AMENDMENTS MADE IN INCOME-TAX ACT

Rates of income-tax for assessment year 2015-16

1. Rates of Income Tax

(A) I. In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial person

Upto ₹2,50,000	Nil
₹2,50,001 to ₹5,00,000	10%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

II. In the case of every **individual,** being a **resident in India,** who **is of** the **age of 60 years or more but less than** 80 years at any time during the previous year.

Upto ₹3,00,000	Nil
₹3,00,001 to ₹5,00,000	10%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

III. In the case of every **individual,** being a **resident in India,** who is of the **age** of 80 years or more at any time during the previous year.

Upto ₹5,00,000	Nil
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

Surcharge: The amount of income-tax computed in accordance with the above rates and rates specified in section 111A (relating to short term capital gain on shares sold through recognised stock exchange) and section 112 (relating to long-term capital gain) shall, in the case of every individual or HUF or AOP or BOI, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income tax Act, having a total income exceeding 1 crore rupees, be increased by a surcharge at the rate of 10% of such income-tax.

Marginal relief: Total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of `1 crore by more than the amount of income that exceeds 1 crore rupees.

Cess: 'Education Cess' @2%, and 'Secondary and Higher Education Cess (SHEC)' @1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

(B) In the case of every co-operative society

(1) where the total income does not exceed ₹10,000	10% of the total income;
(2) where the total income exceeds ₹10,000 but does not exceed ₹20,000	₹1,000 plus 20% of the amount by which the total income exceeds ₹10,000;
(3) where the total income exceeds ₹20,000	₹3,000 plus 30% of the amount by which the total income exceeds ₹20,000.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 10% of such income-tax in case of a co-operative society having a total income exceeding ₹1 crore.

Marginal relief: Total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

(C) In case of every firm (including limited liability partnership)/ every Local Authority — 30%.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 10% of such income-tax in case of a firm having a total income exceeding ₹1 crore.

Marginal relief: Total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

(D) In the case of a company

(i) For domestic companies: 30%,

Surcharge: Where the total income of a domestic company exceeds ₹1 crore but not exceeding ₹10 crore a surcharge @ 5% of tax shall be levied. Where the total income of the domestic company exceeds ₹10 crore a surcharge @10% of tax shall be levied.

Marginal relief: In the case of every company having a total income exceeding ₹1 crore but not exceeding ₹10 crore, total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹1 crore.

In the case of every company having a total income exceeding ₹10 crore, total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income tax and surcharge on a total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

(ii) For foreign company: 40%.

Surcharge: Where the total income of a company other than a domestic company exceeds ₹1 crore but does not ₹10 crore a surcharge of 2% of tax shall be levied. Where the total income of such company exceeds ₹10 crore a surcharge at the rate of 5% of tax shall be levied.

Marginal relief:

In the case of every company having a total income exceeding ₹1 crore but not exceeding ₹10 crore, total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹1 crore.
In the case of every company having a total income exceeding ₹10 crore, total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income tax and surcharge on a total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.
Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

AMENDMENTS RELATING TO DEFINITIONS

2. Insertion of new definition "Business Trust"[Section 2(13A)] [W.e.f. 1st day of October, 2014]

"Business Trust" means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognised stock exchange, in accordance with the regulations made under the Securities Exchange Board of India Act, 1992 and notified by the Central Government in this behalf.

3. Substitution in the definition of Capital Assets [Section 2(14)] [w.e.f. A.Y. 2015-16]

For the words in the opening portion "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade'

the following shall be substituted, namely: -

"capital asset" means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992,

but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (6)],';

4. Insertion of new explanation in the definition of Capital Assets [Section 2(14)] [w.e.f. A.Y. 2015-16]

The Explanation occurring at the end shall be numbered as "Explanation 1" thereof and after the Explanation as so numbered, the following Explanation shall be inserted, namely:—

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

5. Substitution in the definition of section 2(15A) [w.r.e.f. 1st day of June, 2013]

For clause (15A), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013,—

'(15A) "Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117;'

6. Substitution in the definition of section 2(16) [w.r.e.f. 1st day of June, 2013]

For clause (16), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013,—

'(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income-tax or a Principal Director of Income-tax under sub-section (1) of section 117;'

7. Substitution in the definition of section 2(21) [w.r.e.f. 1st day of June, 2013]

For clause (21), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013,—

'(21) "Director General or Director" means a person appointed to be a Director General of Income-tax or a Principal Director General of Income-tax or, as the case may be, a Director of Income-tax or a Principal Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or Deputy Director of Income-tax;

8. Definition of "income" expanded [Section 2(24)(xvi)] [W.e.f. A.Y. 2015-16]

A new clause (ix) has been inserted in section 56(2) by the Finance (No. 2) Act, 2014 to provide that the following sum shall be taxable under the head income from other sources.

"any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset".

Consequently, clause (xvii) has been inserted in section 2(24) to include the following in the definition of income—

"any sum of money referred to in section 56(2)(ix)"

9. Insertion of sub-clause (xvii) in clause 24 of section 2 [w.e.f. A.Y. 2015-16]

"(xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;"

10. Insertion of clause (34A), (34B), (34C) & (34D) in section 2 [w.e.f. 1st day of June, 2013]

(34A) "Principal Chief Commissioner of Income-tax" means a person appointed to be a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117.

(34B) "Principal Commissioner of Income-tax" means a person appointed to be a Principal Commissioner of Income-tax under sub-section (1) of section 117.

(34C) "Principal Director of Income-tax" means a person appointed to be a Principal Director of Income-tax under sub-section (1) of section 117.

(34D) "Principal Director General of Income-tax" means a person appointed to be a Principal Director General of Income-tax under sub-section (1) of section 117.

11. Amendments in the definition of short term capital asset [section 2(42A)][w.e.f. A.Y. 2015-16]

(A) in the proviso, with effect from the 1st day of April, 2015,—

(i) for the words "a share held in a company or any other security listed in a recognised stock exchange in India", the words and brackets "a security (other than a unit) listed in a recognised stock exchange in India" shall be substituted;

(ii) for the words, brackets, figures and letter "a unit of a Mutual Fund specified under clause (23D) of section 10", the words "a unit of an equity oriented fund" shall be substituted;

(B) in the Explanation 1, in clause (i), after sub-clause (hb), the following sub-clause shall be inserted with effect from the 1st day of October, 2014, namely:—

"(hc) in the case of a capital asset, being a unit of a business trust, allotted pursuant to transfer of share or shares as referred to in clause (xvii) of section 47, there shall be included the period for which the share or shares were held by the assessee;

(C) after Explanation 3, the following Explanation shall be inserted with effect from the 1st day of April, 2015, namely:—

Explanation 4.—For the purposes of this clause, the expression "equity oriented fund" shall have the meaning assigned to it in the Explanation to clause (38) of section 10;'.

12. Substitution of new authorities

In the Income-tax Act, save as otherwise expressly provided, and unless the context otherwise Substitution of requires, the reference to any income-tax authority specified in column (1) of the Table below shall be new authorities, substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013 by reference to the authority or authorities specified in the corresponding entry in column (2) of the said Table and such consequential changes as the rules of grammar may require shall be made:

Table

Sl. No.	(1)	(2)
1.	Commissioner	Principal Commissioner or Commissioner
2.	Director	Principal Director or Director
3.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner
4.	Director General	Principal Director General or Director General

AMENDMENTS RELATING TO INCOME EXEMPT FROM TAX

13. Clarification in respect of section 10(23C) of the Act [w.e.f. A.Y. 2015-16]

(i) after sub-clause (iiiac), the following Explanation shall be inserted, namely:—

"Explanation.— For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year."

(ii) after the seventeenth proviso, the following proviso and the Explanation shall be inserted, namely:—

Provided also that where the fund or institution referred to in sub-clause (iv) or the trust or institution referred to in sub-clause (v) has been notified by the Central Government or approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), has been approved by the prescribed authority, and the notification or the approval is in force for any previous year, then, nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.

Explanation.— In this clause, where any income is required to be applied or accumulated, then, for such purpose the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this clause in the same or any other previous year;

14. Rationalisation of taxation regime in the case of charitable trusts and institutions [Section 10(23C), section 11 and section 115BBC) [W.e.f. A.Y. 2015-16]

The existing provisions of section 11 provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions subject to various conditions contained in the said section. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said section, then such income is deemed to be taxable income of the trust or institution.

Section 13 provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

The sections 11, 12, 12A, 12AA and section 13 constitute a complete code governing the grant or withdrawal of registration and its cancellation, providing exemption to income, and also the conditions under which a charitable trust or institution needs to function in order to be eligible for exemption. They also provide for withdrawal of exemption either in part or in full if the relevant conditions are not fulfilled.

Several issues have arisen in respect of the application of exemption regime in cases of trusts or institutions in respect of which clarity in law is required. The Finance (No. 2) Act, 2014 has made the following clarifications in this regard:

(A) Trust or institution claiming exemption under section 10(23C) or section 11 and 12 cannot claim exemption under any other clauses of section 10 other than section 10(1) [W.e.f. A.Y. 2015-16]

The general provision of exemptions are contained in section 10, whereas the specific and special exemption are covered in sections 11 to 13 and 10(23C). The primary objective of providing exemption in case of charitable institution is that income derived from the property held under trust should be applied and utilised for the object or purpose for which the institution or trust has been established. In many cases it has been noted that trusts or institutions which are registered and have been claiming benefits of the exemption regime do not apply their income, which is derived from property held under trust, for charitable purposes. In such circumstances, when the income becomes taxable, then a claim of exemption under general provisions of section 10 in respect of such income is preferred and tax on such income is avoided. This defeats the very objective and purpose of placing the conditions of application of income etc. in respect of income derived from property under trust in the first place.

Sections 11, 12 and 13 are special provisions governing institutions which are being given benefit of tax exemption, it is therefore imperative that once a person voluntarily opts for the special dispensation it should be governed by these specific provisions and should not be allowed flexibility of being governed by other general provisions or specific provisions at will. Allowing such flexibility has undesirable effects on the objects of the regulations and leads to litigations.

Similar situation exists in the context of section 10(23C) which provides for exemption to funds, institution, hospitals, etc. which have been granted approval by the prescribed authority. The provision of section 10(23C) also have similar conditions of accumulation and application of income, investment of funds in prescribed modes etc.

Therefore, the Finance (No. 2) Act, 2014 has inserted section 11(7) w.e.f. A.Y. 2015-16 to provide specifically that where a trust or an institution has been granted registration under section 12AA or 12A for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any clauses of section 10 [other than that relating to exemption of agricultural income under section 10(1) and income exempt under section 10(23C)].

Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit of exemption under other clauses of section 10 (except the exemption in respect of agricultural income under section 10(1)). [Eighteenth proviso inserted w.e.f. A.Y. 2015-16].

(B) Depreciation not to be allowed as application of income in case of an asset acquisition of which has been claimed as application of income under section 10(23C) or section 11, as the case may be.

The existing scheme of section 11 as well as section 10(23C) provides exemption in respect of income

when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. is claimed and such amount of notional deduction remains to be applied for charitable purpose. Therefore, double benefit is claimed by the trusts and institutions under the existing law.

Depreciation has been held to be an application of income in many judgments of the Courts. Some of the important judgments are as under:

1. CIT v Sheth Manilal Ranchhoddas Vishram Bhavan Trust (1992) 198 ITR 598 (Guj).
2. CIT v Bhoruka Public Welfare Trust (1999) 240 ITR 513 (Cal).
3. CIT v Institute of Banking Personnel Selection (IBPS) (2003) 264 ITR 110 (Bom).
4. CIT v Market Committee, Pipli (2011) 330 ITR 16 (P&H).
5. CIT v Tiny Tots Education Society (2011) 330 ITR 21 (P&H).
6. DIT v Vishwa Jagriti Mission (2012) Income Tax Review -Sept - P. 83 (Del).
7. Escorts Cardiac Diseases Hospital Society v Asst DIT (2012) 18 Taxmann.com 104 (ITAT-Del).
8. CIT v Shri Gujarati Samaj (Regd.) (2011) 64 DTR 76 (MP).

However, there is a contrary judgment of Kerala High Court in this regard in the case of Lissie Medical Institution v CIT (2012) 348 ITR 344 (Ker).

The provisions have been rationalised to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose.

In view of the above, the Finance (No. 2) Act, 2014 has inserted section 11(6) and an Explanation under eighteenth proviso to section 10(23C) w.e.f. A.Y. 2015-16 to provide that under section 11 and section 10(23C), income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year.

Consequently, if acquisition of an asset has not been claimed as application of income, then depreciation on that asset can be claimed as application of income under section 11. E.g. if a charitable trust has received specific corpus donation (say for construction of building) then such corpus donation is exempt under section 11(1)(d). In that case, the depreciation on such building can be claimed as application of income as the acquisition of the asset has never been claimed as application of income under section 11(1)(a) in this case. This is not possible u/s 10(23C) as corpus donations are not exempt under section 10(23C).

(C) Applicability of section 11 and 12 to earlier years if the registration is granted to a trust or institution in the subsequent year [Section 12A] [W.e.f. 1-10-2014]

The existing provisions of section 12A provide that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA has been granted. In case of trusts or institutions which apply for registration after 1-6-2007, the registration shall be effective only prospectively.

Non-application of registration for the period prior to the year of registration causes genuine hardship to charitable organisations. Due to absence of registration, tax liability gets attached even though they may otherwise be eligible for exemption and fulfill other substantive conditions. The power of condonation of delay in seeking registration is not available under the section.

In order to provide relief to such trusts and remove hardship in genuine cases, the Finance (No. 2) Act, 2014 has w.e.f. 1-10-2014 inserted the following three provisos under section 12A:

(a) Where a trust or institution has been granted registration under section 12AA, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

(b) No action for reopening of an assessment under section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

(c) The above benefits, however, would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA or a registration once granted was cancelled.

15. Exemption of any income of a business trust by way of interest received or receivable from special purpose vehicle [Section 10(23FC)] [w.e.f. A.Y. 2015-16]

'(23FC) any income of a business trusts by way of interest received or receivable from a special purpose vehicle'.

Explanation. —For the purposes of this clause, the expression "special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration.

16. Exemption from any distributed income received by a unit holder from the business trust [Section 10(23FD)] [w.e.f. A.Y. 2015-16]

'(23FD) any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause (23FC)'.

17. Broaden the tax exemption base under section 10(38)

(i) after the words "unit of an equity oriented fund", the words "or a unit of a business trust" shall be inserted;

(ii) after the proviso but before the Explanation, the following proviso shall be inserted, namely:—

Provided further that the provisions of this clause shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in clause (xvii) of section 47.

18. Registration of the trust or institution can be cancelled in certain other cases also [Section 12AA(4)] [W.e.f. 01-10-2014]

The existing provisions of section 12AA provide that the registration once granted to a trust or institution shall remain in force till it is cancelled by the Commissioner. The Commissioner can cancel the registration under section 12AA(3) under two circumstances:

(a) the activities of a trust or institution are not genuine, or;

(b) the activities are not being carried out in accordance with the objects of the trust or institution.

Only if either or both the above conditions are met, would the Commissioner be empowered to cancel the registration, and not otherwise. Therefore, the powers of Commissioner to cancel registration are severely restricted. There have been cases where trusts, particularly in the year in which they have substantial income claimed to be exempt under other provisions of the Income Tax Act, deliberately violate provisions of section 13 by investing in prohibited mode etc. Similarly, there have been cases where the income is not properly applied for charitable purposes or has been diverted for benefit of certain interested persons. Due to restrictive interpretation of the powers of the Commissioner under section 12AA, registration of such trusts or institutions continues to be in force and these institutions continue to enjoy the beneficial regime of exemption.

Whereas under section 10(23C), which also allows similar benefits of exemption to a fund, Institution, University etc, the power of withdrawal of approval is vested with the prescribed authority if such authority is satisfied that such entity has not applied income or made investment in accordance with provisions of section 10(23C) or the activities of such entity are not genuine or are not being carried out in accordance with all or any of the conditions subject to which it was approved.

Therefore, in order to rationalise the provisions relating to cancellation of registration of a trust, the Finance (No. 2) Act, 2014 has inserted section 12AA(4) to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that section 13(1) is applicable as its activities are being carried out in such a manner that,—

(i) its income does not enure for the benefit of general public;

(ii) it is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act);

(iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc.; or

(iv) its funds are invested in prohibited modes,

then the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution.

However, registration shall not be cancelled under section 12AA(4) if such trust or institution proves that there was a reasonable cause for the activities to be carried out in the above manner.

19. Taxation of anonymous donations [Section 115BBC] [W.e.f. A.Y. 2015-16]

The existing provisions of section 115BBC provide for levy of tax at the rate of 30% in case of certain assessees, being university, hospital, charitable organisation, etc. on the amount of aggregate anonymous donations exceeding 5% of the total donations received by the assessee or ₹1,00,000, whichever is higher.

Due to the mechanism of aggregation of tax provided in section 115BBC, while tax at the rate of 30% is levied on the amount of anonymous donations exceeding the threshold, the remaining tax is chargeable on total income after reducing the full amount of anonymous donations. The proper way of computation is to reduce the income by the amount which has been taxed at the rate of 30% (i.e. anonymous donations exceeding the above limit of 5% of the total donations or ₹ 1,00,000, whichever is higher).

The existing provision gives the impression that amount of 5% of total donation or ₹1,00,000 whichever higher is totally exempt and there is no need to apply such amount to claim exemption under section 10(23C) or section 11 and 12.

Therefore, the Finance (No. 2) Act, 2014 has substituted section 115BBC(1)(ii) to provide that the income-tax payable shall be the aggregate of the amount of income-tax calculated at the rate of 30% on the aggregate of anonymous donations received in excess of 5% of the total donations received by the assessee or ₹1,00,000, whichever is higher, and the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations which is in excess of the 5% of the total donations received by the assessee or ₹1,00,000, as the case may be.

Therefore, if such amount of donation which is not treated as anonymous donation is not applied like any other income, it will become taxable.

20. Double deduction under section 10AA and section 35AD not allowed [Section 10AA(9) inserted w.e.f. A.Y. 2015-16]

Where a deduction under section 10AA is claimed and allowed in respect of profits of any of the 13 specified businesses, referred to in section 35AD(8)(c), for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.

In other words, if an assessee, carrying on a specified business, claims deduction under section 10AA, any capital expenditure incurred by such assessee shall not be eligible for deduction under section 35 AD.

AMENDMENTS RELATING TO INCOME FROM HOUSE PROPERTY

21. Deduction of interest in case of oneself occupied residential property increased to ₹2,00,000 [Second proviso to section 24(6)] [W.e.f. A.Y. 2015-16]

Second proviso to section 24(6), inter-alia, provides that in case of one self-occupied property where the acquisition or construction of the property is completed within three years from the end of the financial year in which the capital is borrowed, the amount of deduction under section 24(6) shall not exceed ₹1,50,000.

The Finance (No. 2) Act, 2014 has amended the second proviso to section 24(6), so as to increase the limit of

deduction on account of interest in respect of oneself occupied property referred to in section 23(2) from ₹1,50,000 to ₹2,00,000.

AMENDMENTS RELATING TO INCOME FROM BUSINESS AND PROFESSION

22. Manufacturing company eligible for deduction @ 15% of actual cost of new asset being eligible plant and machinery [Section 32AC]

In order to encourage substantial investment in plant or machinery, the Finance Act, 2013 had inserted a section 32AC in the Income-tax Act to provide that where an assessee, being a **company**,—

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

(b) acquires and installs new assets (eligible plant or machinery) during the period beginning from 01.04.2013 and ending on 31.03.2015 and the aggregate amount of actual cost of such new assets exceeds ₹100 crores, then, such company shall be allowed—

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

(ii) for the assessment year 2015-16, a deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 01.04.2013 and ending on 31.3.2015, as reduced by the deduction allowed, if any, for assessment year 2014-15.

In order to simplify the existing provisions of section 32AC and also to make medium size investments in plant and machinery eligible for deduction, the Finance (No. 2) Act, 2014 has w.e.f. A.Y. 2015-16 inserted sub-section (1A), to provide that the deduction under section 32AC shall be allowed if the company on or after 01-04-2014 acquires and installs eligible plant and machinery during any previous year, the aggregate amount of actual cost of which exceeds ₹25 crore.

A proviso to section 32AC(1A) has also been inserted to provide that the assessee who is eligible to claim deduction under the existing combined threshold limit of ₹100 crore for investment made in previous years 2013-14 and 2014-15 shall continue to be eligible to claim deduction under the existing provisions contained in section 32AC(1) even if its investment in the previous year 2014-15 is below the new threshold limit of investment of ₹25 crore during the previous year.

Further, the Act has inserted section 32AC(1B) to provide that no deduction under section 32AC(1A) shall be allowed for any assessment year commencing on or after the 1st day of April, 2018.

In other words, the eligible plant & machinery should be acquired and installed upto 31-3-2017 to claim exemption under section 32AC(1A).

The other conditions of section 32AC shall also be applicable to the newly inserted section 32AC(1A).

Illustration

The deduction allowable under this section after the amendment in different scenario of investment is illustrated as under: **(₹ in crore)**

Sl. No.	Particulars	P.Y. 2013-14	P.Y. 2014-15	P.Y. 2015-16	P.Y. 2016-17	Remarks
1.	Amount of investment	20	90	-	-	Deduction will be available under the existing section 32AC(1) in previous year 2014-15 as the aggregate investment upto 31-03-2015 exceeds ₹100
	Deduction allowable	Nil	16.5	-	-	
2.	Amount of investment	30	40	-	-	No deduction shall be allowed under section 32AC(1) as the aggregate investment in two specified years does not exceed ₹100 crore but it will be allowed under section 32AC(1A) as the investment in plant and machinery during the previous year 2014-15 exceeds ₹25 crore
	Deduction allowable	Nil	6			

3.	Amount of investment	150	10	-	-	Deduction of 15% must have been allowed in previous year 2013-14 as the investment exceeded ₹100 crores. Further it will be allowed in previous year 2014-15 under section 32AC(1), computed as under: Total investment upto 31-03-2015 ₹150 crores + ₹10 crores = ₹160 crores
	Deduction allowable	22.5	1.5			Deduction to be allowed @ 15% of ₹ 160 crores ₹24 crores Less: Deduction claimed in previous year 2013-14 ₹22.5 crores
						Deduction allowed in2014-15 ₹ 1.5 crore
						Section 32AC(1A) shall not be applicable and the deduction will be allowed under section 32AC(1) although in the previous year 2014-15, the investment is less than 25 crores
4.	Amount of investment	60	20	-	-	No deduction either u/s 32AC(1) (as aggregate investment in two specified years does not exceed ₹100 crores) or U/s 32AC(1 A) (as investment in P.Y. 2014 does not exceed ₹25 crore) Further, no deduction was allowed in P.Y. 2013-14 under section 32AC(1)
	Deduction allowable	Nil	Nil			
5.	Amount of investment	30	30	30	40	Deduction will be allowed @ 15% under section 32AC(1A) as investment in each previous year exceeds ₹25 crore
	Deduction allowable	Nil	4.5	4.5	6	
6.	Amount of investment	150	20	70	20	Deduction will be allowed both u/s 32AC(1)& 32AC(1A)
	Deduction allowable	22.5	3	10.5	Nil	

23. Deduction in respect of capital expenditure on specified business [Section 35AD] [W.e.f. A.Y. 2015-16]

(A) Deduction extended to two new businesses: Under the existing provisions of section 35AD, investment-linked tax incentive is provided by way, of allowing a deduction in respect of the whole of any expenditure of capital nature (other than expenditure on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred.

Currently, "eleven specified businesses" are eligible for availing the investment-linked deduction under section 35AD.

The Finance (No. 2) Act, 2014 has included the following two new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD:

(a) laying and operating a slurry pipeline for the transportation of iron ore;

(b) setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.

Further, the date of commencement of operations for availing investment linked deduction in respect of the two new specified businesses shall be on or after 01-04-2014.

(B) Asset for which deduction has been claimed u/s 35AD to used only for specified business [Section 35AD(7A) and (7B)]: The existing provisions of section 35AD do not provide for a specific time period for which capital assets on which the deduction has been claimed and allowed, are to be used for the specified business.

With a view to ensure that the capital asset on which investment linked deduction has been claimed is used for the purposes of the specified business, the Finance (No. 2) Act, 2014 has inserted section 35AD(7A) to provide that any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.

Further, the Act has inserted section 35AD(7B) to provide that if such asset is used for any purpose other than the specified business during the period of 8 years specified in section 35AD(7A), otherwise then by way of a mode referred to in section 28(vii), the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains. of business or profession" of the previous year in which the asset is so used.

Section 28(vii) provides that If any asset on which a deduction under section 35AD has been allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax under clause (vii) of section 28,

(C) No deduction to be allowed under section 10AA if deduction is claimed under section 35AD: The existing provisions of section 35AD(3) provide that where any assessee has claimed a deduction under this section, no deduction shall be allowed under the provisions of Chapter VIA for the same or any other assessment year. As section 10AA also provides for profit linked deduction in respect of units set-up in Special Economic Zones, the Act has amended section 35AD(3) so as to provide that where any deduction has been availed of by the assessee on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA shall also be available to the assessee in the same or any other assessment year in respect of such specified business.

Consequently, section 10AA has also been amended so as to provide that no deduction under section 35AD shall be available in any assessment year to a specified business which has claimed and availed of deduction under section 10AA in the same or any other assessment year.

24. Expenditure on Corporate Social Responsibility (CSR) not to be allowed as deduction [Explanation 2 to section 37(1)] [W.e.f. A.Y. 2015-16]

CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.

The existing provisions of section 37(1) provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act.

Therefore, in order to provide certainty on this issue, Explanation 2 has been inserted to section 37 to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37(1).

However, the memorandum to the Finance (No. 2) Act, 2014 provides that the CSR expenditure which is of the nature described in section 30 to section 36 shall be allowed deduction under those sections subject to fulfillment of conditions, if any, specified therein.

25. Disallowance of expenditure for non-deduction of tax at source [Section 40(a)(i) & (ia)] [W.e.f. A.Y. 2015-16]

(A) Time period for deposit of tax deducted at source in case of payment to non-resident also

extended till due date of return u/s 139(1) [Section 40(a)(i)]

The existing provisions of section 40(a)(i) provide that certain payments such as interest, royalty and fee for technical services made to a non-resident shall not be allowed as deduction for computing business income if tax on such payments was not deducted, or after deduction, was not paid before the end of the previous year on in the subsequent year within the time prescribed under section 200(1). Under section 40(a)(ia) in case of payments made to resident, the deductor is allowed to claim deduction for payments as expenditure in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return of income under section 139(1). However, in case of disallowance for non-payment of tax from' payments made to non-residents, this extended time limit of payment up to the date of filing of return of income under section 139(1) is not available.

In order to provide similar extended time limit for payment of tax deducted from payments made to non-residents, section 40(a)(i) has been amended to provide that the deductor shall be allowed to claim deduction for payments made to non-residents in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return under section 139(1).

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(B) Section 40(a)(ia) made applicable to all sums payable to a resident on which tax is deductable at source under Chapter XVII-B but disallowance restricted to 30% instead of 100%

In case of non-deduction or non-payment of tax deducted at source (TDS) from certain payments made to residents, the entire amount of expenditure on which tax was deductible is disallowed under section 40(a)(ia) for the purposes of computing income under the head "Profits and gains of business or profession". The disallowance of whole of the amount of expenditure results into undue hardship.

In order to reduce the hardship, the Finance (No. 2) Act, 2014 has provided that in case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia), the disallowance shall be restricted to 30% of the amount of expenditure claimed.

However, where in respect of any such sum,—

(a) tax has been deducted in any subsequent year, or

(b) has been deducted during the previous year but paid after the due date specified under section 139(1),

30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Further, existing provisions of section 40(a)(ia) provides that certain payments such as interest, commission, brokerage, rent, royalty fee for technical services and contract payment made to a resident shall not be allowed as deduction for computing business income if tax on such payments was not deducted, or after deduction, was not paid within the time specified under the said section. Chapter XVII-B mandates deduction of tax from certain other payments such as salary, directors fee, which are currently not specified under section 40(a)(ia). The payments on which tax is deductible under Chapter XVII-B but not specified under section 40(a)(ia) may also be claimed as expenditure for the purposes of computation of income under the head "Profits and gains from business or profession".

In order to improve the TDS compliance in respect of payments to residents which are currently not specified in section 40(a)(ia), the Act has provided that the disallowance under section 40(a)(ia) shall extend to all expenditure on which tax is deductible under Chapter XVII-B.

26. Transaction in respect of commodity derivatives to be treated as non speculative transaction only when such transaction is liable to CTT (Section 43(5)) [W.r.e.f. A.Y. 2014-15]

The existing provisions contained in clause (5) of section 43 define the term speculative transaction. The proviso to the said clause (5) excludes certain category of transactions as speculative transactions.

Finance Act, 2013 made a provision for levy of commodities transaction tax on commodity derivatives in respect of commodities other than agricultural commodities. As a consequence to the levy of commodities transaction tax, clause (e) was inserted in the proviso to section 43(5) to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association shall not be considered as speculative transaction. Vide Circular No. 3 dated 24-01-2014 explaining the provisions of the Finance Act, 2013, it was clarified that the eligible transaction shall include only those transactions in commodity derivatives which are liable to commodities transaction tax.

Accordingly, clause (e) of the proviso to the said clause (5) has been amended so as to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association and chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be considered to be a speculative transaction.

27. Business of Plying, Hiring or Leasing Goods Carriages [Section 44AE] [W.e.f. A.Y. 2015-16]

The existing provisions of section 44AE provides for presumptive taxation in the case of an assessee who is engaged in the business of plying, hiring or leasing goods carriages and not owning more than ten goods carriages at any time during the previous year. Income from the said business is calculated as under:

Type of Goods carriage	Amount of presumptive income
Heavy goods vehicle (HGV)	₹ 5,000 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.
Vehicle other than HGV	₹4,500 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.

The amount of presumptive income was revised by the Finance (No. 2) Act, 2009. Further, the existing provisions make a distinction between HGV and vehicle other than HGV for specifying the amount of presumptive income.

Considering the erosion in the real values of the amount of specified presumptive income due to inflation over the years and also in order to simplify this presumptive taxation scheme. the Finance (No. 2) Act, 2014 has provided for a uniform amount of presumptive income of ₹ 7,500 for every month (or part of a month) for all types of goods carriage without ally distinction between HGV and vehicle other than HGV.

The assessee may declare a higher income than that specified above.

The expression "goods carriage" shall have the meaning assigned to it in section 2 of the Motor Vehicles Act, 1988 [Explanation].

AMENDMENTS RELATING TO CAPITAL GAINS

28. Meaning of short-term capital asset modified [Section 2(42A)] [W.e.f. A.Y. 2015-16]

The existing provisions contained in section 2(42A) provides that short-term capital asset means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, proviso to section 2(42A) provides that in case of the following assets, the period shall be twelve months instead of thirty six months:

(a) share of a company

(b) any other security listed in a recognized stock exchange in India

(c) a unit of Unit Trust of India or a unit of a Mutual Funds specified u/s 10(23D)

(d) a zero coupon bond

The shorter period of holding of not more than twelve months for consideration as short-term capital asset was introduced for encouraging investment on stock market where prices of the securities are market determined.

Accordingly, the above proviso to section 2(42A) has been amended so as to provide that the period of twelve months shall be applicable only in case of following assets:

(a) a security (other than unit) listed in a recognised stock exchange in India

(b) a unit of an equity oriented fund

(c) a zero coupon bond

In other words, unlisted securities (including shares), units of a mutual fund (other than an equity oriented mutual fund) and units of newly proposed business trusts shall be a short-term capital asset if it is held for not more than 36 months instead of 12 months.

Period of holding of unlisted shares and units transferred on or after 01- 04-2014 but before 11-07-2014: The Act has inserted second proviso to section 2(42A) to provide that unlisted share of a company or a unit of a mutual fund specified u/s 10(23D) which is transferred during the period beginning on 01- 04-2014 and ending on 10-7-2014 shall be a short-term capital asset if it is held for not more than 12 months instead of 36 months mentioned in the above amended proviso.

Consequent amendment has also been made in section 112.

Amendment made by the Finance (No. 2) Act, 2014 [W.e.f. 01-10-2014]

In determining the period for which capital assets is held by the assessee, the following sub-clause (hc) has been inserted in Explanation 1 to section 2(42A) to provide that:

"In the case of a capital asset, being a unit of a business trust, allotted pursuant to transfer of share or shares as referred to in section 47(xvii), there shall be included the period for which the share or shares were held by the assessee." [See also Point no. 54]

1. For the purposes of this clause, the expression "security" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Explanation 2 to section 2(42A)]

2. As per Section 2(h) of Securities Contracts (Regulation) Act, 1956, unless the context otherwise requires, "securities" include—
   (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
   (ia) derivative;
   (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
   (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
   (id) units or any other such instrument issued to the investors under any mutual fund scheme;]
   (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
   (ii) Government securities;
   (iia) such other instruments as may be declared by the Central Government to be securities; and
   (iii) rights or interest in securities

29. Year of taxability of capital gains when compensation is received in pursuance of an interim order of any Court, Tribunal or other authority (Proviso to section 45(5)(6)] [W.e.f. A.Y. 2015-16]

The existing provisions contained in section 45 provide for charging of any profits or gains arising from transfer of a capital asset. Section 45(5) provides for dealing with capital gains arising from transfer by way of compulsory acquisition where the compensation is enhanced or further enhanced by the court, Tribunal or any other authority. Section 45(5)(6) provides that where the amount of compensation is enhanced or further enhanced by the court it shall be deemed to be the income chargeable of the previous year in which such amount is received by the assessee.

There is uncertainty about the year in which the amount of compensation received in pursuance of an interim order of the court is to be charged to tax, due to court orders.

Accordingly, a proviso has been inserted under section 45(5)(b) to provide that the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made.

30. Transfer of a capital asset being a Government security, made outside India through an intermediary by a non-resident to another non-resident not to be regarded as transfer [Section 47(viib)] [W.e.f. A.Y. 2015-16]

The Act has inserted section 47(viib) to provide that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident shall not be regarded as a transfer.

1. For the purposes of this clause, "Government Security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Explanation to section 47(viib)]
2. As per section 2(b) of the Securities Contracts (Regulation) Act, 1956 "Government security" means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944.

31. Transfer of a capital asset, being share of a special purpose vehicle (SPV) to a business trust in exchange of units allotted by that trust to the transferor not to be treated as transfer [Section 47(xvii)] [W.e.f. A.Y. 2015-16]

Any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor shall not be treated as a transfer. For details see point no. 54.

Explanation.— For the purposes of this clause, the expression "special purpose vehicle" shall have the meaning assigned to it in the Explanation to clause (23FC) of section 10.

Consequently, section 49(2AC) has been inserted so as to provide that where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in section 47(xvii), the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share referred to in the said clause. For detail see Point no. 54.

32. Meaning of Cost Inflation Index changed [Clause (v) of Explanation to section 48] [W.e.f. A.Y. 2016-17]

The existing provisions contained in section 48 prescribe the mode of computation of income chargeable under the head "Capital gains". Clause (v) of the Explanation to the said section defines the term "Cost Inflation Index" (CII) which in relation to a previous year means such index as may be notified by the Government having regard to 75% of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME) for the immediately preceding previous year to such previous year.

The release of CPI for UNME has been discontinued. Accordingly, the Act has amended the said clause (v) of the Explanation to section 48 to provide that "Cost Inflation Index" in relation to a previous year means such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

33. Forfeiture of advance for transfer of a capital asset not to be deducted from the cost, etc. but to be taxed under the head "income from other sources" [Section 51] [W.e.f. A.Y. 2015-16]

See point no. 37.

34. Exemption u/s 54 and 54F to be allowed in case of investment in one residential house property only situated in India [Section 54 and 54F] [W.e.f. A.Y. 2015-16)]

The existing provisions contained in section 54(1), inter alia, provide that where capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house then the amount of capital gains to the extent invested in the new residential house is not chargeable to tax under section 45.

The existing provisions contained in section 54F(1), inter alia, provide that where capital gains arises from transfer of a long-term capital asset, not being a residential house, and the assessee within a period of one

year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house then the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.

The following issues were always debated and there have been contrary judgments in this regard:

1. Can an assessee acquire more than one residential house to claim exemption under section 54?
2. Can an assessee acquire a residential house outside India to claim exemption u/s 54 or 54F, as the case may be?

Some of the judgments which have been pronounced with regard to issue No. 1 are as under:

The expression 'a' residential house should be understood in a sense that building should be of residential nature and 'a' should not be understood to indicate a singular number. The combined reading of sections 54(1) and 54F of the Income-tax Act discloses that, a nonresidential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to section 54F of the Income-tax Act, lays down that if the assessee has already one residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building. [CIT v D. Ananda Basappa (2009) 309 ITR 329 (Karn)].

However, Punjab and Haryana High Court, distinguishing D. Ananda Basappa case has held as under: Exemption under section 54 is available in respect of purchase or construction of one house only. The assessee was not entitled to exemption in respect of two independent residential house situated at different locations [Pawan Arya v C1T (2011) 49 DTR 123 (P&H)]:

But, in a recent judgement the Karnataka High Court has held as under:

Acquisition of more than one residential house by assessee out of capital gains would not disentitle assessee from availing benefit conferred under section 54 [CIT v Khoobchand M. Makhija (2014) 43 taxmann.com 143 (Karnataka)].

In case of section 54F, the law specifically prohibits the purchase or construction of more than one residential house.

Some of the judgments which have been pronounced with regard to issue No. 2 are as under:

Where non-resident Indian sold property in India and purchased residential property in U.K. and claimed deduction under section 54, it was held that it was not necessary that residential property should be purchased in India itself [Mrs. Prema P. Shah, Sanjiv P. Shah v ITO (2006) 282 ITR (AT) 211 (Mum)].

On the other hand, exemption under section 54F was not allowed where asset other than residential house property was transferred and the assessee acquired a residential house outside India [Leena J. Shah v ACIT (2006) 6 SOT 721 (Ahd)].

However, after considering the above two judgements the Bangalore Tribunal has held that exemption under section 54F cannot be denied on ground that residential house acquired was situated outside India [Vinay Mishra v ACIT (2013) 30 taxmann.com 341 (Bangalore -Trib)]

The benefit was intended for investment in one residential house within India. Accordingly, the Act has amended section 54(1) so as to provide that the rollover relief under the said section is available if the investment is made in one residential house and that too if the house is situated in India.

Further, section 54F(1) has been amended so as to provide that the exemption is available if the investment is made in one residential house and that too if the house is situated in India.

35. Capital gains exemption on investment in Specified Bonds to be restricted to ₹50 lakhs [Section 54EC] [W.e.f. A.Y. 2015-16]

The existing provisions contained in section 54EC(1) provide that where capital gain arises from the transfer of a long-term capital asset and the assessee has, within a period of six months, invested the whole or part of capital gains in the long-term specified asset, the proportionate capital gains so invested in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The proviso to the said sub-section provides that the investment made in the long-term specified asset during any financial year shall not exceed ₹50,00,000.

However, the wordings of the proviso have created an ambiguity. As a result the capital gains arising during

the year after the month of September were invested in the specified asset in such a manner so as to split the investment in two years i.e., one within the year and second in the next year but before the expiry of six months. This resulted in the claim for relief of ₹ 1 crore as against the intended limit for relief of ₹50,00,000.

There are contrary judgments in this regard. Some of the judgments are as under:

The proviso to section 54EC provides that the investment made in a long term specified asset by an assessee "during any financial year" should not exceed ₹50 lakhs. It is clear that if the assessee transfers his capital asset after 30th September of the financial year he gets an opportunity to make an investment of ₹50 lakhs each in two different financial years and is able to claim exemption upto ₹1 crore under section 54EC. The language of the proviso is clear and unambiguous and so the assessee is entitled to get exemption upto ₹1 crore in this case. [Aspi Ginwala v ACIT (2012) 20 Taxmann.com 75 (Ahd)(Trib). See also Sriram Indubhal v ITO (2013) 32 Taxmann.com 118 (Chennai)(Trib); Coromandal Industries P. Ltd. v ACIT 36 Taxmann.com 6 (Chennai) (Trib); ITO v Rania Faleiro (2013) 33 Taxmann.com 611 (Punjab) (Trib)]. However, a contrary view was taken in Raj Kumar Jain & Sons (ITAT Jaipur) that the exemption under section 54EC had to be restricted to ₹50 lakhs. However, Circular No. 3/2008 dated 12-03-2008 issued by the CBDT makes it clear that the Proviso only intended to restrict the investment in a particular financial year and did not intend to restrict the maximum amount of exemption permissible under section 54EC. The fact that the Proviso uses the words "in a financial year" fortifies this interpretation. Accordingly, it has to be held that the assessee is entitled to total deduction of ₹1 crores in respect of the investment of ₹50 lakhs made in each financial year

Amendment made by the Finance (No. 2) Act, 2014 to restrict the investment only upto ₹50 lakh

The Act has inserted second proviso in section 54EC(1) so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed ₹50,00,000.

36. Tax on long-term capital gains on units [Proviso under clause (d) to section 112] [W.e.f. A.Y. 2015-16]

Under the existing proviso, where tax payable on long-term capital gains arising on transfer of a capital asset, being listed securities or unit or zero coupon bond exceeds 10% of the amount of capital gains before allowing for indexation adjustment, then such excess shall be ignored. As long-term capital gains is not chargeable to tax in the case of transfer of a unit of an equity oriented fund which is liable to securities transaction tax, the benefit under section 112 in respect of unit cover only the unit of a fund, other than an equity oriented fund.

The above proviso has been amended so as to allow the concessional rate of tax of 10% on long term capital gain to listed securities (other than unit) and zero coupon bonds.

Hence, long-term capital gain from units other than the units of equity oriented fund shall now be taxable @ 20% after indexation. The concessional rate of tax of 10% shall not be applicable in the case of such units.

Units transferred on or after 01-04-2014 but before 11-07-2014 to be allowed benefit of existing concessional rate of tax: The Finance (No. 2) Act, 2014 has further inserted second proviso to provide that where such units have been transferred on or after 01-04-2014 but before 11-07-2014, it will continue to get the benefit of the above proviso i.e. if there is a long-term capital gain from the transfer of such units, the tax will be levied at the minimum of the following rates:

(i) 20% after indexation of cost,

(ii) 10% without indexation of cost.

AMENDMENTS RELATING TO INCOME FROM OTHER SOURCES

37. Forfeiture of advance received for transfer of a capital asset not to be deducted from the cost, etc. but to be taxed under the head "income from other sources" (Section 56(2)(ix)] [W.e.f. A.Y. 2015- 2016]

The existing provisions of section 51 of the Income-tax Act provide that in computing cost of acquisition, where any capital asset was, on any previous occasion, subject to negotiations for its transfer, any advance, or other money received and forfeited by the assessee in respect of such negotiation is to be deducted from the cost for which the asset was acquired or from the written down value or fair market value, as the case may be.

A situation may arise where advance money forfeited is more than the cost of 'acquisition'. In such a case, the excess of the advance money forfeited over the cost of 'acquisition' of such asset shall be a capital receipt not taxable [Travancore Rubber & Tea Co. Ltd. v CIT(2000) 243 ITR 158 (SC)].

The Finance (No. 2) Act has inserted section 56(2)(ix) to provide for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset.

Such sum shall be chargeable to income-tax under the head 'income from other sources' if:

(a) such sum is forfeited; and

(b) the negotiations do not result in transfer of such capital asset.

Consequential amendment in section 2(24) relating to definition of income

A consequential amendment in section 2(24) has been made by inserting clause (xvii) to include such sum referred to in section 56(2)(ix) in the definition of the term 'income'.

Consequential amendment in section 51 to avoid double taxation

Section 51 has also been amended to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with the provisions of section 56(2)(ix), such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

AMENDMENTS RELATING TO SET OFF AND CARRY FORWARD OF LOSSES

38. Explanation to section 73 will also be not applicable to a company the principal business of which is the business of trading in shares [Explanation to section 73] [W.e.f. A.Y. 2015-16]

The existing provisions of section 73 provide that losses incurred in respect of a speculation business cannot be set off or carried forward and set off except against the profits of any other speculation business. Explanation to section 73 provides that in case of a company deriving its income mainly under the head "Profits and gains of business or profession" (other than a company whose principal business is business of banking or granting of loans and advances), and where any part of its business consists of purchase or sale of shares, such business shall be deemed to be speculation business for the purpose of this section. Section 43(5) defines the term speculative transaction as a transaction in which a contract for purchase or sale of any commodity, including stocks and shares, is settled otherwise than by way of actual delivery. However, the proviso to the said section exempts, inter alia, transaction in respect of trading in derivatives on a recognised stock exchange from its ambit.

The Act has amended the aforesaid Explanation so as to provide that the provision of the Explanation shall also not be applicable to a company the principal business of which is the business of trading in shares.

Authors note: Prior to assessment year 2015-16, in case of a company such income was treated as speculative income. Therefore, if there is a carry forward of speculation loss relating to such transactions, it may not be possible to set off such loss in the subsequent year from the income of such transactions as it will now be treated as business income.

AMENDMENTS RELATING TO DEDUCTIONS FROM GROSS TOTAL INCOME

39. Raising the limit of deduction for investments [Section 80C and 80CCE] [W.e.f. A.Y. 2015-16]

Under the existing provisions of section 80C, an individual or a Hindu undivided family, is allowed a deduction from income of an amount not exceeding ₹1,00,000 with respect to sums paid or deposited in the previous year, in certain specified instruments. The investments eligible for deduction, specified under section 80C(2), include life insurance premia, contributions to provident fund, schemes for deferred annuities etc. The assessee is free to invest in any one or more of the eligible instruments within the overall ceiling of ₹1 lakh.

In order to encourage household savings, the Act has raised the limit of deduction allowed under section 80C from the existing ₹ 1 lakh to ₹ 1.5 lakh.

In view of the above, consequential amendment has also been made in section 80CCE to raise the limit from ₹1,00,000 to ₹ 1,50,000.

40. Date of joining the service in case of private sector employee not relevant for claiming tax benefits in respect of New Pension Scheme Section 80CCD [W.e.f. A.Y. 2015-16)

Under the existing provisions contained in section 80CCD(1), if an individual, employed by the Central Government or any other employer on or after 01-01-2004, has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding 10% of his salary is allowed. Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under section 80CCD(2), to the extent it does not exceed 10% of the salary of the individual in the previous year.

Considering the fact that for employees in the private sector, the date of joining the service is not relevant for joining the New Pension Scheme (NPS), the Act has amended the provisions of section 80CCD to provide that the condition of the date of joining the service on or after 01.01.2004 is not applicable to employees in the private sector for the purposes of deduction under the section 80CCD.

41. Limit of deduction of the contribution by an employee under section 80CCD restricted to ₹1 lakh [Section 80CCD (1A)] [W.e.f. A.Y. 2015-16]

The Finance (No. 2) Act, 2014 has inserted section 80CCD(1A) to provide that the amount of deduction under section 80CCD(1) shall not exceed ₹1 lakh.

42. Extension of the sunset date under section 80-IA for the power sector [Section 80-IA] [W.e.f. A.Y. 2015-16]

Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction of profits and gains is allowed to an undertaking which,—

(a) is set up for the generation and distribution of power if it begins to generate power at anytime during the period beginning on 1- 04-1993 and ending on 31- 03-2014;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1- 04-1999 and ending on 31- 03-2014;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 01- 04-2004 and ending on 31-03-2014.

With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the Act has amended the above provisions to extend the terminal date for a further period up to 31- 03-2017 i.e. till the end of the 12th Five Year Plan.

AMENDMENTS RELATING TO INTERNATIONAL TRANSACTIONS

43. Rationalisation of the Definition of International Transaction [Section 92B] [W.e.f. A.Y. 2015-16]

The existing provisions of section 92B define 'International transaction' as a transaction in the nature of purchase, sale, lease, provision of services, etc. between two or more associated enterprises, either or both of whom are non-residents.

Section 92B(2) extends the scope of the definition of international transaction by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between the other person and the associated enterprise. The sub-section as presently worded has led to a doubt whether or not, for the transaction to be treated as an international transaction, the unrelated person should also be a non-resident.

Therefore, the Act has amended section 92B(2) to provide that where, in respect of a transaction entered into by an enterprise with a person other than an associated enterprise, there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise or, where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, and either the enterprise or the associated enterprise or both of them are non-resident, then such transaction shall be deemed to be an international transaction entered into between two associated "enterprises, whether or not such other person is a non-resident.

44. Determination of arm's length price where more than one price is determined by the most appropriate method

Amendment made by the Finance (No. 2) Act, 2014 [Section 92C] [W.e.f. A.Y. 2015-16]

Section 92C(2) provides that the most appropriate method referred to in section 92C(1) shall be applied for determination of arm's length price in the manner as may be prescribed.

However, where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices. [Proviso to section 92C(2)].

Further, if the variation between: (a) the arm's length price so determined, and (b) price at which international transaction has been actually undertaken, does not exceed such percentage not exceeding 3% of the latter (i.e. price at which international transaction has been actually undertaken) **as may be notified by the Central Government in the Official Gazette in this behalf**, then the price at which international transaction has actually been undertaken shall be deemed to be the arm's length price and no adjustment is required to be made. [Proviso 2 to section 92C(2)].

The following third proviso has been inserted in section 92C(2):

Provided also that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after 1-04-2014, shall be computed in such manner as may be prescribed and accordingly the first and second proviso shall not apply.

In other words, for any international transaction or specified domestic transaction undertaken on or after 01-04-2014, third proviso shall be applicable instead of proviso first and second.

45. Roll back provision in Advance Pricing Agreement Scheme [Section 92CC] [W.e.f. 1-10-2014]

Section 92CC provides for Advance Pricing Agreement (APA). It empowers the Central Board of Direct Taxes, with the approval of the Central Government, to enter into an APA with any person for determining the Arm's Length Price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by the person. The agreement entered into is valid for a period, not exceeding 5 previous years, as may be mentioned in the agreement. Once the agreement is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such an APA.

In many countries the APA scheme provides for "roll back" mechanism for dealing with ALP issues relating to transactions entered into during the period prior to APA. The "roll back" provisions refers to the applicability of the methodology of determination of ALP, or the ALP, to be applied to the international transactions which had already been entered into in a period prior to the period covered under an APA. However, the "roll back" relief is provided on case to case basis subject to certain conditions. Providing of such a mechanism in Indian legislation would also lead to reduction in large scale litigation which is currently pending or may arise in future in respect of the transfer pricing matters.

Therefore, the Act has inserted section 92CC(9A) to provide that the agreement referred to in section 92CC(1) (i.e. APA) may, subject to such conditions, procedure and manner, as may be prescribed provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to an international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in section 92CC(4) and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

AMENDMENTS RELATING TO SPECIAL RATES OF TAX

46. Tax on short-term capital gain at special rate of 15% applicable to units of business trust also [Section 111A] [W.e.f. A.Y. 2015-16]
See point no. 54.

47. Tax on long-term capital gains on units [Section 112] [W.e.f. A.Y. 2015-16]
See point no. 36.

48. Taxation of anonymous donations [Section 115BBC] [W.e.f. A.Y. 2015-16]
See point no. 19.

49. Certain dividends received from foreign companies to be taxed @ 15% without limiting it to a particular assessment year [Section 115BBD] [W.e.f. A.Y. 2015-16]

Section 115BBD was introduced as an incentive for attracting repatriation of income earned by Indian companies from investments made abroad. It provides for taxation of gross dividends received by an Indian company from a specified foreign company at the concessional rate of 15% if such dividend is included in the total income for the assessment year 2012-13 or 2013-14 or 2014-2015.

With a view to encourage Indian companies to repatriate foreign dividends into the country, the Act has amended section 115BBD(1) by omitting all the assessment years referred to therein so as to extend the benefit of lower rate of taxation without limiting it to a particular assessment year. Thus, such foreign dividends received in financial year 2014-15 and subsequent financial years shall continue to be taxed at the lower rate of 15%.

AMENDMENTS RELATING TO ALTERNATE MINIMUM TAX

50. Adjusted total income for purpose of AMT to include deduction claimed under section 35AD after adjustment of depreciation [Section 115JC(2)] [W.e.f. A.Y. 2015-16]

The existing provisions of section 115JC provide that where the regular income tax payable by a person, other than a company, for a previous year is less than the alternate minimum tax for such previous year, the person would be required to pay income tax at the rat of eighteen and one half per cent on its adjusted total income. The section further proves that the total income shall be increased by the following to arrive at adjusted total income:

(a) deductions claimed under any section (other than section 80P included in Part C of Chapter VI-A) i.e. sections 80- IA to 80RRB other than section 80P, and

(b) deductions claimed under section 10AA.

Under the Income-tax Act, the investment linked deductions have been provided in place of profit linked deductions. These profit linked deductions are subject to alternate minimum tax (AMT). Accordingly, with a view to include the investment linked deduction claimed under section 35AD in computing adjusted total income for the purpose of calculating alternate minimum tax, the Act has amended section 115JC(2) so as to provide that besides the above two deductions mentioned under clause (a) and (b) above, the total income shall also be increased by the deduction claimed under section 35 AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

51. Credit of Alternate Minimum Tax [Section 115JEE] [W.e.f. A.Y. 2015-16]

The existing provisions of section 115JEE(1) provide that the provisions of Chapter-XII BA shall be applicable to any person who has claimed:

(a) a deduction under any section (other than section 80P) of part C of Chapter VI-A or

(b) a deduction u/s 10AA.

The Finance (No. 2) Act, 2014 has inserted clause (c) in section 115JEE above to provide that provisions of Chapter-XII BA shall also be applicable if deduction has been claimed under section 35AD.

Further the present provisions of section 115JEE(2) provide that the Chapter shall not be applicable to an individual or an HUF or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person if the adjusted total income does not exceed ₹20,00,000. This has created difficulty in claim of credit of alternate minimum tax under section 115JD in an assessment year where the income is not more than ₹20,00,000 or there is no claim of any deduction under section 10AA or Chapter VI-A.

With a view to enable an assessee who has paid alternate minimum tax in any earlier previous year to claim credit of the same, in any subsequent year, the Act has inserted section 115JEE(3) so as to provide that the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD, notwithstanding the conditions mentioned in section 115JEE(I) or (2).

AMENDMENTS RELATING TO DIVIDEND DISTRIBUTION TAX

52. Dividend and Income Distribution Tax to be grossed up [Section 115-O&115R][W.e.f.1-10-2014]

Section 115- O provides that a domestic company shall be liable for payment of additional tax at the rate of 15% on any amount declared, distributed or paid by way of dividends to its shareholders. This tax on distributed profits is final tax in respect of the amount declared, distributed or paid as dividends and no credit in respect of it can be claimed by the company or the shareholder.

Section 115R similarly provides for levy of additional income-tax in respect of income distributed by the mutual funds to its investors at the rates provided.

Prior to introduction of dividend distribution tax (DDT), the dividends were taxable in the hands of the shareholder. The gross amount of dividend representing the distributable surplus was taxable, and the tax on this amount was paid by the shareholder at the applicable rate which varied from 0 to 30%. However, after the introduction of the DDT, a lower rate of 15% is currently applicable but this rate is being applied on the amount paid as dividend after reduction of distribution tax by the company. Therefore, the tax is computed with reference to the net amount. Similar case is there when income is distributed by mutual funds.

Due to difference in the base of the income distributed or the dividend on which the distribution tax is calculated, the effective tax rate is lower than the rate provided in the respective sections.

In order to ensure that tax is levied on proper base, the amount of distributable income and the dividends which are actually received by the unit holder of mutual fund or shareholders of the domestic company need to be grossed up for the purpose of computing the additional tax.

Therefore, the Act has inserted section 115-O(1B) in order to provide that for the purposes of determining the tax on distributed profits payable in accordance with the section 115-O, any amount by way of dividends referred to in section 115-O(1), as reduced by the amount referred to in section 115-O(1A) [referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in section 115-O(1), be equal to the net distributed profits.

Illustration

R Ltd. an Indian company wishes to distribute ₹9,00,000 as dividend to its shareholders. It has received ₹4,00,000 as dividend from its subsidiary domestic company on which subsidiary company has already paid D.D.T. Determine the amount of dividend distribution tax payable if such dividend is distributed on or after 01-10-2014.

Solution

Net dividend on which DDT is payable

	₹
Amount of dividend to be distributed to shareholders	9,00,000
Less: Dividend received from subsidiary company on which DDT has already been paid	4,00,000
Net dividend liable to DDT	5,00,000
Computation of DDT	
Alternative 1	
₹5,00,000 × 19.994% (effective rate)	99,970
Alternative 2	
Net dividend to be gross up	
₹5,00,000 × 100/85	
Gross amount ₹5,88,235	
DDT payable on 5,88,235 @ 16.995%	**99,970**

Similarly, the Act has inserted section 115R(2A) to provide that for the purposes of determining the additional income-tax payable in accordance with section 115R(2), the amount of distributed income shall be increased to such amount as would, after reduction of the additional income-tax on such increased amount at the rate specified in section 115R(2), be equal to the amount of income distributed by the Mutual Fund.

It may be noted that the rate of income distribution tax prescribed under section 115R(2) is as under and the same will have to be grossed up in the above manner to determine the effective rate of income

distribution tax:

1.	(a)	Where the income is distributed to any person being an individual or a HUF by a money market mutual fund or a liquid fund	25%
	(b)	Where the income is distributed to any other person by a money market mutual fund or liquid fund.	30%
2.	Where the income is distributed by a fund other than a money market mutual fund or a liquid fund and such income is distributed to—		
	(a)	Individual or HUF	25%
	(b)	Any person other than individual or HUF	30%

However, income from investment made by a non-resident (not being a company) or a foreign company in an Infrastructure debt fund (IDF) whether set up as a IDF-NBFC or IDF-MF, the tax rates shall be 5% on income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

53. Mutual fund/securitisation trust not to file statement of income distributed to income tax authority [Omission of section 115R(3A) or 115TA(3)] [W.e.f. A.Y. 2015-16]

The Act has omitted section 115R(3A) and therefore mutual fund shall not have to file statement of income distributed to unit holders to the Income Tax Authority.

Similarly, section 115TA(3) has been omitted and therefore securitization trust shall not have file statement of income distributed to investors to income tax authority.

SPECIAL PROVISIONS RELATING TO BUSINESS TRUSTS [NEWLY INSERTED CHAPTER XIIFA]

54. Taxation Regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invite) [Section 115UA] [W.e.f. 1-10-2014]

The Securities and Exchange Board of India (SEBI) had proposed draft regulations relating to two new categories of investment vehicles namely, the Real Estate Investment Trust (REIT) & Infrastructure Investment Trust (Invite). These regulations were placed in public domain for comments.

Based on the comments received on the consultative paper and the Budget announcement, a separate regulatory framework under draft SEBI (Infrastructure Investment Trusts) Regulations, 2014 (referred to as "Regulations" hereafter) has been proposed for introducing Invites in India

The income-investment model of such REITs and Invits (referred to as business trusts) has the following distinctive elements:

(i) the trust would raise capital by way of issue of units (to be listed on a recognised stock exchange) and can also raise debts directly both from resident as well as nonresident investors;

(ii) the income bearing assets would be held by the trust by acquiring controlling or other specific interest in an Indian company (SPV) from the sponsor.

The expansion of asset delivery through the public-private partnership (PPP) model has increased the number of assets available for financing. The Indian infrastructure and the PPPs are currently in a challenging phase, with development of existing projects delayed, and diminishing attractiveness of new projects to private sector funds and strategic operators. In order to meet these challenges, new investment vehicle structure, an Infrastructure Investment Trust needs to be facilitated. Similarly, securitization of income earning real estate assets needs to be facilitated. Certainty in the taxation aspects of these trusts is necessary.

The Finance (No. 2) Act, 2014 has amended the Act to put in place a specific taxation regime for providing the way the income in the hands of such trusts is to be taxed and the taxability of the income distributed by such business trusts in the hands of the unit holders of such trusts. Such regime has the following main features:

1. Meaning of business trust [Section 2(13A)] [W.e.f. 01-10-2014]

"Business trust" means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognised stock exchange, in accordance with the regulations made under the Securities Exchange Board of India Act, 1992 and notified by the

Central Government in this behalf.

2. Special provisions relating to business trust

Tax on income of unit holder and business trust [Section 11 SUA]

(1) Notwithstanding anything contained in any other provisions of this Act, any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.

(2) Subject to the provisions of section 111A and section 112, the total income of a business trust shall be charged to tax at the maximum marginal rate.

In other words, the income by way of capital gains on disposal of assets by the trust shall be taxable in the hands of the trust at the applicable rate. However, if such capital gains are distributed, then the component of distributed income attributable to capital gains would be exempt in the hands of the unit holder. Any other income of the trust shall be taxable at the maximum marginal rate.

(3) If in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in section 10(23FC)(i.e. interest income), then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year. See point 3(d) below.

(4) Any person responsible for making payment of the income distributed on behalf a of business trust to a unit holder shall furnish a statement to the unit holder and the prescribed authority, within such time and in such form and manner as may be prescribed, giving the details of the nature of the income paid during the previous year and such other details as may be prescribed.

(5) The business trust is required to furnish its return of income.

(6) The necessary forms to be filed and other reporting requirements to be met by the trust shall be prescribed to implement the above scheme.

3. Taxability of units of a business trust [W.e.f. A.Y. 2015-16]

The listed units of a business trust, when traded on a recognised stock exchange, would attract securities transaction tax (STT), and hence would be given the tax benefits as under:

(a) Long-term capital gain from transfer of units of a business trust also to be exempt u/s 10(38)

Like units of equity oriented fund, long-term capital from the transfer of units of a business trust shall also be exempt u/s 10(38). However, there will be long-term capital gain from the transfer of units of a business trusts only when these are held by the investor for more than 36 months instead of 12 months in case of units of equity oriented fund.

Provided that the provisions section 10(38) shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in section 47(xvii). See para (c) below.

(b) Short-term capital gain from the transfer of units of a business trust shall also be taxable at the special rate of 15% u/s 111A

Section 111A has been amended to provide that like shares and units of equity oriented fund, units of a business trust shall also be taxable at the special rate of 15% as STT will be chargeable on the transfer of such units. However, for the purpose of short-term capital gain, the period of holding in this case shall be 36 months instead of 12 months.

Provided that the provisions section 111A shall not apply in respect of any income arising from transfer of units of a business trust which were acquired in consideration of a transfer referred to in section 47(xvii). See para (c) below.

(c) Exchange of shares in special purpose vehicle (SPV) with units of the business trust shall not be regarded as transfer [Section 47(xvii)]:

The Act has inserted section 47(xvii) to provide that any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor shall not be regarded as transfer.

Explanation.—For the purposes of this clause, the expression "special purpose vehicle" shall have

the meaning assigned to it in the Explanation to section 10(23FC). See para (d) below.

Thus, in case of capital gains arising to the sponsor at the time of exchange of shares in SPVs with units of the business trust, the taxation of gains shall be deferred and taxed at the time of disposal of units by the sponsor.

However, as mentioned para in (a) and (b) above, the benefit of section 10(38) and section 111A will not be available to the sponsor in respect of these units at the time of disposal.

Consequential amendments due to insertion of section 47(xvii)

1. Cost of acquisition of units in the hands of the sponsor. As per section 49(2AC) inserted by the Finance (No. 2) Act, 2014, for the purpose of computing capital gain, the cost of these units shall be considered as cost of the shares to the sponsor.
2. Period of holding of the unit in the hands of the sponsor. The Act has inserted clause (hc) in Explanation 1 to section 42A to provide that in the case of a capital asset, being a unit of a business trust, allotted pursuant to transfer of share or shares as referred to in section 47(xvii), there shall be included the period for which the share or shares were held by the assessee i.e. sponsor.

(d) Interest received by the business trust from SPV to be exempt but taxable in the hands of the unit holder [Section 10(23FC) and section 194LBA]

The Act has inserted 10(23FC) to provide that any income of a business trust by way of interest received or receivable from a special purpose vehicle shall be exempt.

Explanation.—For the purposes of this clause, the expression "special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust Is granted registration.

Thus, the income by way of interest received by the business trust from SPV is accorded pass through treatment i.e., there is no taxation of such interest income in the hands of the trust. Similarly, there will not be any withholding tax at the level of SPV as clause (xi) has been inserted in section 194A(3) to provide that no tax shall be deductible from any income by way of interest referred to in section 10(23FC).

However, such distributed income or part thereof shall be deemed to be income of unit holder and shall be charged to tax as income of the previous year.

For this purpose, withholding tax in respect of payment of interest component of distributed income to a resident or non-resident unit holder shall be effected by the trust. Consequently, section 194LBA has been inserted w.e.f. 01-10-2014 to provide as under:

(A) TDS on distributed income payable by a business trust to its unit holder being a resident [Section 194LBA(1)] : Where any distributed income referred to in section 115UA, being of the nature referred to in section 10(23FC) (i.e. interest income), is payable by a business trust to its unit holder being a resident, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 10%.

(B) TDS on distributed income payable by a business trust to its unit holder being a non resident [Section 194LBA(2)]: Where any distributed income referred to in section 115UA, being of the nature referred to in section 10(23FC) (i.e. interest income), is payable by a business trust to its unit holder, being a non-resident, not being a company or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.

(e) Benefit of section 194LC also applicable in case of business trust

The Act has amended section 194LC to provide that in case of external commercial borrowings by the business trust, the benefit of reduced rate of 5% tax on interest payments to non-resident lenders shall be available on similar conditions, for such period as is provided in the section.

(f) SPV liable to pay DDT on dividend distributed by it to the business trust but the same if distributed shall be exempt in the hands of the unit holder

The dividend received by the business trust shall be subject to dividend distribution tax at the level of SPV. Hence it is not taxable in the hands of the business trust.

Further section 10(23FD) has been inserted to provide as under:

Any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in section 10(23FC) shall be exempt.

AMENDMENTS RELATING TO INCOME-TAX AUTHORITIES

55. Income-tax Authorities [Section 116] [W.r.e.f. 01-06-2013]

Section 116 specifies income-tax authorities for the purposes and section 117 states that the Central Government may appoint such persons as it thinks fit to be income-tax authorities. The income-tax authorities enumerated under section 116 include Central Board of Direct taxes, Directors-General of Income-tax or Chief Commissioners of Income-tax, Directors of Income-tax or Commissioners of Income-tax etc.

In view of the creation of new income-tax authorities, the Finance (No. 2) Act, 2014 has amended the aforesaid section 116 so as to include the newly created income-tax authorities i.e. "Principal Chief Commissioner of Income-tax", "Principal Commissioner of Income-tax", "Principal Director General of Income-tax" and "Principal Director of Income-tax" to mean a person appointed to be an income-tax authority under section 117.

56. Power to issue orders in certain cases by way of relaxation or otherwise [Section 119(2)(a)]

The existing section 119(2)(a) provides that the Board may, if it considers it necessary or expedient so to do for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time, general or special order in respect of any class of income or class of cases may be by way of relaxation of any of the provisions of sections 115P, 115S, 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1 A), 210, 211, 234A, 234B, 234C, 271, 273 and from 1.4.2006 onwards also sections 115WD, 115WF, 115WG, 115WHand 115WK or otherwise.

The Finance (No. 2) Act, 2014 has inserted section 234E in the above section 119(2)(a) so that relaxation can also be given for this section.

AMENDMENTS RELATING TO SEARCH AND SURVEY

57. Power of survey [Section 133A] [W.e.f. 1-10-2014]

(A) Books of account or other document can now be impounded for 15 days instead of 10 days without approval of prescribed Income Tax Authority

The existing provision contained in section 133A enables the Income-tax authority to enter any premises in which business or profession is carried out for the purposes of survey. An income-tax authority acting under this section may impound and retain in his custody any books of account or documents inspected by him during the course of survey. However, he shall not retain in his custody any such books of account or document for a period exceeding 10 days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be.

An income-tax authority acting under section 133A has the powers as conferred upon it under section 131(1). With a view to align the time period and the authority for approval beyond the specified time period the Finance (No. 2) Act, 2014 has substituted the proviso (b) in section 133A(3)(/a) to provide that an income-tax authority under section 133A shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (instead of 10 days) (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director therefor, as the case may be.

(B) Survey may also be conducted for verifying the compliance of the provisions of TDS and TCS [Section 133A(2A)] [W.e.f. 1-10-2014]

The Finance (No. 2) Act, 2014 has inserted section 133A(2A) to provide that an income-tax authority may

for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B (relating to TDS) or Chapter XVII-BB (relating to TCS), as the case may be, enter any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated where books of account or documents are kept. The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

(ii) to furnish such information as he may require in relation to such matter.

Consequently, section 133A(3) will also now become applicable in case of survey for compliance of provision of TDS and TCS. Thus an income-tax authority during such survey may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, a proviso has been inserted in section 133A(3) to provide that while acting under section 133A(2A) (discussed above), the Income Tax Authority shall not:

(a) impound and retain in his custody any books of account or documents inspected by him or

(b) make an inventory of any cash, stock or other valuables.

58. Assessment of income of a person other than the person who has been searched [Section 153C] [W.e.f. 1-10-2014]

Section 153C relates to assessment of income of any other person. The existing provisions contained in section 153C(1) provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153 A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153 A.

The Finance (No. 2) Act, 2014 has amended section 153C(1) to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153 A if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in section 153A(1).

In other words, the Assessing Officer to whom the books of account or documents or assets seized or requisitioned have been handed over, before proceeding under section 153A, will have to record the satisfaction that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in section 153A(1). Thus, proceedings under section 153A(1) read with section 153C can be taken by him only for those assessment year or years to which undisclosed income belong instead of past six assessment years.

59. Inquiry by prescribed income-tax authority [Section 133C] [W.e.f. 1-10-2014]

With a view to enable prescribed income-tax authority to verify the information in its possession relating to any person, the Finance (No. 2) Act, 2014 has inserted a new section 133C so as to provide that for the

purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him, on or before a date to be therein specified, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under the Income-tax Act.

AMENDMENTS RELATING TO FILING OF RETURNS

60. Mutual Funds, Securitisation Trusts and Venture Capital Companies or Venture Capital Funds to file return of income [Section 139(4C)] [W.e.f. A.Y. 2015-16]

Section 10(23D) exempts the income of a Mutual Fund, section 10(23DA) exempts the income of a securitisation trust from the activity of securitisation and section 10(23FB) exempts the income of a venture capital company (VCC) or venture capital fund (VCF) from investment in a venture capital undertaking. The Mutual Fund or securitisation trust or VCC or VCF are not obligated to furnish their return of income under section 139. Instead they are required to furnish a statement giving details of the nature of the income paid or credited during the previous year and such other relevant details as may be prescribed.

The Act has amended section 139(4C) so as to provide that Mutual Fund referred to in section 10(23D), Securitization trust referred to in section 10(23DA) and Venture Capital Company or Venture Capital Fund referred to in section 10(23FB) shall, if the total income in respect of which such fund, trust or company is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed forms and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions, so far as may be, apply as if it were a return required to be furnished under section 139(1).

61. Business trusts will also be required to file return of income [139(4E)] [W.e.f. A.Y. 2015-16]

Every business trust, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of its income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply if it were a return required to be furnished under section 139(1).

62. Signing and verification of return of income [Section 140] [W.e.f. 1-10-2014]

The existing provisions under section 140 provide that the return under section 139 shall be signed and verified in the manner specified therein.

With a view to enable the verification of returns either by a sign in manuscript or by any electronic mode, section 140 has been amended so as to provide that the return shall be verified by the persons specified therein. The manner of verification of return is prescribed under section 139.

AMENDMENTS RELATING TO ASSESSMENT

63. Estimate of value of assets by Valuation Officer [Section 142A] [W.e.f. 01-10-2014]

Under the existing provisions contained in section 142A, the Assessing Officer may, for the purpose of making an. assessment or reassessment, require the Valuation Officer to make an estimate of the value of any investment referred to in section 69 or 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or 69B or fair market value of any property referred to in section 56(2). On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purposes of assessment or reassessment.

Section 142A does not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer.

Accordingly, old section 142A has been substituted by new section 142A so as to provide as under:

(A) Reference by Assessing Officer to the Valuation Officer for estimate of the value including fair market value of any asset, property, or investment [Section 142A(1) and (2)]

(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a

reference to the Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(B) Power of Valuation Officer and procedure to make the estimate of the value of the asset, property or investment [Section 142A(3), (4) and (5)]

(1) The Valuation Officer, on a reference being made, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957.

(2) The Valuation Officer shall estimate the value of the asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(3) If the assessee does not co-operate or comply with the directions of the Valuation Officer, he may, estimate the value of the asset, property or investment to the best of his judgment.

(C) Time period of submitting valuation report [Section 142A(6)]

The Valuation Officer shall send a copy of the report of the estimate made by him under section 142A(4) and (5) to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made.

(D) Assessing Officer may take such report into account in making assessment or reassessment [Section 142A(7)]

The Assessing Officer on receipt of the report from the Valuation Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Consequential amendments for extension of time limit for completion of assessment and reassessment specified under section 153 and 153B: The Act has amended sections 153 and 153B so as to provide that the time period beginning with the date on which the reference is made to the Valuation Officer and ending with the date on which his report is received by the Assessing Officer shall be excluded from the time limit provided under the aforesaid sections for completion of assessment or reassessment.

In other words, the time limit of completion of assessment and reassessment will be extended by the period taken by the Valuation Officer for submission of valuation report.

64. Income Computation and Disclosure Standards [Section 145] [W.e.f. A.Y. 2015-16]

Section 145 provides that the method of accounting for computation of income under the heads "Profits and gains of business or profession" and "Income from other sources" can either be the cash or mercantile system of accounting. The Finance Act, 1995 empowered the Central Government to notify Accounting Standards (AS) for any class of assessees or for any class of income. Since the introduction of these provisions, only two Accounting Standards relating to disclosure of accounting policies and disclosure of prior period and extraordinary items and changes in accounting policies have been notified.

The Central Board of Direct Taxes (CBDT) had constituted an Accounting Standard Committee in 2010. The Committee has submitted its Final Report in August, 2012. The Committee recommended that the AS notified under the Act should be made applicable only to the computation of taxable income and a taxpayer should not be required to maintain books of account on the basis of AS notified under the Act. The Final Report of the Committee was placed in public domain for inviting comments from stakeholders and general public. After examining the comments/suggestions, the Committee inter alia recommended that the provisions of section 145 may be suitably amended to clarify that the notified AS are not meant for maintenance of books of account but are to be followed for computation of income.

In order to clarify that the standards notified under section 145(2) are to be followed for computation of income and disclosure of information by any class of assessees or for any class of income, it is provided that the Central Government may notify in the Official Gazette from time to time income computation and

disclosure standards to be followed by any class of or in respect of any class of income. It is further provided that the Assessing Officer may make an assessment in the manner provided in section 144, if the income has not been computed in accordance with the standards notified under section 145(2).

65. Exclusion from time limit provided for completion of assessment, etc. [Section 153 and 153B] [W.e.f. 1-10-2014]

See Point no. 63.

AMENDMENTS RELATING TO TDS

66. No TDS on interest income of a business trust received from a special purpose vehicle [Section 194A] [W.e.f. 1-10-2014]

See Point no. 54.

67. Tax deduction at source from non-exempt payments made under life insurance policy [Section 194DA] [W.e.f. 1-10-2014]

Under the existing provisions of section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section. Therefore, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) are taxable under the provisions.

In order to have a mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempted under section 10(10D), the Act has inserted a section 194DA to provide for deduction of tax at the rate of 2% on sum paid under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D).

However, no deduction under this section shall be made if the aggregate sum paid in a financial year to an assessee is less than ₹ 1,00,000.

68. TDS on income distributed by a business trust [Section 194LBA] [W.e.f. 01-10-2014]

See point no. 54.

69. Concessional rate of tax on overseas borrowing [Section 194LC] [W.e.f. 01-10-2014]

The existing provisions of section 194LC provide for lower withholding tax rate of 5% on interest paid by an Indian company to non-residents on monies borrowed by it in foreign currency from a source outside India under a loan agreement or through issue of long-term infrastructure bonds at any time on or after 01- 07-2012 but before 01-07-2015 subject to certain conditions.

In order to further incentivise low cost long-term foreign borrowings by Indian companies, the Act has made the following changes in section 194LC:

(i) The benefit of concessional rate has also been made applicable to a business trust besides the Indian company.

(ii) Money borrowed in foreign currency from a source outside India should be:

(a) under a loan agreement at any time on or after 01-07-2012 but before 01-07-2017; or

(b) by way of issue of long-term infrastructure bonds at any time on or after 1-7-2012 but before 1-10-2014; or

(c) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after 1-10-2014 but before 01-07-2017,

In other words, the Act has extended the benefit of this concessional rate of withholding tax to borrowings by way of issue of any long-term bond, and not limited to a long term infrastructure bond. Further, the period of borrowing for which the said benefit shall be available has been extended by two years. Thus, the concessional rate of withholding tax will now be available in respect of borrowings made before 1- 07-2017 instead of 1- 07-2015.

Consequential amendment in section 206AA: Section 206AA provides for levy of higher rate of

withholding tax in case the recipient of income does not provide permanent account number to the deductor. An exception from applicability of section 206AA in respect of payment of interest on long-term infrastructure bonds eligible for benefit under section 194LC is currently provided in section 206AA(7).

Since, the benefit of lower withholding tax rate of 5% has now been made available under section 194LC to issue of any long-term bond instead of long-term infrastructure bond, section 206AA(7) has been amended to ensure that this benefit of exemption is extended to payment of interest on any long-term bond referred to in section 194LC.

70. Amendments in the provisions relating to filing, processing of quarterly statement, penalty thereto, etc. [Sections 200,200A, 201 & 271H] [W.e.f. 1-10-2014]

(A) Filing of correction statement [Proviso to section 200(3)]: Under Chapter XVII-B, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. The person deducting tax ('the deductor') is required to file a quarterly statement of tax deduction at source (TDS) containing the prescribed details of deduction of tax made during the quarter by the prescribed due date.

Currently, a deductor is allowed to file correction statement for rectification/updation of the information furnished in the original TDS statement as per the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013 notified vide Notification No.03/2013 dated 15-01-2013. However, there does not exist any express provision in the Act for enabling a deductor to file correction statement.

In order to bring clarity in the matter relating to filing of correction statement, the Act has inserted the following proviso to section 200(3):

Provided that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

(B) Consequential amendment in section 200A: Since proviso to section 200(3) now allows the deductor to file correction statements, consequently, section 200A has been amended for enabling processing of correction statement as well.

(C) Extension of period for which assessee shall be deemed to be in default for failure to deduct tax [Section 201(3)]: The existing provisions of section 201(1) provide for passing of an order deeming a payer as assessee in default if he does not deduct or does not pay or after deduction fails to pay the whole or part of the tax as per the provisions of Chapter XVII-B.

As per existing section 201(3), no order shall be made under section 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of—

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;
(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case:

Section 201(3) has been substituted by the Finance (No. 2) Act, 2014, w.e.f. 1-10-2014 as under:
No order shall be made under section 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

(D) Competent authority to levy penalty under section 271H specified: The existing provisions of section 271H provides for levy of penalty for failure to furnish TDS/TCS statements in certain cases or furnishing of incorrect information in TDS/TCS statements. The existing provisions of section 271H do not specify the authority which would be competent to levy the penalty under the said section. Therefore, provisions of section 271H have been amended to provide that the penalty under section 271H shall be levied by the Assessing officer.

AMENDMENTS RELATING TO PAYMENT OF INTEREST

71. Interest payable by the assessee [Section 220] [W.e.f. 1-10-2014]

The existing provision contained in section 220(1) and (2) are as under:

(1) **Section 220(1)** provides that any amount specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of notice at the place and to the person mentioned in the notice.

(2) **Section 220(2)** states that if the amount specified in the notice is not paid within the period, the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the-period commencing from the day immediately following the end of the period mentioned in section 220(1) and ending with the day on which the amount is paid.

(3) **The first proviso to section 220(2)** states that where as a result of an order under sections 154, 155, 250, 254, 260, 262, 264 or section 245D(4), the amount on which interest payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

Liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back. Accordingly, section 220(1A) has been inserted so as to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect-as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

Further, existing second proviso under section 220(2) has been made as third proviso and a new second proviso has been inserted under section 220(2) to provide that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under section 220 is increased, the assessee shall be liable to pay interest under section 220(2) on the amount payable as a result of such order, from the day immediately following the end of the period mentioned in the first notice of demand referred to in section 220(1) section and ending with the day on which the amount is paid.

AMENDMENT RELATING TO SETTLEMENT COMMISSION

72. Scope of proceedings for which application can be made to Settlement Commission expanded

The existing provision for making the application to the Settlement Commission provide asunder:

An assessee may make an application for settlement to Settlement Commission at any stage of a case relating to him which is pending before an Assessing Officer on the date of making such application.

Meaning of case [Section 245A(b)]: "Case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under section 245C(1) is made.

Proceeding of assessment for which application cannot be made to Settlement Commission [Proviso to section 245A(b)]: As per the proviso, in case of the following proceeding through pending before the Assessing Officer, the assessee shall not be allowed to make the application to the Settlement Commission:

(i) a proceeding for assessment or reassessment or recomputation under section 147.

(ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment.

Amendment made by the Finance (No. 2) Act, 2014 [W.e.f. 1-10-2014)

The above proviso to section 245A(b) has been omitted w.e.f. 1-10-2014 and hence now application to

Settlement Commission can also be made in case of the following if proceeding of the same are pending:

(i) a proceeding for assessment or reassessment or recomputation under section 147.

These proceeding shall be deemed to have commenced from the date on which a notice under section 148 is issued;

(ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment.

These proceedings shall be deemed to have commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed.

Proceedings of assessment for which application can be made to Settlement Commission after amendment: From the above, it may be observed that the application to Settlement Commission can be made for the following proceedings for assessment in respect of assessment year or assessment years which is/are pending before the Assessing Officer on the date on which application under section 24C(1) is made:

(a) a proceeding for assessment or reassessment or recomputation under section 147.

These proceeding shall be deemed to have commenced from the date on which a notice under section 148 is issued;

(b) a proceeding for assessment or reassessment for 6 assessment years immediately preceding the assessment year in which search is conducted in case of a person referred to in section 153 A or 153C.

(c) a proceeding for assessment or re-assessment for the assessment year relevant to the previous year in which search in conducted or books are requisitioned under section 132A in case of a person referred to in section 153A or 153C.

The above proceedings shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which assessment is made.

(d) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment.

These proceedings shall be deemed to have commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed.

(e) a proceeding for assessment for any assessment year other than the proceeding of assessment or reassessment referred to in clause (a) to (d) above. In other words, it is for proceedings for assessment u/s 143 or section 144.

The above proceeding shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

73. Amendment relating to settlement commission under wealth tax

Like amendments in income tax, similar amendments have been made in section 22A of the Wealth Tax Act. Thus, the application to the Settlement Commission under wealth tax can also be made in the following cases:

(1) Proceeding for assessment or reassessment under section 17

These proceeding shall be deemed to have commenced from the date on which a notice under section 17 is issued;

(2) a proceeding for making fresh assessment in pursuance of an order under section 23A or section 24 or section 25, setting aside or cancelling an assessment.

These proceedings shall be deemed to have commenced from the date on which the order under section 23A or section 24 or section 25, setting aside or cancelling an assessment was passed.

AMENDMENTS RELATING TO ADVANCE RULING

74. Advance ruling can now be obtained by a resident also [Section 245N] [W.e.f. 1-10-2014]

Existing provisions relating to meaning of Advance Ruling is as under:

(a) "Advance ruling" means:

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by resident applicant with such non-resident.

In both the above cases, such determination shall include the determination of any question of law or of fact specified in the application;

(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal;

(iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not (applicable w.e.f. 01- 04-2015).

Further, such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.

Amendment made by the Finance (No. 2) Act, 2014 [W.e.f. 1-10-2014]

The Act has inserted the following clause (iia) in the above definition of advance ruling:

"a determination by the Authority in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant"

Hence, certain class or category of resident applicant will now also be allowed to obtain advance ruling.

Similarly, existing provisions relating to meaning of "applicant" is as under:

(b) "Applicant" means any person who—

(i) is a non-resident for a transaction which has been undertaken or is proposed to be undertaken by him; or

(ii) is a resident for a transaction which has been undertaken or is proposed to be undertaken by him with a non-resident; or

(iii) is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf, or

(iv) a resident or non-resident referred to in clause (iv) above i.e. the person who proposes to undertake an arrangement referred to in Chapter XA.

and makes an application under sub-section (1) of section 245Q.

Amendment made by the Finance (No. 2) Act, 2014 [01-10-2014]

The Act has inserted the following clause (iia) to the above definition of applicant:

"is a resident (referred to in sub-clause (iia) of clause (a) of the meaning of advance ruling given above) falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify".

75. Constitution of Authority for Advance Ruling enlarged to have more Benches [Section 245-O] [W.e.f. 1-10-2014]

The Finance (No. 2) Act, 2014 has enlarged the Constitution of Authority for Advance Ruling as under:

(1) The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue

Members and law Members as the Central Government may, by notification, appoint.

(2) A person shall be qualified for appointment as—

(a) Chairman, who has been a Judge of the Supreme Court;

(b) Vice-chairman, who has been Judge of a High Court;

(c) a revenue Member from the Indian Revenue Service, who is a Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General;

(d) a law Member from the Indian Legal Service, who is an Additional Secretary to the Government of India.

(3) The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

(4) The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under this Act

(5) The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.

(6) A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

(7) The Authority shall be located in the-National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

OTHER AMENDMENTS

76. Mode of acceptance or repayment of loans and deposits also allowed by use of electronic clearing system through a bank [Section 269SS and 269T] [W.e.f. A.Y. 2015- 16]

The existing provisions contained in section 269SS, inter alia, provide that no person shall take from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft, if the amount of such loan or deposit or aggregate of such loans or deposits is ₹ 20,000 or more. Similarly, the existing provisions of section 2691, inter alia, provide that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft, if the amount of such loan or deposit together with interest or the aggregate amount of such loans or deposits together with interest, if any payable thereon, is ₹ 20,000 or more.

In the present times many banking transactions take place by way of internet banking facilities or by use of payment gateways. Accordingly, the Act has amended the provisions of the said sections 269SS and 269T so as to provide that any acceptance or repayment of any loan or deposit by use of electronic clearing system through a bank account shall not be prohibited under the said sections if the other conditions regarding the quantum etc. are satisfied.

77. Obligation to furnish statement of Information [Sections 271FA, 271FAA and 285BA] (W.e.f. A.Y. 2015-16]

(A) The existing provisions of section 285BA provide for filing of an Annual Information Return by specified persons in respect of specified financial transactions which are registered or recorded by them and which are relevant and required for the purposes to the prescribed income-tax authority.

With a view to facilitate effective exchange of information in respect of residents and non-residents, the Finance (No. 2) Act, 2014 has substituted the existing section 285BA by making the following changes:

(1) the existing heading "Annual Information Return" of section 285BA has been substituted by the new heading "Obligation to Furnish Statement of Financial Transaction or Reportable Account"

(2) the furnishing of statement by a prescribed reporting authority or a prescribed reporting financial institution shall be in respect of a such specified financial transaction or such reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purpose of this Act to the

prescribed income-tax authority or such other authority or agency as may be prescribed.

(3) the statement of information shall be furnished within such time, in the form .and manner as may be prescribed.

(4) where any person, who has furnished a statement of information under section 285BA(1), or in pursuance of a notice issued under section 285BA(5), comes to know or discovers any inaccuracy in the information provided in the statement, then, he shall, within a period of 10 days, inform the income-tax authority or other authority or agency referred to in sub-section (1) the inaccuracy in such statement and furnish the correct information in the manner as may be prescribed.

(5) The Central Government may, by rules, specify,—(a) the persons referred to in subsection (1) of section 285BA to be registered with the prescribed income-tax authority; (b) the nature of information and the manner in which such information shall be maintained by the persons referred to in (a) above; and (c) the due diligence to be carried out by the persons referred in (a) for the purpose of identification of any reportable account referred to in sub-section (1) of section 285BA.

(B) Amendment made in section 271FA: Since the heading of section 285BA has been substituted from "Annual Information Return" to "Obligation to Furnish Statement of Financial Transaction or Reportable Account", the existing provisions of section 271FA which provide for penalty for failure to furnish an Annual Information Return will now be substituted by penalty for failure to furnish statement of financial transaction or reportable account.

(C) Penalty for furnishing inaccurate statement under section 285BA [Section 271FAA]: The Finance (No. 2) Act, 2014 has inserted a new section 271 FA A so as to provide that if a person referred to in clause (k) of sub-section (1) of section 285BA, who is required to furnish a statement of financial transaction or reportable account, provides inaccurate information in the statement and where, the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section (7) of section 285BA or is deliberate on the part of the person; or

(a) the person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency; or

(b) the person discovers the inaccuracy after the statement of financial transaction or reportable account is furnished and fails to inform and furnish correct information within the time specified under sub-section (6) of section 285BA,

then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of ₹50,000.

78. Levy of Penalty by Transfer Pricing Officers [Section 271G] [W.e.f. 1-10-2014]

The existing provisions of section 271G provide that if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such document or information as required by sub-section (3) of section 92D, then such person shall be liable to a penalty which may be levied by the Assessing Officer or the Commissioner (Appeals).

Section 92CA provides that an Assessing Officer may make reference to a Transfer Pricing Officer (TPO) for determination of arm's length price (ALP). TPO has been defined in the said section to mean a Joint Commissioner or Deputy Commissioner or Assistant Commissioner who is authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D. The determination of arm's length price in several cases is done by the TPO.

The Finance (No. 2) Act, 2014 has amended section 271G to include TPO, as referred to in Section 92CA, as an authority competent to levy the penalty under section 271G in addition to the Assessing Officer and the Commissioner (Appeals).

79. Prosecution in case of failure to produce accounts and documents [Section 276D] [W.e.f. 1-10-2014]

The existing provisions of section 276D provide that if a person willfully fails to produce accounts and documents as required in any notice issued under section 142(1) or willfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may

extend to one year or with fine equal to a sum calculated at a rate which shall not be less than ₹ 4 or more than ₹ 10 for every day during which the default continues, or with both.

The Finance (No. 2) Act, 2014 has amended section 276D so as to provide that if a person willfully fails to produce accounts and documents as required in any notice issued under section 142(1) or willfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

80. Provisional attachment [Section 281B] [W.e.f. 1-10-2014]

The existing provisions of section 281 B(1) provide that the Assessing Officer, during the pendency of any proceeding for assessment or reassessment, in order to protect the interest of revenue may, with the previous approval of the Chief Commissioner of Commissioner, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. Section 281B(2) provides that the provisional attachment shall cease to have effect after the expiry of 6 months provided that the Chief Commissioner or Commissioner may extend the period upto a total period of two years.

The Finance (No. 2) Act, 2014 has amended the proviso to section 281B(2) so as to provide that the Chief Commissioner, Commissioner, Director General or Director may extend the period of provisional attachment so that the total period of extension does not exceed two years or upto sixty days after the date of assessment or reassessment, whichever is later.

Note:

(1) For any issue relating to controversy in provisions, refer Bare Act., which shall prevail.

(2) The amendments are compiled in line with the recommendations of the stated finance act. However, it must be read with all relevant notifications, circulars - provided such are issued at least 6(six) months prior to the month of examination of the Institute. Accordingly, such notifications would be applicable for the examinations. However, notifications/circulars issued but the time gap is less than 6(six) months from the month of examination, such shall not be made applicable.

(3) Institute reserves the rights to declare applicability/ non-applicability of any provision and such declaration shall be made by circular/notification from the Institute.