

## **BUDGET TWENTY THIRTEEN EXPLORATION —CHIDAMBARAM'S 8TH ; INDIA'S 82ND**

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### **History of the Budget**

The word "Budget" is derived from an early 15th century French word, "Bougette", which means purse or a leather bag. According to several popular accounts, Bougette or the purse was used by the British Chancellor to carry his papers, which he presented to the British Parliament. But, it was only in the year 1873 that the word was used particularly to describe an annual financial statement.

India's first Union Budget was presented by Mr. R. K. Shanmukham Chetty, who served as a Finance Minister in Jawaharlal Nehru's cabinet, on November 26, 1947. The present Finance Minister, P. Chidambaram's budget speech 2013-14 was the 82nd budget presentation in the history of independent India.

The Indian budget history can be broadly divided into two phases : (1) Pre-liberalization ; and (2) Post-liberalization.

### **Pre-liberalization**

- The first Union budget of independent India was presented by Sh. R. K. Shanmukham Chetty on November 26, 1947.
- The Union budgets for the fiscal years 1959-61 to 1963-64, inclusive of the interim budget for 1962-63, were presented by Sh. Morarji Desai. On February 29 in 1964 and 1968, he became the only finance minister to present the Union budget on his birthday. Sh. Vyas presented budgets that included five annual budgets, an interim budget during his first stint and one interim budget and three final budgets in his second tenure when he was both the Finance Minister and Deputy Prime Minister of India.
- After Desai's resignation, Smt. Indira Gandhi, the then Prime Minister of India, took over the Ministry of Finance to become the only woman to hold the post of the finance minister.
- The hon'ble Sh. Pranab Mukherjee, the first Rajya Sabha member to hold the Finance portfolio, presented the annual budgets for 1982-83, 1983-84 and 1984-85.

- Sh. Rajiv Gandhi presented the budget for 1987-89 after Sh. V. P. Singh quit his government, and in the process became only the third Prime Minister to present a budget after his mother and grandfather.
- N. D. Tiwary presented the budget for 1988-89, Sh. S. B. Chavan for 1989-90, while Sh. Madhu Dandawate presented the Union budget for 1990-91.
- The hon'ble Dr. Manmohan Singh became the Finance Minister but presented the interim budget for 1991-92 as elections were forced.
- Due to political developments, early elections were held in May 1991 following which the Indian National Congress returned to political power and the hon'ble Manmohan Singh, the Finance Minister, presented the budget for 1991-92.

### **Post-liberalisation**

- The hon'ble Manmohan Singh, in his next annual budgets from 1992-93, opened the economy, encouraged foreign investments and reduced peak import duty from 300 plus per cent. to 50 per cent.
- After elections in 1996, a non-Congress ministry assumed office. Hence the final budget for 1996-97 was presented by Sh. P. Chidambaram, who then belonged to Tamil Maanila Congress.
- Following a constitutional crisis when the hon'ble I. K. Gujral Ministry was on its way out, a special session of Parliament was convened just to pass Chidambaram's 1997-98 budget. This budget was passed without a debate.

After the general elections in March 1998 that led to the Bharatiya Janata Party forming the Central Government, Sh. Yashwant Sinha, the then Finance Minister in this Government, presented the interim and final budgets for 1998-99.

- After general elections in 1999, Sh. Sinha again became the finance minister and presented four annual budgets from 1999-2000 to 2002-2003. Due to elections in May 2004, an interim budget was presented by Sh. Jaswant Singh.

### **Time of Budget Announcement**

Until the year 2000, the Union Budget was announced at 5 pm on the last working day of the month of February. This practice was inherited from the Colonial Era, when the British Parliament would pass the budget in the noon followed by India in the evening of the day.

It was Mr. Yashwant Sinha, the then Finance Minister of India in the NDA government (led by BJP) of Sh. Atal Bihari Vajpayee, who changed the ritual by announcing the 2001 Union Budget at 11 am

### **Budget Twenty Thirteen—three promises**

#### **Promises made to woman, youth and poor.**

- We stand in solidarity with our girl children and women. And we pledge to do everything possible to empower them and to keep them safe and secure. A fund—"Nirbhaya Fund"—to be setup with Government contribution of Rs. 1,000 crore.
- Youth to be motivated to voluntarily join skill development programmes. National Skill Development Corporation to set the curriculum and standards for training in different skills. Rs. 1,000 crore set apart for this scheme.
- To the poor of India direct benefit transfer scheme will be rolled out throughout the country during the term of the UPA Government with the motive "Aapka paisa aapkehaath"

### **Winners and losers from direct tax wing**

#### **A General**

##### **1. Rates of Income-tax**

Puncture of "Great Expectations"—Rates of income-tax in respect of income liable to tax for the assessment year 2014-15 remain neutral against intensifying inflation, petrol, rupee, cost of living etc.

In respect of income of all categories of assesseees liable to tax for the assessment year 2014-15, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2012, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases

##### **Education Cess**

For assessment year 2014-15, additional surcharge called the "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such cess.

## 2. Lollypop—Insertion of section 87A effective 1st April, 2014

Rebate of Rs. 2,000 for individuals having total income up to Rs. 5 lakh With a view to provide tax relief to the individual taxpayers who are in the lower income bracket. The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of two thousand rupees, whichever is less.

## 3. Sunny side up

Insertion of section 80EE regarding interest on loan taken for first residential house property—effective April 1, 2013.

The deduction shall not exceed one lakh rupees and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on the 1st day of April, 2015, subject to the following conditions—

(1) the loan has been sanctioned by the financial institution during the period beginning April 1, 2013 and ending March 31, 2014 ;

(2) the amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees ;

(3) the value of the residential house property does not exceed forty lakh rupees ;

(4) the assessee does not own any residential house property on the date of sanction of the loan.

(5) Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

**View.**— Prime condition for availing this deduction is that it is available on the first house property. One can take the benefit if some existing house property is in the name of the spouse in the absence of any specific direction subject to fulfilment of other conditions.

An interesting point to note is that deduction under this section will be available to the individual on interest payable on loan taken by him and if the loan is

joint, both the husband and the wife can avail deduction of Rs. 1L each as the condition is “sanction” based.

4. An Axe to grind—Insertion of new section 194-IA regarding TDS on payment on transfer of certain immovable property other than agricultural land—effective June 1, 2013

For assessee the statutory requirement under section 139A of the Income-tax Act read with rule 114B of the Income-tax Rules, 1962 to quote the Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of Rs. 5 lakh or more is already existing. Not only this, section 285B and rule 114E require filing of annual information return in respect of purchase or sale by any person of immovable property at thirty lakh rupees or more. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. The lacuna existed in case of resident assessee where most of these transactions went under-reported. Finance Minister’s measure has come at the right time to plug this hole with insertion of this new section 194-IA to provide for deduction of tax at the rate of 1 per cent. of such sum.

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

5. Clamping down on interest deposit—Return of income filed without payment of self-assessment tax to be treated as defective return—Insertion of section 139(9)(aa)—effective June 1, 2013

It has been noticed that a large number of assessee file their returns of income without payment of self-assessment tax. Consequently, the existing Explanation to 140A amended so as to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

**Knock-knock—** It is a reminder to calculate and pay interest (under section 234B and 234C) at the time of payment of self-assessment tax under section 140A only, omission to do so will render the return of income defective and penalty provisions under section 271 can be invoked.

6. We now have a definition of the much-debated “Super rich” category—introduction of additional surcharge for some

7. Non-salaried

## 1. Business

Explanation 2 inserted to section 132B—Existing liability does not include advance tax liability—Including “advance tax payable” in “the existing liability” not the legislative intent.

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

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

2. Non-business have a definition of the much-debated “super rich” category. Secondly, 10 per cent. surcharge is not as bad as it was feared.

## 8. Corporate

### 1. General

#### Surcharge on income-tax

Additional surcharge shall be levied in respect of income liable to tax for the assessment year 2014-15, in the following cases:—

Domestic company	More than 10 crore	From 5 per cent. to 10 per cent.
Other than Domestic Company	More than 10 crore	From 2 per cent. to 5 per cent.
Provisions to apply to section 115JB for income exceeding one crore rupees in case of individuals, HUFs,	More than 1 crore	10 per cent.

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

2. Bringing home the bacon—Rates for deduction of income-tax at source during the financial year 2013-14 from income by way of royalty or fees for technical services to be 25 per cent. of such income

The move has to do away with correction of the rate of tax on royalty in the Income-tax Act, which is lower than the rates provided in a number of double taxation avoidance agreements. The surcharge increases as follows :

Non resident person	More than 1 crore	Increase by 10 per cent.
Other than domestic company	More than 1 crore < 10 crores	Increase by 2 per cent.
Other than domestic company	More than 10 crores	Increase by 5 per cent.

3. Chapter- XII-DA—Plugging the loopholes—Special provisions relating to tax on distributed income of domestic company for buy-back of shares

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

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

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

Unlisted companies, as part of tax avoidance scheme, are resorting to buy-back of shares instead of payment of dividends in order to avoid payment of tax

by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

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

## 9. Specific to categories or industries

### Industrial corridors

- an investment allowance at the rate of 15 per cent. to a manufacturing company that invests more than Rs. 100 crore in plant and machinery during the period April 1, 2013 to March 31, 2015.
- Plans for seven new cities have been finalised and work on two new smart industrial cities at Dholera, Gujarat and Shendra Bidkin, Maharashtra will start during 2013-14
- Delhi Mumbai Industrial Corridor (DMIC) to be provided additional funds during 2013-14 within the share of the Government of India in the overall outlay, if required.
- Chennai-Bengaluru Industrial Corridor to be developed.
- Preparatory work has started for Bengaluru Mumbai Industrial Corridor.

### Leh-Kargil transmission line

- Government to construct a transmission system from Srinagar to Leh at a cost of Rs. 1,840 crore.

### Oil and gas

- A policy to encourage exploration and production of shale gas will be announced.



- The 5 MMTPA LNG terminal in Dabhol, Maharashtra will be fully operational in 2013-14.

## **Coal**

- In the medium-to long-term need to reduce our dependence on imported coal, one way forward is to devise a PPP policy framework with Coal India Limited as one of the partners.
- Ministry of Coal to announce Government's policies in due course.

## **Power**

- Guidelines regarding financial restructuring of DISCOMS have been announced. State Government urged to prepare the financial restructuring plan, quickly sign MoU and take advantage of the scheme.
- Extension of the "eligible date" for projects in the power sector to avail of the benefit under section 80-IA of the Income-tax Act, from March 31, 2013 to March 31, 2014.

## **Textiles**

- Technology Upgradation Fund Scheme (TUFS) to continue in 12th Plan with an investment target of Rs. 1,51,000 crore.
- Allocation of Rs. 50 crore to Ministry of Textile to incentivise setting up Apparel Parks within the SITPs to house apparel manufacturing units.
- A new scheme called the Integrated Processing Development Scheme will be implemented in the 12th Plan to address the environmental concerns of the textile industry.
- Working capital and term loans at a concessional interest of 6 per cent. to handloom sector.
- Scheme of Fund for Regeneration of Traditional Industries (SFURTI) extended to 800 clusters during the 12th Plan.

## **Foreign trade**

- Support to measures to be taken to boost exports of goods and services.

## **A INDIRECT TAX WING**

## 1. Rate Changes

S. No.		Rate increase	Rate decrease	No change
Custom Duties				
1	Custom duty for non agricultural products			√
	Normal rate of excise duty			√
	Normal rate of service tax			√
	Specified machinery for manufacture of leather and leather goods, including footwear,		7.5 per cent. to 5 per cent.	
	Pre-forms of precious and semi-precious stones		10 per cent. to 2 per cent.	
	Export of unprocessed ilmenite	10 per cent.		
	Export of upgraded ilmenite	5 per cent.		
	For protection to domestic sericulture	5 per cent. to 15 per cent.		
	Steam coal Bituminous coal	Equalized to 2 per cent. customs duty and 2 per cent. CVD		
	Imported luxury goods such as high-end motor vehicles, motorcycles, yachts and similar vessels.	75 per cent. to 100		

	Baggage rules male passenger female passenger	50,000 100,000		
<b>Excise Duties</b>				
1	Cotton		Zero duty at the fibre stage	
	Spun yarn		12 per cent. at the fibre stage	
	Handmade carpets and textile floor coverings of coir or jute	No duty		
	Ship-building industry	No duty and no CVD on imported		
	Cigarettes		By 18 per cent.	
	SUVs		from 27 per cent. to 30 per cent.	
	Marble		30 per sq. mtr to 60 per sqmtr.	
	Imported mobile phones of value more than Rs. 2000		to 6 per cent.	

## 2. Service Tax

Inclusion of two more services in negative list :

1. vocational courses offered by institutes affiliated to the State Council of Vocational Training—Section 65B amended

2. testing activities in relation to agriculture and agricultural produce—Section 66D

Introduction of one time scheme—'Voluntary Compliance Encouragement Scheme' to rope in defaulters in the tax fold

A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since October 1, 2007 and makes the payment in one or two instalments before prescribed dates. In such a case, interest, penalty and other consequences will be waived.

## Penalties and Procedures

- maximum penalty for failure to take registration will be Rs. 10,000—Section 77(1)(a)
- Penalty which may extend to one lakh rupees for any director, manager, secretary or other officer of such company, who is knowingly defaults —Section 78A
- The Appellate Tribunal may admit an appeal even after the expiry of the relevant period on satisfaction that there was sufficient cause for not presenting it within the relevant period—Section 86(5)
- Collection of any amount as service tax but failing to pay the same to the credit of the Central Government beyond a period of six months from the date on which such payment became due to attract rigorous imprisonment of seven years, where the amount so collected exceeds fifty lakh rupees [sections 89(1) and 89(2)] and this will be termed as cognizable offence [Section 90]
- Power to arrest—Commissioner of Central Excise is empowered to authorize any officer of Central Excise not below the rank of Superintendent of Central Excise, to arrest a person for specified offences, say, evasion of service tax, non-payment of collected service tax or other offences stated in 89(1)—Section 91
- Scope of advance ruling is being extended to cover resident public limited companies—Section 96A(b)(iii)

### 3. Important notifications

#### 1. Notification No. 02/2013-ST, dated March 1, 2013—Reduction in abatement of value for payment of service tax on construction activity

Construction of complex, building or civil structure, or a part thereof, intended for sale to a buyer, wholly or partly except where the entire consideration is received after issuance of completion certificate by the competent authority :

(a) taxable portion for service tax purpose will remain as 25 per cent. where the carpet area of residential unit is up to 2000 square feet or the amount charged is less than one crore rupees.

(b) in all other cases taxable portion for service tax purpose will be 30 per cent.

#### 2. Notification No. 3 /2013 – ST- Mega exemption withdrawn for few services

1. Services provided by an educational institution in relation to auxiliary educational services or renting of immovable property to any person other than an educational institution will no longer be eligible to avail exemption from service tax.

2. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright relating to cinematograph films was hitherto fully exempt. Now the benefit of exemption will only be available to films exhibited in a cinema hall or cinema theatre. TV channels like Star Plus, Zee TV, etc., will have to pay service tax on their exhibition of films on their channel.

3. Now service tax exemption available only to non-air-conditioned (non-centrally air-heated) restaurants, eating joint or a mess irrespective of whether they have a license to serve alcoholic beverages or not. Service tax will be imposed on restaurants having air-conditioning facility in any part of the establishment, at any time during the year irrespective of whether they have a license to serve alcohol or not ; for example restaurants like McDonalds, Dominos.

4. Exemption to transportation of petroleum and petroleum products, postal mails or mail bags and household effects by railways and vessels will no longer be available, while transportation by rail or vessel of agricultural produce, foodstuffs, chemical fertilizers and oilcakes, registered newspapers or magazines, relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap and defence or military equipments will be available to goods transport agency (GTAs).

5. Service tax exemption for vehicle parking to general public is now being withdrawn.

6. Exemption for services provided to Government, a local authority or a Governmental authority, by way of repair or maintenance of a vessel or an aircraft is being withdrawn.

7. Definition of “charitable activities” is being amended. Exemption of Rs. 25 lakhs given to activities relating to advancement of any other object of general public utility has been withdrawn for charitable institutions and they will be covered by threshold exemption of Rs. 10 lakhs as available to SSI's.

#### 4. Excise

1. Notification No. 5/2013-CE, dated March 1, 2013—Duty raised for stainless pattis/pattas

Compound levy rate of duty for stainless pattis/pattas raised from rupees thirty thousand to rupees forty thousand per cold-rolling machine, per month.

2. Notification No. 6/2013-CE, dated March 1, 2013—Rate of duty hiked on mobile handsets

Excise duty raised to 6 per cent. from 1 per cent. on mobile phones priced above Rs 2,000.

3. Notification No. 7/2013-CE, dated March 1, 2013—Area-based exemption

Intermediate goods manufactured and captively consumed in the manufacture of final goods by units availing of area-based exemption in the States of Himachal Pradesh and Uttarakhand are exempted from excise duty.

4. Notification No. 8/2013-CE, dated March 1, 2013—Tax branded read-made garments at lower rate of 6 per cent.

6 per cent. rate of excise duty on branded ready-made garments and made-ups of cotton, not containing any other textile materials ; credit of duty on inputs has been taken.

5. Notification No. 11/2013-CE, dated March 1, 2013—‘zero excise duty route’ to branded ready-made garments and made-ups.

Readymade garments attract 12 per cent. excise duty now. The budget has proposed zero excise duty on branded ready-made garments and made-ups. This notification shall not apply to goods in respect of which credit of duty on inputs has been taken under the Cenvat Credit Rules, 2004.

6. Notification No. 10/2013-CE, dated March 1, 2013—Handmade carpets and other carpets and floor coverings of jute and coir

Excise duty withdrawn from handmade carpets and other carpets and textile floor coverings of coir or jute.

7. Notification No. 12/2013-CE, dated March 1, 2013

(a) BCD on set-top boxes for TV has been increased from 5 per cent to 10 per cent.

(b) Excise duty on SUVs has been increased from 27 per cent to 30 per cent, except those registered as taxis.

(c) Excise duty on tobacco products has been increased.

(d) Excise duty withdrawn on all goods used for manufacture of fertilizers.

8. No. 2/2013-Central Excise (N.T.), dated March 1, 2013

Refund arising consequent to order for final assessment of excess payment of duty on provisional basis, interest on refund will be paid as per provisions of section 11BB of the Act.

9. Section 23C of the Central Excise Act, 1944—Advance ruling on admissibility of credit of service tax

Now advance ruling can be sought on admissibility of credit of service tax paid or deemed to have been paid on input service used in or in relation to the manufacture of the excisable goods.

10. Section 35C of the Central Excise Act, 1944—Stay period extended

Appellate Tribunal may, on application made by a party for extension of stay period, extend the period of stay to a further period not exceeding one hundred and eighty-five days. Where appeal is not disposed of within total period of three hundred and sixty-five days, stay order, on the expiry of the said period will stand vacated.

5. Customs

1. Section 47 of the Customs Act, 1962—Failure to pay import duty within two days from the date of billing or say, entry, will attract interest

Now import duty has to be paid within two days from the date on which the bill of entry is returned to the importer for payment of duty otherwise import duty will attract interest.

2. Section 129B of Customs Act, 1962—Stay period extended

Appellate Tribunal may, on application made by a party for extension of stay period, extend the period of stay by a further period not exceeding one hundred and eighty-five days. Where appeal is not disposed of within a total period of three hundred and sixty-five days, stay order, on the expiry of the said period, will stand vacated.

3. Limit for duty-free import of gold raised

Male passengers can carry gold worth Rs. 50,000, and female passengers Rs. 1 lakh compared to the earlier limit of Rs. 10,000 and Rs. 20,000, respectively.

## **C. Budget misses**

### **1. Direct Tax Code—4 years and counting**

Continuing work-in-progress for 4years as our income tax laws remain rooted in 1961.

### **2. General Anti-Avoidance Rules**

Section 96(2) provides that an arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit.

The Expert Committee which recommended that where only a part of the arrangement is impermissible, the tax consequences of an “impermissible avoidance arrangement” should be made limited to that portion of the arrangement which are not found acceptable in the budget. The Committee suggested that the GAAR should be deferred by 3 years and be implemented from the assessment year 2017-18 while in the Finance Bill it is made applicable one year earlier from the assessment year 2016-17. Another recommendation of the Committee by which it sought that the GAAR shall apply only to the income received, accruing or arising, or deemed to accrue or arise, to the taxpayers on or after the date of effect of the GAAR provisions is left unaddressed. There is no clarification so stated anywhere in the Bill. Another miss is the Committee recommendation on monetary threshold of Rs. 3 crore of tax benefit (including tax only, and not interest etc) to a taxpayer in a year for the applicability of the GAAR provisions.

## **D. Budget recall—reversal of harsh amendments—GAAR**

1. The GAAR provisions have been revisited to provide some reliefs. Impermissible avoidance arrangement is one being guided mainly for tax considerations or with an underlying tax benefit. In the previous order even if one of the main purposes were to save tax it would have been caught within the impermissible list. The Expert Committee recommendation that the Act may be amended to provide that only arrangements which have the main purpose (and not one of the main purposes) of obtaining tax bene-fit should be covered under the GAAR has been accepted.

2. In sub-section (4) of section 97, the following factors are not considered relevant for determining whether an arrangement lacks commercial substance, namely—



1. the period or time for which the arrangement (including operations therein) exists ;
2. the fact of payment of taxes, directly or indirectly, under the arrangement ;
3. the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

The Expert Committee desired a clarification by which all the three factors may be regarded as relevant for an arrangement to be excluded from the commercial substance test. This has been accepted in its form and substance in the Finance Bill.

## **E. Budget loss**

1. Lost advantage for scheduled banks

Section 36(1)(viia) provide for allowance of deduction to banks, co-operative society, etc., in respect of any provision for bad and doubtful debts up to 10 per cent. of the aggregate value of advances made by rural branches. As this deduction is tuned to rural advances the banks also seek a deduction under general deduction for bad debts under clause (vii) of section 36(1) on write-off of debts. There has been litigation on such claim of deduction as the department believes that this kind of dual-claiming results in double deduction.

The matter was finally resolved by the apex court in February 2012 in Catholic Syrian Bank Ltd. v. CIT [2012] 343 ITR 270 (SC). The apex court held that the two clauses are independent and the proviso in clause (vii) only set a further limit vis-a-vis rural advances so that it does not affect the claim for write-off of non rural or urban advances. The proviso is limited in its application to bad debt(s) arising out of rural advances of a bank. As per Sh. S. H. Kapadia, then Chief Justice, if the amount of bad debt(s) actually written off in the accounts of the bank represents only debt(s) arising out of urban advances, the allowance thereof in the assessment is not affected, controlled or limited in any way by the proviso to clause (vii).

To negate the impact of this decision the Finance Bill has brought in an Explanation that says that the provisional account for the purposes of application of proviso to clause (vii) shall be only one account in respect of provision for bad and doubtful debts which shall represent all types of advances including advances made by rural branches. In other words, by this Explanation the limit set in proviso to clause (vii) would even apply to claim for write-off of urban advances.

Interestingly in this case the Explanation is inserted by way of a clarification and in all likelihood it may disturb tax assessments in case of banks.

## **F. Budget obsession**

### **1. Investment allowance**

A new deduction of 15 per cent. of actual cost would be available in two years only in case of investments in select new plant and machinery acquired and installed during the period from April 1, 2013 to March 31, 2015 provided the value of such machinery is more than INR 100 crs. Someone in the department circles pointed it out it as a lollipop provision having application only in case of a company and further that it serves little to companies who make investments of such order. Further even investments of this size are not planned overnight for which reason it is too narrow to restrict such allowance in such a close-ended manner for machinery acquired and installed during April 1, 2013 to March 31, 2015. In the least the deduction must be open-ended to even allow such deduction where machineries are installed after April 1, 2013 but acquired prior to March 31, 2013. Likewise machineries acquired before March 31, 2015 but installed after April 1, 2015 should well qualify for deduction. Moreover the deduction must be left open-ended.

Further the acquisition in one year and installation in the succeeding year may not be acceptable to the Assessing Officer. Hence there is a dire need to clarify in this regard.

## **G. Budget hard-hitting**

### **1. Keyman policy beneficiaries**

The new Bill proposes to tax key individuals who benefit from assignment of key man policies taken by their employer. Thus in effect even though the Explanation to section 10(10D) is reworded to include assignments during the term of the policy within the taxable bounds, no amendment has been carried out to the language of clause (xi) of section 2(24) which treat only sum received as income. Technically, sum is received only on maturity so that it boils down to a normal policy any person could go scot free altogether as his receipt is exempt under the Act. The amendment perhaps seeks to denote what is received on maturity from the assigned policy as also the meaning of sum received the under keyman policy and that would only mean taxation at the time of maturity. In other words, there would be no taxation at the time of assignment of policy.

The amendment would come into effect from April 1, 2014 (the assessment year 2014-15) in which case any assignment/surrender/maturity completed before March 31, 2014 may perhaps escape this levy.

## 2. Capital gains agricultural land definition change—both arbitrary and discriminatory

Currently agricultural land falling outside the municipality is considered to be exempt if it falls beyond 2-8 kms of the municipal limits depending on the area/location. A notification citing areas with their distance from municipality is available. And such distance is set on the basis of distance by road.

Now in the budget it is provided that such distance will be measured aurally or by air. That means that it would bring the land more closer to the municipality. This rationalization is questionable being both arbitrary and discriminatory. It is an established practice that anyone who purchases land would take into account distance based on motorable road and not the aerial route.

The provision therefore attempts to not only restrict exemption but attempts to tax agricultural income which is exempt from tax.

Another serious flaw is that now there is an Explanation which defines “population” according to the last preceding census, which is census of 2011. Though this statement is akin to what it was yesterday there is an inherent flaw in it in that it refers to the entire population in a particular area without looking at the distribution between rural and urban population.

The Government of India census data of 2011 provides that Himachal Pradesh has the lowest proportion of urban population being as low as 9.8 per cent. whereas the State of Goa has the highest proportion of urban population being 49.8 per cent. Further, among union territories Delhi has the highest proportion of urban population which is 93.2 per cent. with Dadra and Nagar Haveli having lowest proportion of Urban Population at 22.9 per cent. This means the census has a data on the proportion of rural and urban population. Further in a paper published on rural-urban distribution of population as part of census data Rural-Urban distribution is at 68.84 per cent. and 31.16 per cent. Whereas the level of urbanization increased from 27.81 per cent. in 2001 Census, to 31.16 per cent. in 2011 Census the proportion of rural population declined from 72.19 per cent. to 68.84 per cent.

Thus more than 2/3rd of our population is still rural. Keeping this vital divide into account it is more justifiable and more rational to take into account the population for the purpose of section 2(1A) to be urban proportion of population out of the census data and not the entire population number to beat this orthodox rule.

Hope someone would wake up to this and set this right. For instance, in a particular area which falls within the prescribed distance may have large section

as rural population and may not have much scope of urbanization, yet since the total population number may exceed the prescribed number, the land situated therein may be regarded as urban land. This is very unfair and therefore the new provision is discriminatory and arbitrary and thus qualifies for constitutional challenge in law.

### 3. Revenue audit under section 142(2A)—scope expanded—both arbitrary and discriminatory

To protect the interests of the Revenue the Income-tax Act provide for special audit in case of complexity in the accounts of the assessee. In *Living Media Ltd. v. CIT* [2002] 255 ITR 268 (SC) the assessee, during the course of assessment proceedings has filed voluminous details running into approximately 500 pages to explain the queries raised by the Assessing Authority. Further details running into about thousand pages were also filed by the assessee before the assessing authority. This followed a direction for special audit citing complexity of the accounts of the assessee. The Delhi High Court and the Supreme Court did not interfere either. At one point in time in *Joint CIT v. I.T.C. Ltd.* [1999] 239 ITR 921 (Cal) the company had to go through special audit. The assessee in this case carried on its business through forty-three branches all over India. At the same time in this case the Calcutta High Court also held that the power conferred on the Assessing Officer and the approval of the Commissioner and Chief Commissioner is not confined to any turnover, in business or profession and there is no limit or any bar on account of amount of receipts either in business or profession. In *Gurunanak Enterprises v. CIT* [2003] 259 ITR 637 (Delhi) the Delhi High Court upheld the audit direction in case of a lottery trader. There is finding in this case that the scheme of lottery business involves a highly specialized and complex accounting system and the accounting becomes even more complex because of the very high number of draws (15 to 20 draws per day to thousands of draws per annum) and that it necessitates very comprehensive and detailed accounting.

Thus complexity could result for several reasons. Until now the Assessing Officer who could order special audit at the instance of the Revenue considering the nature and complexity of the account of the assessee ; now on after June 1, 2013 he can get an approval from the CCIT/CIT to have revenue audit in either of the following additional situations :

- a. volume of the accounts ;
- b. doubts about the correctness of the accounts ;
- c. multiplicity of transactions in the accounts ; or
- d. specialized nature of business activity of the assessee.

The additional parameters which are an off-shoot of the complexity factor could now pose more challenges to the Revenue who have to now frame a set of rules to bar or limit special audit application in select cases on the basis of the volumes of accounts, number of transactions, state of incorrectness or for that matter the specialized nature of business, in the absence of which the section would fail in its operation and may struck down in the courts of law.

Further, it appears that by putting these additional aberrations the Revenue is pretending to convert an audit into an investigation. This amendment is again discriminatory and arbitrary in nature in the absence of any proactive rules regarding each set of parameters. Every business activity requires some kind of specialization and to therefore call for audit in case of specialized business activity sounds both funny and hurting.

#### 4. Higher WHT on royalty and FTS

In the international tax front the Finance Bill has ticked on WHT on royalty and FTS and raised the rate to 25 per cent. from the present rate of 10 per cent. The rate of 10 per cent. is parimateria to the maximum rate of taxation on royalty and FTS under various DTAA with countries. In other words the present rate is harmonious to the rate provided in the treaties.

The increase in rate from 10 per cent. at to 25 per cent. is without any rationale and totally arbitrary and may adversely impact FDI as any investor would look at WHT rates in the country and not the ones prescribed by any treaty for the sole purpose of double tax avoidance. Further treaty-override provisions in the Income tax Act such as invalid TRC, GAAR invoke, beneficial interest, etc., are quite unfriendly and no investor will decide investments based on treaty rates.

It is desirable therefore to restore the WHT rate to 10 per cent., which is harmonious with the treaty rates.

#### **H. Budget legends**

No retrospective amendments

- 1 Cost and Management Accountant.
- 2 Chartered Accountant.