserted in the Act, so as to provide that where an assessee, being a company, –

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

(ii) invests a sum of more than Rs.100 crores in new assets (plant or machinery) during the period beginning from 1.4.2013 and ending on 31.3.2015 –

then, the assessee shall be allowed –

(a) for the AY 2014-15, a deduction of fifteen per cent of the aggregate amount of actual cost of new assets acquired and installed during the FY 2013-14, if the cost of such asset exceeds Rs.100 crores,

(b) for AY 2015-16, a deduction of fifteen per cent of the aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1.4.2013 and ending on 31.3.2015, as reduced by deduction allowed, if any, for AY 2014-15.

The expression '*new asset*' shall exclude the following :

(i) any plant or machinery used before installation either within India or outside India by any other person;

(ii) any plant or machinery installed in any office or residential accommodation, including 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 while computing income of any previous year.

In respect of the aforesaid incentive provisions, suitable safeguards have also been provided which are as follows :

(a) where the new assets are sold or transferred within five years of their installation, the amount deducted shall be deemed to be the income chargeable under '*Profits and gains of business or profession*' of the previous year.

(b) the aforesaid income will be in addition to taxability of gains arising from the transfer of the new asset.

However, the aforesaid restriction shall not apply in case of amalgamation or demerger and the provisions of section 32A shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

5. New section 43CA – Computation of income under the head '*Profits and gains of business or profession*' for transfer of immovable property in certain cases.

At present, when a capital asset, being an 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 the said value (stamp duty value) is taken as full value of consideration under section 50C of the Act. This provision, however, does not apply to the transfer of immovable property, held by the transferor as stock-in-trade.

The new section 43CA is to be inserted in order to provide 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 consideration for the purposes of computation of income under the head '*Profits and gains of business or profession*'.

Besides, it is also provided that where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the stamp duty value may be taken as on the date of the agreement for transfer.

The aforesaid condition shall apply only in a case where the amount of consideration or a part thereof, has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

6. Amendment of section 56(2)(vii) – Taxability of immovable property for inadequate consideration

The existing provisions of sub-clause (b) of clause (vii) of sub-section (2) of section 56 or in other words, section 56(2)(vii)(b) of the 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 Rs.50,000, 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 aforesaid provisions, however, do not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration.

Therefore, section 56(2)(vii) is to be amended, so as to provide that where any immovable property is received for a consideration, which is less than the stamp duty value of a property by an amount exceeding Rs.50,000, the stamp duty value of such property as exceeds such consideration, shall be charged to tax in the hands of the individual or HUF, as income from other sources.

Taking into consideration the fact that there might be a time gap between the date of agreement and the date of registration, it is provided that where the date of agreement fixing the amount of consideration for the transfer of 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. The aforesaid exceptions shall, however, apply only in a case where the amount of consideration or part thereof, has been paid by any mode, other than cash, on or before the date of agreement, fixing the amount of consideration for transfer of such immovable property.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

[***Author's Note*** :

The aforesaid amendment of section 56(2)(vii)(b), may lead to unintended tax-implications resulting into double taxation or triple taxation and such tax-implications do not appear to have been considered.

For the purpose of explaining the aforesaid point, if the fair market value or stamp duty value of the property, subject to transfer is assumed at Rs.100, though the same is transferred for a sum of Rs.60, the difference of Rs.40, will be brought to tax in the hands of the transferee, as income from other sources. However, at the same time, in view of the provisions of section 50C, the sale consideration of Rs.60, will be deemed to be Rs.100, in the hands of the transferor. Thus, the transferor will pay capital gains tax on an additional sum of Rs.40. Accordingly, the aforesaid amendment will result into double taxation, in respect of the same amount of income.

Besides, it may lead to further tax-implications in the hands of the transferee, when he intends to sell the aforesaid asset, because the cost of the aforesaid asset for the purpose of computation of capital gains will have to be taken at Rs.60 and not Rs.100. Thus, the transferee will be subjected to additional tax burden, because there is no provision in the Act, for the adjustment of the cost of asset for the purposes of computation of capital gains, liable to tax in the hands of the aforesaid transferee.]

7. Amendment of section 80CCG – Expanding the scope of deduction and its eligibility - [Rajiv Gandhi Equity Savings Scheme]

Presently, deduction is allowable to a retail investor in listed equity shares upto 50% of the amount invested or Rs.25,000, whichever is lower. The aforesaid deduction is a one-time deduction and is available only in one AY, in respect of the amount so invested. Besides, this deduction is available to a new retail investor whose gross total income does not exceed Rs.10 lakhs.

In order to liberalize the incentive available for investment in capital markets by the new retail investors, section 80CCG is to be amended, so as to provide that investment in listed units of equity oriented fund shall also be eligible for deduction and further, the deduction shall be allowed for three consecutive AYs, beginning with the AY relevant to the PY, in which the listed equity shares or listed units were first acquired by the new retail investor. Besides, the eligibility limit of income of the investor has been enhanced to Rs.12 lakhs, from the existing limit of Rs.10 lakhs.

The aforesaid amendments will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

8. New section 80EE - Deduction in respect of interest on loan sanctioned during FY 2013-14, for acquiring residential house property.

In the existing provisions of section 24 of the Act, income chargeable under the head '*Income from house property*' is computed after making the deductions specified therein. The deductions specified under section 24 are as follows :

(i) A sum equal to 30% of the annual value.

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

Besides, it is also provided that where the property consists of house or part of a house, which is in the occupation of an owner for his own residence or cannot be actually 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 aforesaid amount of deduction shall not exceed Rs.1,50,000, subject to the conditions laid down in the said section.

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

The newly inserted section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted 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 section 80EE shall not exceed Rs.1,00,000.

The aforesaid deduction will be subject to the following conditions :

(i) The loan has been sanctioned by a financial institution during the period beginning on 1.4.2013 and ending on 31.3.2014.

(ii) The amount of loan sanctioned for acquisition of residential house does not exceed Rs.25 lakhs.

(iii) The value of residential house property does not exceed Rs.40 lakhs

(iv) The assessee does not own any residential house property on the date of sanction of the loan, and

(v) No deduction shall be allowed in respect of such interest under any other provisions of the Act.

It is also provided that if the interest on loan payable for the PY is less than Rs.1,00,000, the balance amount shall be allowed in the AY, beginning on 1.4.2015, i.e. AY 2015-16.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

[***Author's Note*** :

In this regard, it has to be specifically noted that the aforesaid benefit is available only in respect of interest on a loan taken by an assessee from any financial institution and for the purposes of section 80EE, the term 'Financial institution' includes a housing finance company, which has been separately defined].

9. Amendment of section 80-IA(4)(iv) - Extension of sunset date for tax holiday for power sector

The sunset date for tax-holiday for power sector is to be extended to 31.3.2014 from 31.3.2013 for undertakings which start generation or distribution or transmission of power or undertake substantial renovation or modernization of existing network of transmission or distribution lines during that period., viz. before 31.3.2014.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

10. New section 87A – Rebate of Rs.2000 for individuals having total income upto Rs.5,00,000.

With a view to providing tax relief to the individual tax-payers who are in lower income bracket, a new section 87A is inserted, so as to provide rebate from the tax payable by an assessee, being an individual resident in India, whose income does not exceed Rs.5,00,000.

The rebate shall be equal to the amount of income-tax payable on the total income for any AY or an amount of Rs.2,000, whichever is less. Consequently, any individual having income upto Rs.2,20,000 will not be required to pay tax and every individual having total income above Rs.2,20,000, but not exceeding Rs.5,00,000, shall get a tax rebate of Rs.2,000.

Section 87 has also been consequentially amended.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

11. Amendment of sections 90 and 90A – Tax Residency Certificate (TRC)

A new sub-section (5) is to be inserted in sections 90 and 90A, so as to provide that the certificate of being a resident in a country outside India or specified territory outside India, referred to in sub-section (4), shall be necessary, but not a sufficient condition for claiming any relief under the agreement referred to therein.

The insertion of the aforesaid sub-section (5) in sections 90 and 90A has created a lot of panic and uncertainty amongst the foreign institutional investors (FIIs) and other non-resident entities. In view of the panic and uncertainty created by the aforesaid sub-section (5), the Government of India has come out with a clarification, vide a Press Release issued by the Ministry of Finance, Government of India, dated 1.3.2013. It has been clarified, vide the aforesaid Press Release that the TRC produced by a resident of a Contracting State will be accepted as evidence if he is a resident of that Contracting State and the Income-Tax Authorities in India will not go behind the TRC and question his resident status.

Besides, it is also clarified that in the case of Mauritius, Circular No.789, dated 13.4.2000, continues to be in force, pending on-going discussions between India and Mauritius.

However, since a concern has been expressed about the language of sub-section (5) of section 90 / 90A, this concern will be addressed suitably when the Finance Bill, 2013, is taken up for consideration.

The aforesaid amendment will take effect retrospectively from 1.4.2013 and will, accordingly, apply in relation to AY 2013-14 and subsequent AYs.

12. New Chapter X-A , Consisting of sections 95 to 102 – General Anti-Avoidance Rule (GAAR)

The General Anti-Avoidance Rule (GAAR) was introduced in the Act by the Finance Act, 2012. The substantive provisions relating to GAAR are contained in Chapter X-A of the Act, consisting of sections 95 to 102. The procedural provisions relating to mechanism for invocation of GAAR and passing 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 w.e.f. 1.4.2014.

In view of a number of representations against the provisions relating to GAAR, an Expert Committee was constituted by the Government. The Expert Committee's recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR. Some of the recommendations of the Expert Committee have been accepted by the Government, with some modifications.

In view of the aforesaid reasons, the existing Chapter X-A is to be omitted and in its place a new Chapter X-A consisting of new sections 95, 96, 97, 98, 99, 100, 101 and 102 of the Act, is to be inserted.

The newly inserted Chapter X-A will come into effect from 1.4.2016 and will, accordingly, apply in relation to AY 2016-17 and the subsequent AYs.

It may also be stated here that as per the newly inserted sub-section (2A) in sections 90 and 90A, the provisions of the newly inserted Chapter X-A shall apply even if such provisions are not beneficial to the assessee.

[***Author's Note***

In the context of new provisions of GAAR, the following aspects are very significant which are required to be considered :.

(i) One of the major recommendations of the Expert Committee was that the provisions of GAAR will apply only beyond a threshold limit of Rs. 3 crores.

However, the aforesaid recommendation has not been accepted

(ii) One of the other significant recommendations was that the GAAR could be invoked only in case where the main purpose of the entire arrangement is to obtain tax benefit.

Though the aforesaid recommendation has apparently been accepted, yet the burden of proof has been placed on the tax-payer. In other words, in order to escape the applicability of the provisions of GAAR, the tax-payer will have to prove that the main purpose of the whole arrangement is not to obtain a tax benefit.]

13. Amendment of section 115A – Taxation of income by way of royalty or fees for technical services (FTS)

India has tax-treaties with eighty four countries and majority of tax-treaties allow India to levy tax on gross amount of royalty at rates ranging from ten per cent to twenty five per cent, whereas the tax rate as per section 115A is ten per cent. Thus, in some cases, this has resulted in taxation at a lower rate of ten per cent, even if the treaty allows an income to be taxed at a higher rate.

In order to correct the aforesaid anomaly, the tax rate in case of non-resident taxpayer, in respect of income by way of royalty and FTS, as provided under section 115A of the Act is to be increased from ten per cent to twenty five per cent. This rate of twenty five per cent 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 31.3.1976, which is taxable under section 115A.

The aforesaid amendment will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

14. Amendment of section 115BBD – Lower rate of tax on dividends received from foreign companies

Section 115BBD of the Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of twenty six per cent or more) at the rate of fifteen per cent if such dividend is included in the total income for the FY 2012-13 i.e. AY 2013-14.

In order to continue the aforesaid incentive for one more year, section 115BBD is to be amended so as to extend the applicability of this section in respect of the aforesaid income by way of dividends received in FY 2013-14 also.

The aforesaid amendment will take effect from 1.4.2014 and will apply in relation to AY 2014-15.

15. Amendment of section 115-O – Removal of cascading effect of dividend distribution tax (DDT)

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.

Section 115-O is to be amended in order to extend the benefit of cascading effect to the dividend received from foreign subsidiary (i.e. foreign subsidiary in which the domestic company holds more than fifty per cent of equity share capital).

The aforesaid amendment would lead to savings of fifteen per cent of DDT (excluding surcharge and education cess) on the amount of dividend distributed by the domestic company to its shareholders in India in respect of dividend from foreign subsidiaries.

The aforesaid amendment will take effect form 1.6.2013.

16. New Chapter XII-DA – Additional income-tax on distributed income by a company for buy-back of unlisted shares

The existing provisions of section 2(22)(e) provide the definition of dividends for the purposes of the Act. Section 115-O provides for levy of dividend distribution tax (DDT) on the company at the time when the 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 shareholders, as per section 10(34) of the Act.

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

A company with distributable reserves, has two options to distribute the same to its shareholders, either by declaration and payment of dividend 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 the company is subject to DDT and income of the shareholders is exempt. However, in the second case, the income is taxed as capital gains in the hands of shareholders.

A number of 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 a practice, a new Chapter XII-DA, consisting of sections 115QA, 115QB and 115QC is to be inserted in the Act, in order to provide that the consideration paid by the company for the 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 at the rate of 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. However, the income arising to the shareholders in respect of such buy-back of shares by the company, would be exempt from tax under the newly inserted section 10(34A).

The aforesaid amendments will take effect from 1.6.2013.

[***Author's Note*** :

The aforesaid new Chapter XII-DA may lead to unintended difficulties and hardships to the tax-payers. The reasons for the same are stated as follows :

(i) A plain reading of the aforesaid provisions suggests that tax would be levied on the excess of consideration paid by the Indian company, over and above the sum received by it at the time of issue of shares.

In such a scenario, the Indian company would have to disregard the price on which the shares might have been acquired by certain shareholders, through purchase from the original shareholders and will have to adopt the original value of the shares for computing the amount on which tax is to be payable.

In other words, suppose the original price of a share is Rs.100 per share and thereafter, another shareholder has purchased the same share for a sum of Rs.200 and later on, the company has bought back the same share for Rs.300. In such a case, the additional tax will

be charged on the difference between the buy-back price and the original price of the shares, viz. Rs.200 per share, notwithstanding the fact that the present shareholder had bought the same share for a sum of Rs.200.

It may also be stated here that the original shareholder would have already paid capital gains tax on the capital gains accrued to him on the sale of the aforesaid share for a sum of Rs.200, thus, leading to capital gains of Rs.100.

(ii) If the intention of the Finance Minister is to bring about parity between the dividend distribution and buy-back of shares, the final withholding-tax should have been restricted to the rate prescribed for DDT under section 115-O of the Act, viz. at the rate of 15%.

(iii) Besides, such DDT should have been made applicable to accumulated profits only, and

(iv) Further, in the case of a non-resident shareholder, the shareholder may not be able to get credit of the tax withheld in India akin to DDT, because such a tax is to be levied on the Indian company, rather than the shareholder. This could add to the cost of operating in India for overseas investors.

A better and simpler option

The aforesaid objective could have been achieved by the following amendments :

(a) Omission of section 46A, relating to capital gains on purchase by a company of its own shares or other specified securities.

(b) Omission of exclusionary sub-clause (iv) of section 2(22), according to which dividend under section 2(22) will not include any payment made by a company on purchase of its own shares from a shareholder, in accordance with the provisions of section 77A of the Companies Act, 1956.

(c) Application of sub-clause (d) of section 2(22), according to which dividend includes any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits, etc.

Further, as whole of the amount of deemed dividend may be subjected to DDT under section 115-O, instead of the difference in the purchase price of the share by the company and the cost of the share to the shareholder, the rate of DDT may be reduced, say to 10% instead of 15%, under section 115-O of the Act.

The aforesaid suggestions are offered for consideration by the Finance Minister].

17. Amendment of section 115R – Rationalization of tax on distributed income by the Mutual Funds.

In 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 or an HUF, it is 12.5% or 25%, depending upon the nature of the fund.

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

Besides, section 115R is also to be amended, so as to provide that any income distributed by a Mutual Fund under an infrastructure debt scheme to a non-resident (other than a company) or a foreign company, shall be liable for payment of additional income-tax at the rate of 5% of the income distributed.

The aforesaid amendment will take effect from 1.6.2013.

18. New Chapter XII-EA – Taxation of Securitization Trusts

A new Chapter XII-EA, consisting of new sections 115TA, 115TB and 115TC, relating to tax on distributed income by Securitization Trusts, is to be inserted in the Act.

Section 161 of the 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 the trust.

The special purpose entities set up in the form of trust to undertake securitization activities were facing problem on account of lack of special dispensation in respect of taxation under the Act. The taxation at the level of the trust in accordance with the existing provisions was considered to be restrictive, particularly where the investors in the trust are persons who are exempt from taxation under the provisions of the Act like Mutual Funds.

In order to facilitate the securitization process, a special taxation regime in respect of taxation of income of securitization entities, set up as a trust, from the activity of securitization, is to be provided. For this purpose, a new section 10(23DA) is to be inserted and in addition a new Chapter XII-EA for providing a special tax regime is to be inserted in the Act.

The salient features of the special tax regime are as follows :

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

(ii) The Securitization 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 at the rate of twenty five per cent (25%) in case of

distribution being made to investors who are individuals and HUFs and at the rate of thirty per cent (30%) in other cases.

No additional income-tax shall be payable if the income distributed by the Securitization 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 under the newly inserted section 10(35A)

(iv) The aforesaid tax is to be paid within fourteen days from the date of payment to the investor. If the same is not paid within fourteen days, then the Securitization Trust will be liable to pay interest at the rate of one per cent for every month or part of the month on the amount of additional income-tax not paid within the stipulated period of fourteen days.

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

The aforesaid amendments will take effect from 1.6.2013.

19. New section 194-IA - TDS on transfer of certain immovable properties (other than agricultural land)

Tax is required to be deducted at source, in respect to all the payments made to a non-resident, including TDS in respect of transfer of immovable property by a non-resident. Such tax is 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, a new section 194-IA is to be inserted, so as 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 small tax payers, no tax will be required to be deducted at source, where the total amount of consideration for the transfer of an immovable property is less than Rs.50,00,000.

The aforesaid amendment will take effect from 1.6.2013.

[***Author's Note*** :

The aforesaid provisions of newly inserted section 194-IA are fraught with lot of unintended difficulties / problems for both the transferor, as well as the transferee of the said immovable property. The reasons for the same are as follows :

(i) A transferor of an immovable property who wishes to avail of the benefit of deduction under sections 54, 54EC or 54F, will face lot of unintended difficulties, because he will be required to claim refund in respect of the aforesaid TDS, even if he wishes to utilize the sale proceeds or capital gains accruing or arising from the transfer of the immovable property, for the purchase of residential house or capital gains bonds.

It appears that the aforesaid difficulties which a transferor of the immovable property may face have not been considered, while drafting the aforesaid provisions under section 194-IA.

(ii) At the periphery of all the cities and towns in India, lot of transactions of purchase and sale of immovable property, particularly land, are taking place. Most of such transferors are agriculturists and the land being sold by them may not be treated as agricultural land. In such a case, if there is any default on the part of the transferee of the land, say in respect of permanent account number of the transferor or in case the transferor does not have PAN, the tax will be required to be deducted at source at the rate of 20%, in view of the provisions of section 206AA of the Act.

(iii) Besides, the transferees who are as such not required to deduct tax under any provisions of the Act, will be required to obtain TAN and accordingly, the aforesaid transferees will face lot of difficulties.

The aforesaid aspect does not appear to have been considered while drafting the aforesaid section 194-IA].

20. Amendment of section 194LC – 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 concessional rate of tax at 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), section 194LC is to be amended, 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 utilized for subscription to a long-term infrastructure bond issued of an Indian company, then the borrowing by the company shall be deemed to be in foreign

currency. Thus, the benefit of reduced rate of tax would be available to such non-resident, in respect of the interest income arising on such subscription.

The other important condition in this regard is that 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, issued by an Indian company.

The aforesaid amendment will take effect from 1.6.2013.

21. Amendment of rule 3 in Part A of the Fourth Schedule – Extension of time for approval of the provident fund by the Central Provident Fund Commissioner.

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

The first proviso to said rule 3(1) provides that in a case where recognition has been accorded to any provident fund on or before 31.3.2006 and such provident fund does not satisfy the conditions set out in clause (ea) of the said rule 4 and any other conditions which the Board may specify in this behalf, the recognition to such fund shall be withdrawn if the fund does not satisfy the conditions on or before 31.3.2013.

Therefore, the said proviso to rule 3(1) is to be amended, so as to extend the said time limit upto 31.3.2014.

This amendment will take effect retrospectively from 1.4.2013.

22. Insertion of new sections 14A and 14B and amendment of section 46 of the Wealth-Tax Act, 1957 – Enabling provisions for facilitating electronic filing of annexure-less return of net wealth.

Section 14 of the Wealth-Tax Act, 1957 (WTA) 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 and reports are required to be furnished, along with the return of net wealth in the provisions of WTA, read with the provisions of Wealth-Tax Rules.

In order to facilitate electronic filing of annexure-less return of net wealth, new sections 14A and 14B are to be inserted in the WTA.

The aforesaid amendment will take effect from 1.6.2013.

23. Chapter VII of the Finance Bill, 2013 – Introduction of Commodities Transaction Tax (CTT)

In line with the Securities Transaction Tax (STT), a new tax called Commodities Transaction Tax (CTT) is to be levied on taxable commodities transactions entered into in a recognized association or recognized commodity markets.

The expression '*Taxable commodities transaction*' will mean a transaction of sale of commodity derivatives, in respect of commodities other than agricultural commodities, traded in recognized associations / commodity markets.

The salient features of the aforesaid CTT may be briefly stated as follows :

(i) Rate of tax

Tax at the rate of 0.01% on the transaction value will be levied. Such tax will be denoted as Commodities Transaction Tax (CTT). The said tax will be recovered from the seller.

(ii) Tax collection

The association or market on which the commodities will be traded, will be responsible for collection of tax from the seller, at the time of entering into the transaction.

(iii) Payment of tax

Tax collected will have to be paid to the Central Government by the seventh day of the immediately following month.

(iv) Interest

Interest at the rate of 1% shall be levied for delayed payment of CTT

(v) Default

In the event of default in the collection of tax, a penalty equivalent to the amount of tax shall be levied. In case the tax after being collected, is not paid, then penalty of Rs.1000 per day, till the default continues or the amount of tax, whichever is lower will be levied.

(vi) Return

Early return will have to be filed by the person responsible to collect and pay the CTT.

(vii) Other important provisions

(a) The aforesaid tax will 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.

(b) Besides, section 36 of the Income-Tax Act, 1961, is to be amended, so as to provide that an amount equal to the CTT paid by the assessee, in respect of taxable commodity transactions entered into, in the course of his business during the previous year, shall be allowable as a deduction, if the income arising from such taxable commodity transactions is included in the income computed under the head '*Profits and gains of business or profession*'.

The aforesaid amendment of section 36 of the Income-Tax Act, 1961, will take effect from 1.4.2014 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs.

S. K. TYAGI	**Office**	: (020) 26133012	Flat No.2, (First Floor)
M.Sc., LL.B., **Advocate**		: (020) 40024949	Gurudatta Avenue
Ex-Indian Revenue Service	**Residence**	: (020) 40044332	Popular Heights Road
Income-Tax Advisor	**E-mails**	: sktyagidt@airtelmail.in	Koregaon Park
Website: www.sktyagidt.com		: tyagi@sktyagidt.com	PUNE - 411 001