Tax Alert

PHD

4 March 2013

Finance Bill 2013

Important Direct Tax Proposals

SYNOPSIS

Executive Summary

This write up captures significant direct tax proposals of the Finance Bill 2013 introduced in the parliament on 28th February, 2013.

In his budget speech the Finance Minister (FM) expressed his intention to introduce new Direct Tax code (DTC) in the current budget session, also indicating that it would not be an amended version of the Income-tax Act, 1961 (ITA) but a new code based on the best international practices that will be compatible with the needs of a fast developing economy. Thus, if the direction indicated by FM has its way, it is most likely that we will have a quite different version of DTC that is distinct from the DTC 2010 Bill introduced in the parliament in 2010.

Perhaps, in the wake of the proposed DTC, FM has refrained from proposing any structural changes in his tax proposals. It seems that in view of the current state of the economy and having made liberal allocation of resources to 'politically correct' sectors in the light of this being pre election budget, he had little inclination to provide any significant tax relief. Retaining the existing basic tax rates, he has introduced surcharge@ 10% on tax in the case of non corporate taxpayers such as individuals, partnership firms, LLPs, AOPs etc; if their taxable income is more than INR 10 million. In the case of domestic companies, retaining the surcharge @5% for the income level of INR 10Mn to 100Mn; for the income level above 100Mn, surcharge @10% has been proposed. Similarly, surcharge on dividend distribution tax, capital gains, book profit tax, etc. is increased.

With the objective of attracting new investment in manufacturing segment, Investment Allowance deduction has been proposed @15% on the plant and machinery acquired and installed during the period of 1.04.2013 to 31.03.2015, subject to the condition of the investment being at least INR 1000Mn.

The controversial proposal in the last year's Finance Bill, of tax withholding @1% from the purchase value of any immovable property, which was dropped at the enactment stage, has been re-introduced with little modifications. The proposal is likely to create unnecessary hassles for the Taxpayers.

The bill also seeks to introduce provisions similar to existing section 50C (which applies to immovable property held as capital asset) whereby income arising from transfer of immovable property held as stock-in-trade, will be computed at stamp duty valuation (SDV) of the property, in case of actual sale consideration being lower than the said valuation.

The Bill also seeks to amend existing section 56 of the ITA to provide that: in the case of actual consideration of immovable property being lower than SDV, the transferee shall be liable to pay tax on the differential amount. However a transaction with any specified relatives will be spared from rigors of the above proposal.

The Bill seeks to liberalise the Rajiv Gandhi Equity Linked Saving Scheme for the new retail investors

In respect of buyback of unlisted shares of a domestic company, the Bill seeks to exempt shareholders from capital gains tax, while the company will have to pay tax @20% on the distributed income.
Though the proposal is targeted to curb tax avoidance by non resident shareholders (resident of tax efficient jurisdictions) through buy back route, it will adversely affect the resident shareholders who may have acquired the shares by transfer from another shareholder, at a price higher than the issue price of the shares.

The Bill seeks to extend the concessional tax regime for repatriation of dividend from foreign companies for the period up to 31.03.2014 and further liberalise it in the case of foreign subsidiary by providing deduction of the said amount from amount of dividend distribution on which dividend distribution tax is payable.

The Tax Residency Certificate (TRC) related clarificatory proposal has been revoked by issuance of Press Note on the very next day stating the Government's intention to accept TRC as evidence of residential status, without further investigation.

For the benefit of a first time buyer of a residential house, the Bill seeks to provide deduction of interest up to INR 1 Lac. However the benefit is restricted to the property valued up to INR 40 Lacs and loan amount up to INR 25 Lacs.

The Bill does not address to the recommendations of DR. Shome Committee on the retrospective amendment made by the Finance Act of 2012 in respect of the contentious issue of taxation of capital gains arising from transfer of shares of a foreign company outside India by a non-resident investor, resulting into indirect transfer of properties situated in India.

The General Anti-avoidance Rules (GAAR) provisions introduced by the Finance Act of 2012 have been modified on certain aspects and its implementation has been has been deferred to assessment year 2016-17 corresponding to the financial year commencing on 1.04.2015. However it is significant to note that income arising in future years (when GAAR would be in force), from any existing tax avoidance arrangement, may not be insulated from the GAAR provisions.

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TAX RATES

- The Bill does not seek to change the tax slabs or rates from the current level for any category of tax payers.
- However, a rebate is proposed, in the case of individual (including senior citizens 60 to 79 years) whose taxable income falls in the income slab of INR 2 Lacs to 5 Lacs.
- The rebate would be @ 100% of the tax subject to maximum of INR 2,000.
- Effectively, considering the rebate, an individual will not be liable to pay tax up to the taxable income of INR 2.20 Lacs but he will be liable to file the return if his taxable income is INR 2 Lacs and above.
- No benefit of the rebate will be available to an individual whose taxable income is above INR 5 Lacs.

Surcharge

- In the case of Non Corporate Taxpayers[1] whose taxable income exceeds INR 10 million, currently not liable to any surcharge, the Bill seeks to levy surcharge @ 10% on whole of the tax amount
- In the case of Domestic companies which are currently liable to surcharge @ 5% on tax on income exceeding INR 10 million, will be further liable to surcharge @ 10% on tax on income exceeding INR 1000 Mn.
- In the case of foreign companies which are currently liable to surcharge @ 2% on tax on income exceeding INR 10 million will be further liable to surcharge @ 5% on tax on income exceeding INR 100 million
- The rate of surcharge, on the Dividend Distribution Tax, Book Profits Tax, Special income of non-residents (royalty, fees for technical services etc.), taxable short term capital gains (on sale of equity shares or units liable to STT) and long term capital gains, is enhanced (see table below)
- Currently, non resident individuals are not liable to payment of surcharge on their tax withholding. The Bill propose to levy surcharge @ 10% where the underlying payments on which tax is withheld exceed INR 10 million

All the changes relating to surcharge on tax are tabulated hereunder

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[1] Individual, HUF, Firm, LLP, AOP, Co-operative society, Local authority etc.

Table of surcharge applicable to various categories of persons under different income range

Status of Person	Nature of Income/ Payment	Income range [INR]		
		Up to 10 Million	Between 10 – 100 Million	Above 100 Million
Domestic Company	Normal Income	Nil	5%	10%
	Special Income*	Nil	5%	10%
	Dividend/ Other payments **	10%	10%	10%
	Tax withholding#	Nil	Nil	Nil
Foreign Company	Normal Income	Nil	2%	5%
	Special Income*	Nil	2%	5%
	Dividend/ Other payments **	10%	10%	10%
	Tax withholding#	Nil	2%	5%
Non Corporate – Resident ##	Normal Income	Nil	10%	10%
	Special Income*	10%	10%	10%
	Tax withholding#	Nil	Nil	Nil
Non Corporate - Non Resident ##	Normal Income	Nil	10%	10%
	Special Income*	10%	10%	10%
	Tax withholding#	Nil	10%	10%

* Special income comprises of:

- Short term and Long term capital gains [Sec 111A & 112]
- Minimum Alternate tax and Alternate minimum tax [Sec 115 JB & 115JC]. Benefit of marginal relief available
- Special Income of non residents such as dividend, royalty, fees for technical services, foreign currency Bonds and GDR's, sportsmen etc. [Section 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115BBD, 115BBE, 115E.]

** Dividend/other payments comprise of:

Dividend distribution by Domestic Companies, Mutual Funds, Securitization Trust or Buy-back of shares by unlisted companies.

\# Tax withholding u/s 193, 194, 194A, 194B, 194BB, 194D, 195, 194C, 194E, 194EE, 194F, 194G, 194H, 194I, 194IA, 194J, 194LA, 194LB, 194LC, 196B, 196C, 196D and 206. The threshold of 1 crore or 10 crore, as the case may be, to be reckoned with reference to the underlying payment on which tax is withheld.

\## Individual, AOP, BOI, AJP, HUF, Co-Operative society, Firm, Local Authority. Benefit of marginal relief available.

Education cess:

- The education cess continues to be @3% on the amount of tax increased by surcharge wherever applicable. In line with the current provision, education cess not payable on tax withholding from payment to residents of India.

Commodities Transaction Tax (CTT) – A new Tax introduced

- The Bill seeks to levy a new tax called Commodities Transaction Tax (CTT) on sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognized associations.
- The CTT is levied @ 0.01% of the transaction value, payable by the seller. The buyer of the derivative is not liable to CTT.
- 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 in the chapter VII of the Bill.
- The levy of tax shall be applicable from such date as may be notified by the Central Government
- The Bill also seeks to amend section 36 of the ITA to provide that an amount equal to the CTT paid by a taxpayer in the course of his business shall be allowable as deduction, if the corresponding income is included in the income computed under the head Profits and gains of business or profession.
- In the budget speech the Hon'ble Finance Minister has stated that trading in commodities derivative will not be considered as speculative transactions. However, it appears that some clarity is desirable in the relevant provisions of ITA, in this regard.

The provision shall be effective from assessment year 2014-15.

Reduction in the rates of Securities Transaction Tax (STT)

- The Bill seeks to reduce STT rates in the taxable securities transactions as indicated hereunder:

Nature of taxable securities transaction	Payable by	Current Rate (%)	Proposed Rate (%)
Delivery based purchase of an equity share through recognized stock exchange	Purchaser	0.1	No change
Delivery based purchase of unit of an equity oriented fund through recognized stock exchange	Purchaser	0.1	Nil
Delivery based sale of equity share through recognized stock exchange	Seller	0.1	No change
Delivery based sale of unit of an equity oriented fund through recognized stock exchange	Seller	0.1	0.001
Non delivery based sale of an equity share in a company or unit of an equity oriented fund	Seller	0.025	No change
Sale of an option in securities	Seller	0.017	No change
Sale of a future in securities	Seller	0.017	0.01
Sale of an option in securities where option is exercised	Purchaser	0.125	No change
Repurchase of a unit of an equity oriented fund	Seller	0.25	0.001

- It may be observed that the benefit of reduction has not been granted to the cash segment and options in the derivative segment which constitutes significant part of the trade volume

The revised rates shall be effective from 1 June, 2013

Rationalization of tax on distributed income by the Mutual Fund

- Currently, any debt fund (other than money market or liquid fund) is required to pay Income Distribution Tax @ 12.5% when the recipient of income is the Individual or HUF. In order to bring all debt funds in parity, the Bill seeks to increase the tax rate from 12.5% to 25%.
- 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 separate rates prescribed for 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, the Bill seeks 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.

INCENTIVES PROPOSED

Investment Allowance

- To attract new investments, the Bill seeks to introduce section 32AC in the ITA to provide investments linked incentive subject to the following conditions:
  - The Taxpayer must be a company (domestic or foreign) engaged in the business of manufacture or production of any article or thing
  - It acquires and installs assets, being, new plant and machinery, after 31.03.2013 and before 01.04.2015
  - The aggregate amount of actual cost of such assets exceed INR 100 crores
- The deduction shall be allowed:
  - For the assessment year 2014-15 @ 15% of the aggregate amount of actual cost of such assets acquired and installed during the corresponding financial year ended 31.03.2014, if the aggregate amount of investment in such assets exceed INR 100 crores. In such a case no deduction will be allowable in any subsequent assessment year.
  - For assessment year 2015-16 the deduction will be allowable[2] @ 15% of the aggregate amount of actual cost of such assets

[2] in the cases where the investment is < 100 crores in Asst. Year 2014-15

acquired and installed during the period 01.04.2013 to 31.03.2015 to the extent of such investments as reduced by the deduction, if any allowed for assessment year 2014-15.
  - No deduction will be allowable for Asst. year 2016-17 and onwards.
- Investment in the following plant and machinery shall not be eligible for the deduction:
  - plant and machinery used prior to its installation within or outside India
  - plant and machinery installed at office or residential premises
  - office appliances including computers and computer software
  - any vehicle
  - ship or aircraft
  - Plant and machinery, the whole of the actual cost is allowed as a deduction (whether by depreciation or otherwise) in computing the income under business head.
- If the asset is sold or transferred (except by way of amalgamation or demerger) within a period of 5 years from the date of its installation, the amount of deduction allowed in respect of such assets shall be deemed to be income of the Taxpayer under the head Profits and gains of business or profession in the year in which such new asset is sold or transferred.

Expansion of scope for deduction u/s 80CCG

- Under the current provisions of section 80CCG, Rajiv Gandhi Equity Savings Scheme has been notified which inter-alia, provides that a resident individual being a 'new retail investor', who has acquired listed equity shares, shall be allowed a deduction of 50 % of the amount invested. The deduction under the said section is restricted to INR 25,000/-. The deduction is currently available only in respect assessment year 2013-14, provided his Gross Total Income does not exceed INR 10 Lacs.
- The Bill seeks to expand the scope of the deduction by permitting investment in equity oriented mutual funds, enhancing the limit of the Gross Total Income to INR 12 Lacs and extending the period for availing the deduction for any three consecutive years commencing from the assessment year in which the investment is made for the first time.

The provision shall be effective from assessment year 2014-15.

Additional interest on new loans for residential house property

- The Bill seeks to provide deduction under newly introduced section 80EE of ITA in respect of interest on loan taken for acquisition of a residential house property.
- The deduction shall be available to the Taxpayer who is an individual, subject to the following conditions:

- The loan is sanctioned by Bank or Housing finance company during the period 1-Apr-2013 to 31-Mar-2014
- The amount of loan sanctioned does not exceed INR 25 lacs
- The value of the residential house property does not exceed INR 40 lacs
- The Taxpayer does not own any residential house property on the date of sanction of the loan

- The deduction shall be allowed for interest payment to the extent of INR 1 lakh for assessment year 2014-15. If the interest paid is less than INR 1 lakh in the said assessment year, the balance amount shall be allowed as deduction in the subsequent year.
- No deduction will be allowed in the assessment year 2016-17 and onwards.

This provision will come into effect from 1st April, 2014.

Power Project: Sunset date [section 80IA(4)(iv)]

- Currently, tax holiday u/s 80IA(4)(iv) is available for business of generation and generation and distribution of power which commences operations on or before 31st March 2013.
- The Bill seeks to further extend the benefit of tax holiday by one more year for such business which may commence operations on or before 31st March 2014.

The provision shall be effective in assessment year 2014 – 15

Lower withholding tax for infrastructure bonds

- Under the current provisions of section 194LC, interest income paid by specified company in Infrastructure sectors to a non resident shall be subjected to tax deduction at source at the rate of 5% instead of normal tax withholding rate.
- With a view to attract investment in long term infrastructure bonds, the Bill seeks to provide the same benefit to deposits made by a non resident, in foreign currency in a designated bank account or in rupee denominated long term infrastructure bonds.

This provision shall come into effect from 1st June, 2013

ANTI TAX AVOIDANCE MEASURES

Tax withholding from payment for transfer of immovable properties

- Any person , being the transferee responsible for paying to a resident transferor, any amount by way of consideration, for transfer of any immovable property (other than agricultural land) shall deduct tax at source @ 1% of the consideration in the case where the consideration is INR 50 lacs or more
- Immovable property is defined as land (other than agricultural land) or any building or a part of building
- This provision is likely to create hardship because no relaxation has been provided to dispense with tax deduction in the case of

tax payers whose income from transfer of property is exempt from tax. Also in the case of property developed by the owner under the development agreement, the developer will be called upon to deduct tax, though the consideration may have been agreed to be paid in kind

- The provision shall apply irrespective of the fact whether the transferor is holding the property as stock in trade or capital asset.
- A similar provision was proposed vide Finance Bill 2012 and was dropped at the time of enactment of the Bill in view of the practical difficulties arising from the proposal. In the said Bill it was provided that the transferee need not obtain Tax Deduction Account Number [TAN]. The current Bill does not grant this relaxation. Hence, a Taxpayer, say, a salaried individual who otherwise does not have TAN, will be called upon to obtain the same for the limited purpose of buying a house.
- It is not clear whether the tax withholding will have to be made by the buyer of the property upfront on the whole of the agreement value, irrespective of the terms of the agreement which mandates payment in instalments commensurate with the progress of the construction.
- Incidentally, it may be noted that pursuant to section 206AA of ITA, if the transferor of the property fails to furnish Permanent Account Number, the tax withholding may have to be made @ 20% of the consideration.

The provision shall be effective from 1st June 2013

Stamp duty valuation to be adopted for computing business income from transfer of under priced immovable property

- The Bill seeks to introduce a new section 43CA pursuant to which the business income of a Taxpayer arising from transfer of an asset (other than capital asset), being land or building or both, shall be computed by substituting stamp duty valuation [SDV] of the asset in the place of actual consideration if it is lesser than SDV of the asset.
- The tax on the differential amount will be payable by the transferor. However, the cost of acquisition in the hands of the transferee shall continue to be the actual consideration paid by him.
- It may be recalled that provision of section 50C of ITA deals with computation of capital gains in the similar situation when the asset is held as Capital Asset.
- In a case where a Taxpayer disputes the SDV of the property, then, subject to certain conditions, the department may refer the matter to a Valuation Officer to determine the fair value of the property. However, if the value so determined is higher than SDV of the property, the income shall be computed on the basis of such higher value.
- In a case where the amount of consideration / part consideration has been received by any mode other than cash, and the date of

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 SDV may be taken as on the date of agreement for transfer shall be adopted.

- The Bill seeks to introduce similar provision by amendment to section 56 of the ITA pursuant to which a transferee of such property shall also be liable to such tax on the differential amount. The detailed provisions in this regard are dealt with separately as a subsequent item in this alert..

This provision shall be applicable from 1st April, 2013

Transfer of immovable properties for inadequate consideration (Section 56)

- The Bill seeks to amend section 56 of the Income Tax Act whereby in the case of an immovable property (e.g. land, building, flats, shops, etc.) exceeding Rs. 50,000 in value, if acquired by an individual or HUF for an agreement value which is less than the stamp duty value of the property, then, the difference between the agreement value and the stamp duty value will be considered as income of the acquirer and he will have to pay tax on such additional income.
- This provision will apply whether the property is held as capital asset or as stock-in-trade.
- There is no relief provided to refer the disputed valuation to any valuation officer. Thus, in the case of transfer of immovable property, for a consideration which is less than stamp duty valuation of the property, both, the seller will be liable to tax either under section 43AC or 50C and the buyer will be liable to tax under section 56 on the differential amount.
- The transaction with a specified relative will be insulated from application of this provision.

The provision shall be effective from the assessment year 2014 – 15

Return Defective if filed without payment of Self Assessment Tax

- Under section 140A of ITA, Taxpayer is required to make payment of self assessment tax (including interest) along with return of income filed in a case where advance tax or prepaid taxes are less than the tax liability as per the return of income.
- Currently, a Taxpayer who files such return without payment of the self assessment tax is exposed to interest and penalty. However, validity of the return of income is unaffected.
- The Bill seeks to provide that non payment of the self assessment tax will render the return of income filed by the Taxpayer as defective return. Consequently, the tax officer will send an intimation of the defect and if within 15 days the payment of the tax is not made, the return will be treated as invalid and the Taxpayer shall be liable to all consequences under the ITA of not having filed a return of income.

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

Keyman Insurance Policies

- Some tax payers took the position that keyman insurance policy [KIP] if assigned before maturity, it ceases to be a KIP and accordingly maturity proceeds received by the assignee shall be exempt from tax.
- To plug the loophole the Bill seeks to provide that KIP, even though assigned before maturity shall be deemed to be considered as KIP for the tax purpose and liable to tax in accordance with the provisions of ITA.

The above provision shall be effective from assessment year 2014-15.

Clarification of the phrase "tax due" for recovery in certain cases

- Section 179 of the ITA provides that where tax due from a private limited company cannot be recovered from such company, then in certain cases directors shall be jointly and severally liable for such payments.
- Courts have held that tax due does not include penalty, interest or any other sum payable under the Act.
- To nullify this, it is clarified that tax due includes penalty, interest or any other sum payable under the Act.

The provision shall come into effect from 1st June, 2013.

Contribution to Political party or Electoral trust

- With a view to discourage cash payments by the contributors, it is proposed that no deduction shall be allowed u/s 80GGB and 80GGC to an Indian company or any other person (not being local authority or artificial juridical person) for contribution made in cash to any political party or an electoral trust.
- This provision shall come into effect from 1st April, 2014.

General Anti Avoidance Rules (GAAR) modified and deferred

- GAAR, briefly stated, are the tax rules that ignore the form of a transaction or an arrangement whose main purpose is to obtain tax benefit and lacks commercial substance. The tax liability in such cases will be determined according to the substance of the transaction ignoring its legal form.
- The Finance Act 2012 introduced GAAR provisions to be effective from Assessment Year 2014-15. The Bill seeks to defer the implementation to assessment year 2016-17. Accordingly the provisions will come in force for financial year commencing from 1st April 2015
- The Bill seeks to modify the existing provisions as follows:
  - ➢ It clarifies that GAAR is attracted if the main purpose of a tax avoidance arrangement is to obtain tax benefit, replacing the current trigger condition of transaction or arrangement whose "main purpose or one of the main purpose" is to obtain tax benefit

- The onus to prove that the main purpose of an arrangement is not to obtain tax benefit will be that of the Taxpayer[3] In a case where an arrangement does not have a significant effect upon the business risks or net cash flows of any party, it will be considered to be lacking commercial substance. This test is in addition to those already prescribed in the existing provisions
- The GAAR Approving Panel is proposed to be reconstituted as comprising of a sitting or retired judge of high court who shall be the chairman, a member from Indian Revenue Service of a rank of commissioner and above and a member who is an academician or scholar having special knowledge of matters, such as direct taxes, business accounts and international trade practices. As per the current provisions the panel would have been comprised of officials from tax department or government
- The directions issued by the Approving Panel shall be binding on the tax department and the Taxpayer, there will be no right of appeal against the directions

- The Bill does not incorporate the in principle relaxations that were stated to have been accepted by the Finance Ministry, post Shome Committee report. For example, the threshold for attracting GAAR has not been incorporated. May be, it will be effected by a circular or rules.
- Significantly, no clarity has been provided as to whether the GAAR, after it becomes effective, will have retroactive effect on the pending assessments pertaining to the assessment years relating to the period prior to 1 April 2015. The Finance Ministry had gone on record to state that income arising during the period after the GAAR is effective, as a consequence of tax avoidance arrangements made after August 2010, will not be protected from GAAR. Hence it is important to note that any such arrangement currently in force will not be grandfathered on or after 1 April 2015, hence such arrangements and taxation of income arising therefore, will be subject to GAAR consequences

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[3] Dr. Shome committee had recommended that the onus should be shifted to the tax department.

INTERNATIONL TAXATION

Royalty and fees for technical services – Tax rates enhanced

- The Bill seeks to enhance the tax on non-resident's income by way of royalty or fees for technical service from the current rate of 10% to 25%. Corresponding tax withholding rate has also been enhanced at the same rate
- The Taxpayer entitled to benefit of tax treaty may choose to pay concessional rate of tax provided in India's tax treaty with the jurisdiction of which he is resident. Most tax treaties provide for tax rate ranging from 10% to 20%. However, the tax payer who is not resident of the treaty jurisdiction will suffer the higher tax burden, which may indirectly increase the cost of technology transfer for the residents of India.
- Incidentally, it may be noted that w.e.f. 17.09.2012, the benefit of any tax treaty is subject to Tax Residency Certificate (TRC) produced by the Taxpayer.

The provision shall be effective from the assessment year 2014 - 15

Dividend received from foreign companies – Concessional tax regime extended

- By the Finance Act, 2011 section 115BBD was introduced as an incentive to expedite remission of dividend by a foreign company in which Indian company holds atleast 26% of equity stake. It was provided that the dividend received by the Indian company from such foreign company during 1st April, 2011 to 31st March, 2012 shall be subject to the concessional tax rate @15% on the gross dividend amount, instead of regular provisions of the Act that attract tax rate @30%, subject however to the condition that no deduction to be allowed for the expenses, if any, in relation to the dividend income
- The Finance Act 2012 extended the aforesaid date to 31st March, 2013. The Bill propose to further extend the date by one more year till 31st March 2014.
- Further, it is also proposed that in the case of a foreign subsidiary, the dividend so received shall be deducted from the amount of the dividend distributed by the Company, in the computation of the dividend distribution tax

The provision shall be effective for the assessment year 2014 – 15

Tax on distributed income for buy-back of shares

- The Bill seeks to levy tax @ 20% on consideration paid by a domestic company for buy-back of unlisted shares to the extent of the consideration exceeding the sum received by the company at the time of issue of such shares.
- The tax on the buy-back shall be treated as final payment of tax and no further credit shall be claimed by the company or any other person in respect of such tax.
- No deduction shall be allowed to the company or the shareholder in respect of the buy-back or the tax thereon.

- The Bill also seeks to provide pursuant to new section 10(34A) to the effect that income arising to a shareholder under the buy-back of such un-listed shares shall be exempt from tax.
- This provision is likely to affect those foreign investors resident of Mauritius and such other tax efficient jurisdictions, who claim capital gain exemption under the tax treaty with India, in respect of the shares offered under the buy-back scheme of a closely held domestic company.
- Though unintended, the proposal will, indirectly, adversely affect the resident shareholders who ,may have acquired such shares at a price higher than the issue price.
- The tax on buy-back is to be deposited to the credit of the Central Government within 14 days of payment of consideration for such buy-back of shares. Delay in payment of tax beyond the prescribed time limit will entail interest @ 1% per month and in the event of failure in payment of tax the provisions of tax recovery shall apply to the company and its principal officer.

The provision shall come into effect from 1st June, 2013.

Tax Residency Certificate (TRC)

- Last year by the Finance Act, 2012 the ITA was amended to provide that benefits under a tax treaty shall not be available to any person, unless he has obtained a TRC containing prescribed particulars from the Government of the foreign country or the specified territory. Accordingly, TRC norms have been prescribed on 17.09.2012, after which, tax treaty benefit cannot be claimed by a tax payer without producing TRC, in respect of cross border transactions. In the explanatory memorandum to the Finance Bill, 2012 it was clarified that TRC shall be necessary but not sufficient to prove the tax residency of the jurisdiction which has issued the certificate. However, the provision to this effect was not specifically incorporated in the relevant provisions of the ITA
- The Bill propose to amend section 90 and 90A of the ITA by incorporating a specific clause that TRC shall be a necessary but not the sufficient condition for claiming relief under any tax treaty
- It may be noted that by a CBDT circular 789 of 13.04.2000 date, it was provided that TRC issued by Mauritius tax authority shall be considered to be a conclusive evidence of a Taxpayer being resident of Mauritius. The validity of the circular was upheld by the Supreme Court in the case of Azadi Bachao Andolan Vs. Union of India[4]. Although it is a settled legal position that a beneficial circular issued by CBDT is binding on the tax department, it may be relevant to note that one of the bench member Justice Radhakrishnan in the case of Vodafone A International[5] in his separate judgement observed that the tax department is not precluded from verifying the bonafide

[4] 263 ITR 706
[5] 341 ITR 1

residential status in the appropriate cases where tax evasion or avoidance is suspected by the department

- **Soon after the introduction of the Bill, the Finance Ministry have by a press note dated 01.03.203, diluted / revoked the proposal by stating that: the TRC obtained by a tax payer will be an acceptable evidence of residential status, and the tax department will not further investigate the matter. The FM has further assured to revisit the proposal at the time of enactment of the Bill**
- It would be advisable for the Taxpayers to watch the policy developments in this regard.

The provision shall be effective from the assessment year 2013 – 14

RATIONALIZATION

Clarification on application of seized assets

- Section 132B of the ITA *inter alia* provide that seized assets may be adjusted against existing liabilities under the ITA, Wealth-tax Act, etc including interest and penalty thereon.
- Courts have held that existing liability includes advance tax liability of the assessee.
- It is now clarified that existing liability does not include advance tax payable.

The provision shall come into effect from 1st June, 2013

The qualifying premium for life insurance policies of specified category of persons, enhanced

- Under the current provisions of ITA, 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 10% of the sum assured. Similarly under section 80C, the deduction is available in respect of any premium or other payment made on an insurance policy only up to 10% of the sum assured. The above limits were 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 which demand an annual premium of more than 10% of the actual sum assured, as per current provisions, are ineligible for exemption of the maturity amount and premium paid over the prescribed limit is ineligible for deduction under section 80C.
- It is proposed to provide that in respect of 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, the aforesaid limit of 10% shall be enhanced to 15%.

The provision shall be effective from the assessment year 2014 – 15

Urban Land redefined

- Currently as per section 2(14)(iii), an agriculture land situated in within the jurisdiction of of a municipality or cantonment area and having population of 10,000 and above according to preceding census or situated at a distance up to 8 km from the local limits of any municipality or cantonment board, is treated as a capital asset, the transfer of which is liable to capital gains tax
- The Bill seeks to amend the ITA so as to provide that a land situated in any area within the distance (measured aerially),
  - upto 2 kms, from the local limits of any municipality / cantonment board and which has a population of more than ten thousand but not exceeding one lac;
  - upto 6 kms, from the local limits of any municipality / cantonment board and which has a population of more than 1 lac but not exceeding ten lacs;
  - upto 8 kms, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lacs;

  shall be considered as capital asset.
- It is also proposed to define "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 section 2(1A) 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.

OTHERS

Donation to National Children's Fund - Deduction @100%

- Currently under 80G, deduction at the rate of 50% of the amount donated to the National Children's Fund is allowed.
- The Bill seeks to raise the deduction to 100% of the amount donated.

This provision shall take effect from assessment year 2014-15

Exemption to National Financial Holdings Company Limited

- Specified Undertaking of Unit Trust of India [SUUTI] has wounded up and succeeded by a new company wholly owned by the Central Government i.e. National Financial Holdings Company Limited [NFHCL], incorporated on 7 June 2012.
- The Bill seeks to amend Section 10 to provide exemption to NFHCL on the same lines of SUUTI in respect of its income accruing, arising or received on or before 31 March 2014.

This amendment will take effect retrospectively from 1-Apr-13.

Taxation of Securitisation Trust

- A special tax regime is proposed in respect of taxation of income of securitisation entities, set up as a Trust, from the securitisation activities. A new chapter XII – EA is proposed to be introduced along with amendment to section 10 to give effect to the proposal
- A Securitisation Trust (ST) whose activities are regulated by SEBI or RBI will be exempt from tax on its income from securitisation
- The ST will be liable to tax on income distributed to investors @25% in the case of recipients being individuals or HUF, and @30% in other cases.
- The distributed income received by the investor will be exempt from tax
- In case of delay in payment of income distribution tax by ST, interest @1% per month will be payable and the person responsible for payment of income will be liable to tax recovery proceedings in case of default in deposit of the tax

These provisions shall be effective from 1st June, 2013.

Alternative Investment Funds - Pass Through Status

- Section 10(23FB) provides 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 provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable as if the person had made direct investment in the VCU.
- The SEBI (Alternate Investment Funds) (AIF) Regulations, 2012 (AIF regulations) have replaced the SEBI VCF Regulations, 1996 (VCF regulations) from 21-May-12.
- To extend the benefit of pass through to similar VCF as are registered under new regulations and subject to same conditions of investment restrictions in the context of investment in a VCU, it is proposed to amend section 10(23FB) to provide that –
  - ➢ The existing VCFs and VCCs which were regulated by the VCF regulations would continue to avail pass through status as currently available.
  - ➢ In the context of AIF regulations, the VCC shall be defined as a company and VCF shall be defined as a fund set up as a trust, which has been granted a certificate of registration as VCF being a sub-category of Category I AIF 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 VCU.
    - (b) No investment has been made by such AIFs in a VCU which is an associate company.
    - (c) Units of a trust / shares of a company set up as AIF, are not listed on a recognised stock exchange.

In the context of AIF regulations, the VCU shall be defined as it is defined in the AIF Regulations.

This provision shall be applicable with retrospective effect from assessment year 2013-14

Annexure less electronic wealth tax return

- Currently, section 14 of the Wealth-tax Act provides for furnishing of return of net wealth in the prescribed manner with prescribed documents.
- Sections 139C and 139D of the Income-tax Act require filing of annexure-less return of income in an electronic form by certain class of Taxpayers.
- The Bill seeks to insert new sections 14A and 14B in the Wealth-tax Act in same lines in order to facilitate electronic filing of annexure-less return of net wealth. 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 provisions shall be effective from 1st June, 2013.

Penalty for non filing of AIR – Section 271FA

- Under existing provisions, section 285 BA mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2), failing which shall attract a penalty of a sum of hundred rupees per day during which the failure continues u/s 271FA. The same is
- Sub-section (5) of the section 285 BA empowers the assessing officer to issue notice if the annual return has not been furnished by the due date.
- The Bill seeks to propose that where the Taxpayer fails to furnish the return within the period specified in the notice he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues from the date of expiry of time mentioned in the notice.

These provisions shall be effective from 1st April, 2014.

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For any clarification or elucidation in respect of this alert, you may kindly connect to our Tax Research Team research@phd-ca.com

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