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News Alert
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Supplementary Memorandum on official amendments moved in the Finance Bill, 2012

The Finance Act, 2012 (Finance Act) received the President's assent on 28 May 2012. Certain amendments were carried out to the Finance Bill, 2012 (Bill) during its passage in the Parliament. Accordingly, the Supplementary Memorandum explaining the official amendments to the Bill have been released by the Central Board of Direct Taxes *vide* Circular No. 3/2012 dated 12 June 2012.

A gist of the key amendments made in the Bill *vide* the Supplementary Memorandum is given below:

Sr. no	Particulars	Provisions as proposed in the Bill	Amendments while passing the Bill in the Parliament
1	Exemption to Prasar Bharati (Broadcasting Corporation of India) from income-tax	This exemption was not proposed in the Bill.	Exemption to income of Prasar Bharati (Broadcasting Corporation of India) has been provided by inserting a new clause (23BBH) in section 10 of the Income-tax Act, 1961 (Act).
2	General Anti-Avoidance Rule (GAAR)	<p>The Bill contained the following provisions, among others, pertaining to GAAR :</p> <ul style="list-style-type: none"> As per the provisions of section 96(2) of the Act, if an arrangement has resulted in any tax benefit, it was presumed that main purpose of the arrangement was to obtain the tax benefit unless proved otherwise by the person obtaining the tax benefit. Thus, the onus was on the assessee. The GAAR approving panel would consist of three members of the rank of Commissioner and above (section 144BA(14) of the Act). GAAR was proposed to be made applicable from 1 April 2012 	<ul style="list-style-type: none"> Section 96(2) of the Act has been deleted. Accordingly, the onus has been shifted to the Revenue authorities for any action initiated under GAAR. The GAAR approving panel will consist of an independent member who will be an officer of the level of Joint Secretary or above from the Ministry of Law and two members being the income-tax authorities of the rank of Commissioner and above (section 144BA(14) of the Act). Any taxpayer (resident as well as non-resident) can approach the Authority for Advance Rulings (AAR) for determining whether an arrangement to be undertaken is an impermissible arrangement. The reference to seek an advance ruling can be filed on any date on or after 1 April 2013 (section 245N(a)(iv) of the Act). In order to provide more time to address the issues arising from the GAAR provisions, it is proposed that Chapter X-A containing GAAR provisions will apply to income chargeable to tax in respect of assessment year (AY) 2014-15 and subsequent years.
3	Venture capital companies (VCC) and Venture capital funds (VCF)	The Bill had proposed to delete section 115U(4) of the Act providing exemption from tax withholding and payment of dividend distribution tax or tax on distributed income from payments made by a VCC or VCF to its investors out of income received from a Venture capital undertaking (VCU).	This amendment has now been withdrawn and the earlier position as provided in the Act continues.

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4	Lower withholding at the rate of 5% on external commercial borrowings (ECB)	The Bill had proposed to introduce section 194LC of the Act to provide for tax withholding at a lower rate of 5% as opposed to 20% on interest payment on ECB by an Indian company if it was engaged in one of the eight specified business sectors.	To attract low-cost borrowings from abroad, this incentive has now been extended to all business sectors instead of restricting it to eight specified sectors.
5	Concessional tax rate on long-term capital gains (LTCG) arising on the sale of unlisted securities by non-resident investors	This was not proposed in the Bill.	As per the existing Act, LTCG arising to foreign institutional investors (FIIs) from the sale of unlisted securities is taxed at 10% without giving benefit of indexation or currency fluctuations. This benefit of reduced rate of taxation was not available to other non-resident investors including private equity investors on the sale of unlisted securities (as they were charged at the rate of 20% with the benefit of currency fluctuation but without indexation). In order to give parity, section 112(1)(c) of the Act is now amended so as to extend the above benefit to all non-resident investors.
6	Tax Collected at Source (TCS) on cash sale of bullion and jewellery	The Bill proposed to provide for the collection of tax at 1% by the seller of bullion or jewellery, if the cash sale consideration exceeds INR 0.2 million (section 206C (1D) of the Act).	In order to reduce the compliance burden, the threshold limit for TCS on cash sale of jewellery has been increased from INR 0.2 million to INR 0.5 million. However, the threshold limit for TCS on the cash sale of bullion has been retained at INR 0.2 million. It is further provided that bullion shall not include any coin or any other article weighing 10 grams or less. This amendment will take effect from 1 July 2012.
7	TCS on sale of certain minerals	The Bill proposed to provide tax collection by seller from the buyer at 1% on the sale of minerals being coal, lignite and iron ore (Section 206C(1) of the Act).	Since some of these minerals can also be used in the generation of power, section 206C(1A) of the Act is now amended to provide exemption from TCS to a buyer who provides declaration that the minerals are to be utilised for the purpose of generation of power. This amendment will take effect from 1 July 2012.
8	Minimum Alternate Tax (MAT)	The Bill proposed to amend section 115JB(2) of the Act to provide that in case of companies which are not required to prepare profit and loss account (P&L) as per Schedule-VI of the	In addition to the proposed amendment to the Bill, Explanation 3 to section 115JB(2A) of the Act has now been inserted to clarify the intention of the legislature that MAT was always applicable even to the companies not required to prepare P&L account as per Schedule-VI of the Companies Act,

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		Companies Act, 1956 (insurance, banking, or electricity company) shall prepare their P&L account as per the respective regulatory acts. This provision was proposed to be made effective from AY 2013-14.	1956. This explanation clarifies that prior to AY 2013-14 such companies have an option of preparing their P&L accounts either as per Schedule-VI of the Companies Act or as per the respective regulatory acts. Further, sub-section 5A of the Act is inserted (with retrospective effect from AY 2001-02) to provide that MAT would not be applicable to any income accruing or arising from the life insurance business referred to in section 115B of the Act.
9	Withdrawal of tax deducted at source (TDS) on the transfer of certain immovable properties	The Bill proposed to provide for withholding tax at 1% on the transfer of certain immovable property.	This proposal has been deleted.
10	Filing of income-tax return by residents in relation to assets located outside India	The Bill had proposed compulsory filing of return of income by every resident if he/she has assets (including financial interest in any entity) located outside India or signing authority in any account is located outside India (section 139(1) of the Act).	The category of individual residents called 'Not Ordinarily Residents' has now been excluded from compulsory filing of return of income with respect to their foreign assets, as the income of these residents from assets located outside India is not taxable in India. This amendment will take retrospective effect from AY 2012-13.
11	Securities Transaction Tax (STT) on unlisted equity sold as a part of initial public offer and exemption from LTCG	This was not proposed in the Bill.	A levy STT at 0.2% of the transaction value on the sale of unlisted equity shares would now be applicable where, under an offer for sale as a part of the initial public offer, the shares of the company are subsequently listed on the stock exchange. Consequently, capital gains arising to an investor on off-loading of shareholding as a part of the initial public offer before the listing of the company will be exempt from tax, subject to payment of the STT mentioned above. This amendment will take effect from 1 July 2012.
12	Share premium in excess of share market value	The Bill proposed to amend section 56(2) of the Act to levy tax on share premium received in excess of fair market value. However, an	Consequent to amendment in section 56(2)(viib) of the Act, the definition of income as per section 2(24) of the Act has been amended to include share premium received in excess of fair market value of shares. However,

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		exemption was provided to venture capital undertaking of VCC and VCF (Section 56(2)(viib) of the Act).	considering the hardship that investors would face in determining the fair market value of investments in start-ups, exemption has been provided to the class of investors that will be notified by the central government.
13	Deduction in respect of investment in equity shares	The Bill proposed to introduce a new scheme to encourage flow of savings in to domestic capital markets.	Section 80CCG of the Act has been introduced to provide a deduction to the extent of 50% of the amount invested by a resident individual whose annual income is less than INR 1 million. The amount of deduction is subject to a limit of INR 25,000. The investment would be subject to a lock-in period of three years. The modalities will be notified by the central government. The amendment will be effective from 1 April, 2013 and would be applicable from AY 2013-14.
14	Recognition to provident funds – extension of time limit for obtaining exemption from employee's provident fund organisation (EPFO)	This was not proposed in the Bill.	The first proviso to Rule 3(1) of Fourth Schedule of the existing Act provides that if the recognition to provident fund is obtained on or before 31 March 2006 and the specified conditions are not satisfied before 31 March 2012, the approval would be withdrawn. The time-limit has now been extended to 31 March 2013.
15	Non-withholding of tax from certain payments	This was not proposed in the Bill.	To reduce the hardship and compliance burden in cases of genuine hardships, certain payments made to specified institution(s) or association(s) or body (ies) that will be notified by the central government has been exempted from deduction of tax.
16	Intimation under section 200A(1) of the Act and levy of interest under section 220 of the Act	The Finance Bill proposed to provide that the intimation generated after processing of TDS statements under section 200A(1) of the Act shall be deemed to be notice of demand under section 156 of the Act. Consequently, failure to pay tax as mentioned in the intimation would attract interest under section 220(2) of the Act.	Section 201(1A) of the Act provides for levy of interest on payment of tax mentioned in the intimation. Accordingly, it has been provided that no interest under section 220 (2) of the Act shall be charged if interest has been charged under section 201(1A) of the Act.
17	Error in explanatory memorandum to the Bill	In the paragraph "G. Rationalisation of Transfer Pricing Provisions (sub-heading "Power of the Dispute Resolution Panel to	Correct position is as stated in notes on clauses.

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		enhance variations”) of explanatory memorandum to the Bill, effective date of the provision was mentioned as applying to AY 2009-10 and subsequent years, as opposed to applicability to any proceeding before Dispute Resolution Panel (DRP) on 1 April 2009 as mentioned in notes on clauses.	
18	Error in explanatory memorandum to the Bill	<p>In the paragraph “E. Rationalisation of Tax Deduction at Source and Tax Collection at Source Provisions” (sub-heading “I. Deemed date of payment of tax by the resident payee”) of explanatory memorandum to the Bill, it was explained as follows:</p> <p>(a) Para 3: ...As there is no one-to-one correlation between the tax to be withheld by the payer and the tax paid by payee, there is lack of clarity as to when it can be said that payer has paid the taxes directly.</p> <p>(b) Para 5: The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.</p>	<p>Correct position is as stated below:</p> <p>(a) Para 3: ...As there is no one-to-one correlation between the tax to be withheld by the payer and the tax paid by payee, there is lack of clarity as to when it can be said that payee has paid the taxes directly..</p> <p>(b) Para 5: The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payee.</p>

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