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Government of India  
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Department of Revenue  
(Central Board of Direct Taxes)**

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**Dated, the 21st January, 2015**

# **EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE(No.2) ACT, 2014**

**CIRCULAR**  
**INCOME-TAX ACT**

**Finance (No.2) Act, 2014 – Explanatory Notes to the Provisions of the Finance (No.2) Act, 2014**

**CIRCULAR NO. -01/2015, DATED 21st JANUARY, 2015**

**AMENDMENTS AT A GLANCE**

<b>Section/Schedule</b>	<b>Particulars/Paragraph number</b>
	<b>Finance (No.2) Act, 2014</b>
First Schedule	Rate Structure, <b>3.1 - 3.4</b>
	<b>Income-tax Act, 1961</b>
2	Characterisation of Income in case of Foreign Institutional Investors, <b>4.1 - 4.3</b> ; Long-term Capital Gains on debt oriented Mutual Fund and its qualification as Short-term capital asset, <b>5.1 - 5.3</b> .
10	Clarification in respect of section 10(23C), <b>6.1 - 6.4</b> .
11	Rationalisation of taxation regime in the case of charitable trusts and institutions, <b>7.1 - 7.6</b> .
12A	Applicability of the registration granted to a trust or institution to earlier years, <b>8.1 - 8.6</b> .
12AA	Cancellation of registration of the trust or institution in certain cases, <b>9.1 - 9.5</b> .
24	Deduction from income from house property, <b>10.1-10.3</b> .
32AC	Investment Allowance to a Manufacturing Company, <b>11.1 - 11.4</b> .
35AD	Deduction in respect of capital expenditure on specified business, <b>12.1 - 12.10</b> .
37	Corporate Social Responsibility (CSR), <b>13.1 - 13.4</b> .
40	Disallowance of expenditure for non- deduction of tax at source, <b>14.1 - 14.8</b> .
43	Speculative transaction in respect of commodity derivatives, <b>15.1 - 15.3</b> .
44AE	Business of Plying, Hiring or Leasing Goods Carriages, <b>16.1 - 16.2</b> .

45	Capital gains arising from transfer of an asset by way of compulsory acquisition, <b>17.1 - 17.4.</b>
47	Transfer of Government Security by one non-resident to another non-resident, <b>18.1 - 18.3.</b>
48	Cost Inflation Index, <b>19.1 - 19.3.</b>
54	Capital gains exemption in case of investment in a residential house property, <b>20.1 - 20.5.</b>
54EC	Capital gains exemption on investment in Specified Bonds, <b>21.1 - 21.4.</b>
56	Taxability of advance for transfer of a capital asset, <b>22.1 - 22.6.</b>
73	Losses in Speculation Business, <b>23.1 - 23.3.</b>
80C	Raising the limit of deduction under section 80C, <b>24.1- 24.4.</b>
80CCD	Extension of tax benefits under section 80CCD to private sector employees, <b>25.1 - 25.3.</b>
80-IA	Extension of the sunset date under section 80-IA for the power sector, <b>26.1 - 26.3.</b>
92B	Rationalisation of the definition of International Transaction, <b>27.1 - 27.4.</b>
92C	Providing for use of range concept in determination of Arm's Length Price, <b>28.1 - 28.4.</b>
92CC	Roll back provision in Advance Pricing Agreement Scheme, <b>29.1 - 29.4.</b>
112	Tax on long-term capital gains on units, <b>30.1 - 30.3.</b>
115BBC	Anonymous donations under section 115BBC, <b>31.1- 31.4.</b>
115BBD	Reduction in tax rate on certain dividends received from foreign companies, <b>32.1 - 32.3.</b>
115JC	Alternate Minimum Tax, <b>33.1 - 33.4.</b>
115JEE	Credit of Alternate Minimum Tax, <b>34.1 – 34.3.</b>
115-O	Dividend Distribution Tax, <b>35.1 - 35.8</b>
115R	Income Distribution Tax, <b>35.1 - 35.8.</b>
Chapter XII-FA consisting of section 115UA	Taxation Regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invit), <b>36.1 - 36.5.</b>
116	Income-tax Authorities, <b>37.1 - 37.3.</b>

119	Enabling CBDT to relax provisions relating to levy of fee under section 234E, <b>38.1 - 38.4.</b>
133A	Power of Survey, <b>39.1 - 39.5.</b>
133C	Inquiry by prescribed income-tax authority, <b>40.1- 40.2.</b>
139	Mutual Funds, Securitisation Trusts and Venture Capital Companies or Venture Capital Funds to file return of income, <b>41.1 - 41.5.</b>
140	Signing and verification of return of income, <b>42.1 - 42.3.</b>
142A	Estimate of value of assets by Valuation Officer and time limit for completion of assessments where reference made, <b>43.1 - 43.6.</b>
145	Income Computation and Disclosure Standards, <b>44.1-44.4.</b>
153C	Assessment of income of a person other than the person who has been searched, <b>45.1- 45.3.</b>
194DA	Tax deduction at source from non-exempt payments made under life insurance policy, <b>46.1 - 46.3.</b>
194LC	Concessional rate of tax on overseas borrowing, <b>47.1-47.6.</b>
200	Tax Deduction at Source, <b>48.1- 48.4.</b>
200A	Tax Deduction at Source, <b>48.1- 48.4.</b>
201	Tax Deduction at Source, <b>48.1- 48.4.</b>
220	Interest payable by the assessee under section 220, <b>49.1- 49.4.</b>
245A	Enlarging the scope of Settlement Commission, <b>50.1-50.3.</b>
245N	Enlarging the scope of Authority for Advance Rulings, <b>51.1- 51.5.</b>
245-O	Expansion of Authority for Advance Rulings, <b>51.1-51.5.</b>
269SS	Mode of acceptance of loans and deposits, <b>52.1- 52.3.</b>
269T	Mode of repayment of loans and deposits, <b>52.1- 52.3.</b>
271G	Levy of Penalty under section 271G by Transfer Pricing Officers, <b>53.1 - 53.4.</b>
276D	Failure to produce accounts and documents, <b>54.1-54.3.</b>
281B	Provisional attachment under section 281B, <b>55.1-55.3.</b>
285BA	Obligation to furnish statement of Information, <b>56.1-56.7.</b>
	<b>Unit Trust of India (Transfer of Undertaking and</b>

	<b>Repeal) Act, 2002</b>
13	Extension of income-tax exemption to Specified Undertaking of Unit Trust of India (SUUTI), <b>57.1 - 57.3.</b>

## 1. Introduction

**1.1** The Finance (No.2) Act, 2014 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 6th day of August, 2014 and has been enacted as Act No. 25 of 2014. This circular explains the substance of the provisions of the Act relating to direct taxes.

## 2. Changes made by the Act

**2.1** The Act has-

(i) specified the rates of income-tax for the assessment year 2014-15 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2014-15.

(ii) amended sections 2,10, 10AA, 11, 12A, 12AA, 24, 32AC, 35AD, 37, 40, 43, 44AE, 45, 47, 48, 49, 51, 54, 54EC, 54F, 56, 73, 80C, 80CCD, 80CCE, 80-IA, 92B, 92C, 92CC, 111A, 112, 115A, 115BBC, 115BBD, 115JC, 115JEE, 115-O, 115R, 115TA, 116, 119, 133A, 139, 140, 145 153, 153B, 153C, 194A, 194LC, 200, 200A, 201, 206AA, 220, 245A, 245N, 245-O, 269SS, 269T, 271FA, 271G, 271H, 276D and 281B of the Income-tax Act, 1961;

(iii) Substituted new sections for sections 142A and 285BA;

(iv) inserted new sections 133C, 142A, 194DA, 194LBA and 271FAA in the Income-tax Act, 1961;

(v) inserted Chapter XII-FA consisting of section 115UA in the Income-tax Act, 1961;

(vi) amended sections 22A of the Wealth-tax Act, 1957;

(vii) amended sections 97 and 98 of the Finance (No.2) Act, 2004;

(viii) amended section 13 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

## 3. Rate structure

### 3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2014-15

3.1.1 In respect of income of all categories of assesseees liable to tax for the assessment year 2014-15, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2013 for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases during the financial year 2013-14.

The main features of the rates specified in the said Part I are as follows:

#### 3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person. –

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India, who is of the age of eighty years or more. (very senior citizen)
Up to Rs. 2,00,000	<i>Nil</i>	<i>Nil</i>	
Rs. 2,00,001 - Rs. 2,50,000			<i>Nil</i>
Rs. 2,50,001 - Rs. 5,00,000	10%	10%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

For instance, if the income of an individual is Rs. 1,01,00,000 and income-tax computed is Rs. 28,60,000. Surcharge on the income-tax at the rate of 10% of such tax is Rs. 2,86,000. Thus the total income-tax inclusive of surcharge is Rs. 31,46,000 without providing marginal relief. On providing marginal relief, the income-tax inclusive of surcharge shall be limited to Rs. 29,60,000. Then the education cess of two per cent is to be computed on Rs. 29,60,000 which works out to Rs. 59,200. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax which for the present case of income-tax of Rs. 29,60,000 works out to be Rs. 29,600. Thus, where the amount of tax computed is Rs. 29,60,000, the Education Cess of two per cent is Rs. 59,200, the Secondary and Higher is Rs. 29,600. The total cess in this case will amount to Rs. 88,800 (*i.e.*, Rs. 59,200 + Rs. 29,600). No marginal relief shall be available in respect of such Cess.

### 3.1.3 Co-operative Societies

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows:-

<b>Income chargeable to tax</b>	<b>Rate</b>
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as

income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

#### **3.1.4 Firms –**

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

**3.1.5 Local Authorities** –In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.



The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.1.6 Companies –**

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of five per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of ten per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or an Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent. where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge. No marginal

relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2014-15.**

**3.2.1** In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2014-15 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2014 -15 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2013.

#### **3.2.2 Surcharge –**

The tax deducted at source in the following cases shall be increased by a surcharge for purposes of the Union indicated below:-

(i) In case of every non-resident person not being a company, the rate of surcharge is ten percent of tax where the income or aggregate of such income paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(ii) In case of payments made to foreign companies, the rate of surcharge is two per cent of such income tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five percent.

(iii) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm being a resident or a domestic company.

#### **3.2.3 Education Cess –**

Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any, in the cases of persons not resident in India including companies other than domestic company. For instance, if the amount of tax deducted from a foreign company is Rs. 1,20,00,000 and the surcharge at the rate of two per cent. is Rs. 2,40,000, then the education

cess of two per cent is to be computed on Rs. 1,22,40,000 which works out to Rs. 2,44,800.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the earlier illustration, where the amount of tax deducted is Rs. 1,20,00,000, the surcharge is Rs. 2,40,000, the said Secondary and Higher Education Cess will be computed at the rate of one percent on Rs. 1,22,40,000 which works out to be Rs. 1,22,400. The total cess in this case will, therefore, amount to Rs. 3,67,200 (i.e., Rs. 2,44,800 + Rs. 1,22,400).

### **3.3 Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2014-15.**

**3.3.1** The rates for deducting income-tax at source from ‘Salaries’ and computing advance tax during the financial year 2014-15 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2014-15 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

#### **3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person –**

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). The basic exemption limit has been increased from Rs. 2,00,000 to Rs. 2,50,000. The exemption limit in case of resident individuals above the age of sixty years but less than eighty years has also been raised from Rs. 2,50,000 to Rs. 3,00,000. The rates of tax and other slabs of income for various categories remain the same as in financial year 2013-14. The rates of tax during the financial year 2014-15 are as follows:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India, who is of the age of eighty years or more. (very senior citizen)
Up to Rs. 2,50,000	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
Rs. 2,50,001 - Rs. 3,00,000			<i>Nil</i>
Rs. 3,00,001 - Rs. 5,00,000	10%	10%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### 3.3.3 Co-operative Societies

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

<b>Income chargeable to tax</b>	<b>Rate</b>
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### 3.3.4 Firms –

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a firm having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of

such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.5 Local Authorities-**

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income tax and surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.6 Companies-**

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of five per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of ten per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that (i) the total amount payable as income-tax and surcharge on total income

exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed including surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

**3.4 Surcharge on Additional Income-tax** Where additional income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitization trust to its investors, the additional tax so payable shall be increased by a surcharge of ten percent of such tax.

#### **4. Characterisation of Income in case of Foreign Institutional Investors**

**4.1** The provisions contained in clause (14) of section 2 of the Income-tax Act, 1961, before amendment by the Act, defined the term “capital asset” to include property of any kind held by an assessee, whether or not connected with his business or profession, but did not include any stock-in-trade or personal assets as provided in the definition. The foreign portfolio investors [notified as foreign institutional investors for the purposes of the Income-tax Act vide notification S.O. 199(E) dated 22.01.2014] faced a difficulty in characterisation of their income arising from transaction in securities as to whether it is capital gains or business income. Further, the fund manager managing the funds of such investor remained outside India under the apprehension that their presence in India may constitute permanent establishment (PE) and the income arising from transactions in securities held in India may be taxed as business income of PE. In this context, the Finance Minister, in his budget speech, had stated as under –

*“Foreign Portfolio investors (FPIs) have invested more than Rs. 8 lakh crore (about 130 billion US\$) in India. One of their concerns is uncertainty in taxation on account of characterization of their income. Moreover, the fund managers of these foreign investors remain outside India under the apprehension that their presence in India may have adverse tax consequences. With a view to put an end to this uncertainty and to encourage these fund managers to shift to India, I propose to provide that income arising to foreign portfolio investors from transaction in securities will be treated as capital gains.”*

**4.2** Accordingly, clause (14) has been amended to provide that any security held by foreign institutional investor which has invested in such security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 shall be a capital asset and not a current asset. Therefore, any income arising from transfer of such security by a foreign institutional investor would be in the nature of “capital gains”.

**4.3 Applicability:** - This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **5. Qualification of a unit of a debt oriented Mutual Fund and unlisted security as Short-term capital asset**

**5.1** The provisions contained in clause (42A) of section 2 of the Income-tax Act, before amendment made by the Act, provided 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, in the case of a share held in a company or any other security listed in a recognised stock exchange in India or a unit of the Unit Trust of India or a unit of a Mutual Fund or a zero coupon bond, the period of holding for qualifying it as short-term capital asset was not more than twelve months.

**5.2** 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. However, all shares whether listed or unlisted have enjoyed the benefit of short period of holding and even any investment in shares of private limited companies enjoyed long-term capital gains on its transfer after twelve months. Accordingly, clause (42A) of section 2 of the Income-tax Act has been amended so as to provide that an unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be a short-term capital asset if it is held for not more than thirty-six months. However, in the case of share of an unlisted company or a unit of a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, which is transferred during the period beginning on 1<sup>st</sup> April, 2014 and ending on 10<sup>th</sup> July, 2014, the period of holding for its qualification as short-term capital asset shall be not more than twelve months.

**5.3 *Applicability:-*** This amendment takes effect from 1<sup>st</sup> April, 2015 and will accordingly apply, in relation to the assessment year 2015-16 and subsequent assessment years.

## **6. Clarification in respect of section 10(23C) of the Income-tax Act**

**6.1** The provisions of sub-clause (iiiab) and (iiiac) of section 10(23C) of the Income-tax Act provide exemption, subject to various conditions, in respect of income of certain educational institutions, universities and hospitals which exist solely for educational purposes or solely for philanthropic purposes, and not for purposes of profit and which are wholly or substantially financed by the Government.

**6.2** Absence of a definition of the phrase “substantially financed by the Government” had led to litigation and varying decisions of judicial authorities who had, for this purpose, relied upon various other provisions of the Income-tax Act and other Acts. Thus, there has been lack of certainty in this regard.

**6.3** Therefore, clause (23C) of section 10 has been amended by inserting an Explanation below sub-clause (iiiac) of the said clause. It provides that if the Government grant to a university or other educational institution, hospital or other



institution referred to in section 10(23C)(iiiab) or 10(23C)(iiiac) during any previous year exceeds a prescribed percentage of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year. Vide notification No. 79 /2014 dated 12.12.2014, Rule 2BBB has been inserted in the Income-tax Rules. The said Rule provides that any university or other educational institution, hospital or other institution referred to in sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10 of the Income-tax Act shall be considered as being substantially financed by the Government for any previous year if the Government grant to such university, hospital, or institution exceeds 50 percent of its total receipts, including any voluntary contributions, during the said previous year.

**6.4 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **7. Rationalisation of taxation regime in the case of charitable trusts and institutions**

**7.1** The provisions of section 11 of the Income-tax Act 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 of the Income-tax Act provides for the circumstances under which exemption under section 11 or 12 of the said Act in respect of whole or part of income would not be available to a trust or institution.

**7.2** The sections 11, 12, 12A, 12AA and 13 of the Income-tax Act constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption to income, and also the conditions subject to which a charitable trust or institution is required 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.

**7.3** Several issues had arisen in respect of the application of exemption regime to trusts or institutions in respect of which clarity in law was required.

**7.4** The first issue was regarding the interplay of the general provision of exemptions which are contained in section 10 of the Income-tax Act vis-a-vis the specific and special exemption regime provided in sections 11 to 13 of the said Act. As indicated above, 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 had been noted that trusts or institutions which are registered and have been availing 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, 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 held under trust in the first place.

**7.4.1** Sections 11, 12 and 13 of the Income-tax Act 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 litigation.

**7.4.2** Similar situation existed in the context of section 10(23C) of the Income-tax Act 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.

**7.4.3** Therefore, the Income-tax Act has been amended to provide specifically that where a trust or an institution has been granted registration 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 provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)] of the Income-tax Act. Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) of the Income-tax Act would not be entitled to claim any benefit of exemption under other provisions of section 10 of the said Act (except the exemption in respect of agricultural income).

**7.5** The second issue which had arisen was that the existing scheme of section 11 as well as section 10(23C) of the Income-tax Act provided 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. was being claimed and such amount of notional deduction was not being applied for charitable purpose. As a result, double benefit was being claimed by the trusts and institutions. Therefore, these provisions were required to be 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.

**7.5.1** Accordingly, the Income-tax Act has been amended to provide that under section 11 and section 10(23C), income for the purposes of its 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.

**7.6 Applicability:-** These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **8. Applicability of the registration granted to a trust or institution to earlier years**

**8.1** The provisions of section 12A of the Income-tax Act, before amendment by the Act, provided that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA of the said Act has been granted. In case of trusts or institutions which apply for registration after 1st June, 2007, the registration shall be effective only prospectively.

**8.2** Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfil other substantive conditions. However, the power of condonation of delay in seeking registration was not available.

**8.3** In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act 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.

**8.4** Further, it has been provided that no action for reopening of an assessment under section 147 of the Income-tax Act 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.

**8.5** However, the above benefits would not be available in the case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA of the Income-tax Act or a registration once granted was cancelled.

**8.6 Applicability: -** These amendments take effect from 1<sup>st</sup> October, 2014.

## **9. Cancellation of registration of the trust or institution in certain cases**

**9.1.** The provisions of section 12AA of the Income-tax Act, before amendment by the Act, provided that the registration once granted to a trust or institution shall remain in force until it is cancelled by the Commissioner. The Commissioner could cancel the registration 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.

**9.1.1** The Commissioner was empowered to cancel the registration only if either or both of the above conditions were satisfied, and not otherwise.

**9.2** There have been cases where trusts, particularly in the year in which they had substantial income claimed to be exempt under other provisions of the Income-tax Act though they deliberately violated the provisions of section 13 of the said Act by investing in modes other than specified modes, etc. Similarly, there have been cases where the income is not properly applied for charitable purposes or is diverted for the benefit of certain interested persons. However, due to restrictive interpretation of the powers of the Commissioner under the said section 12AA, registration of such trusts or institutions continued to be in force and these institutions continued to enjoy the beneficial regime of exemption.

**9.3** Whereas under section 10(23C) of the Income-tax Act, 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 said 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.

**9.4** Therefore, in order to rationalise the provisions relating to cancellation of registration of a trust, section 12AA of the Income-tax Act has been amended to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

- (i) its income does not enure for the benefit of the 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, 1961);
- (iii) any income or property of the trust is used or applied directly or indirectly for the benefit of specified persons like author of trust, trustees etc.; or
- (iv) its funds are not invested in specified modes,

then the Principal Commissioner or the Commissioner may cancel the registration, if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the aforesaid manner.

**9.5 Applicability:** - This amendment takes effect from 1<sup>st</sup> October, 2014.

## **10. Deduction from income from house property**

**10.1** The provisions contained in section 24 of the Income-tax Act provide that income chargeable under the head “Income from house property” shall be computed after making certain deductions. Clause (b) of the said section provides that where the property is acquired with borrowed capital, the amount of any interest payable on such capital shall be allowed as deduction in computing the income from house property. The second proviso to clause (b) of the said section, *inter-alia*, provided that in case of 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 that clause shall not exceed one lakh fifty thousand rupees.

**10.2** There has been appreciation in the value of house property and accordingly cost of finance has also gone up. Therefore, the second proviso to clause (b) of section 24 has been amended so as to increase the limit of deduction on account of interest in respect of property referred to in sub-section (2) of section 23 of the Income-tax Act to two lakh rupees.

**10.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **11. Investment Allowance to a Manufacturing Company**

**11.1** In order to encourage the companies engaged in the business of manufacture or production of an article or thing to invest substantial amount in acquisition and installation of new plant and machinery, Finance Act, 2013 inserted section 32AC in the Income-tax Act to provide that where an assessee, being a company, is engaged in the business of manufacture of an article or thing and invests a sum of more than Rs.100 crore in new assets (plant and machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015, then the assessee shall be allowed a deduction of 15% of cost of new assets for assessment years 2014-15 and 2015-16.

**11.2.1** As growth of the manufacturing sector is crucial for employment generation and development of an economy, section 32AC of the Income-tax Act has been amended to extend the deduction available under the said section for investment made in plant and machinery up to 31.03.2017.

**11.2.2** Further, in order to simplify the existing provisions of section 32AC of the Income-tax Act and also to make medium size investments in plant and machinery eligible for deduction, section 32AC has been amended to provide that the deduction

under the said section shall be allowed if the company on or after 1st April, 2014 invests more than Rs.25 crore in plant and machinery in a previous year.

**11.2.3** Section 32AC has been further amended to provide that the assessee who is eligible to claim deduction under the existing combined threshold limit of Rs.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 sub-section (1) of section 32AC even if its investment in the year 2014-15 is below the new threshold limit of investment of Rs. 25 crore during the previous year.

**11.3** The deduction allowable under this section after the amendment in different scenario of investment is given by way of illustration in the following table:

(Rs. 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	--	--	Under the existing section 32AC(1)
	Deduction allowable	Nil	16.5	--	--	
2	Amount of investment	30	40	--	--	Under the amended section 32AC(1A)
	Deduction allowable	Nil	6	--	--	
3	Amount of investment	150	10	--	--	Under the existing section 32AC(1)
	Deduction allowable	22.5	1.5	--	--	
4	Amount of investment	60	20	--	--	No deduction either under section 32AC(1) or 32AC(1A)
	Deduction allowable	Nil	Nil	--	--	
5	Amount of investment	30	30	30	40	Under the amended section 32AC(1A)
	Deduction allowable	Nil	4.5	4.5	6	
6	Amount of investment	150	20	70	20	Deduction both under section 32AC(1) & 32AC(1A)
	<b>Deduction allowable</b>	<b>22.5</b>	<b>3</b>	<b>10.5</b>	<b>Nil</b>	

**11.4 Applicability:-** These amendments takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

## **12. Deduction in respect of capital expenditure on specified business**

**12.1** The provisions of section 35AD of the Income-tax Act, before its amendment by the Act, *inter alia*, provided for investment-linked tax incentive 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. The following “specified businesses” are eligible for availing the investment-linked deduction under section 35AD as enumerated in clause (c) of sub-section (8) of the said section:-

- (i) setting up and operating a cold chain facility;
- (ii) setting up and operating a warehousing facility for storage of agricultural produce;
- (iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- (iv) building and operating, anywhere in India, a hotel of two-star or above category as classified by the Central Government;
- (v) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;
- (vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation, framed by the Central Government or a State Government, as the case may be, and notified by the Board in accordance with the prescribed guidelines;
- (vii) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in accordance with the prescribed guidelines;
- (viii) production of fertilizer in India;
- (ix) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
- (x) bee-keeping and production of honey and beeswax; and
- (xi) setting up and operating a warehousing facility for storage of sugar;

**12.2** So as to promote investment in these sectors, clause (c) of sub-section (8) of section 35AD has been amended to include two new businesses as “specified business” for the purposes of the investment-linked deduction under section 35AD, which are :-

- (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.

**12.3** It has also been provided that the date of commencement of operations for availing investment linked deduction in respect of the two new specified businesses shall be on or after 1st April, 2014.

**12.4** The provisions of section 35AD, before amendment by the Act, did 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.

**12.5** 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, sub-section (7A) has been inserted in section 35AD 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.

**12.6** 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 of the Income-tax Act. This does not take into account a case where asset on which deduction under section 35AD has been claimed is used for any purpose other than the specified business by way of a mode other than that specified above. Accordingly, sub-section (7B) has been inserted to provide that if such asset is used for any purpose other than the specified business, 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.

Example:

Deduction claimed under section 35AD on a capital asset	:	Rs. 100
Depreciation eligible on such asset under section 32	:	Rs. 15
Profit chargeable to tax in accordance with the provisions of sub-section (7B) of section 35AD	:	Rs. 85

**12.7** It has also been provided that the provisions contained in sub-section (7B) of the said section would, however, not apply to a company which has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 within the time period specified in sub-section (7A) of section 35AD.



**12.8** The provisions of sub-section (3) of the aforesaid section, before amendment by the Act, provided that where any assessee has claimed a deduction under this section, no deduction shall be allowed under the provisions of Chapter VIA of the Income-tax Act for the same or any other assessment year. As section 10AA of the Income-tax Act also provides for profit linked deduction in respect of units set-up in Special Economic Zones, section 35AD has been amended 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 be available to the assessee in the same or any other assessment year in respect of such specified business.

**12.9** As a consequence of this amendment, section 10AA has also been amended 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 the deduction under section 10AA in the same or any other assessment year.

**12.10 *Applicability***:-These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

### **13. Corporate Social Responsibility (CSR)**

**13.1** Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Income-tax Act, expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

**13.2** 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.

**13.3** The provisions of section 37(1) of the Income-tax Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Income-tax Act, 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 provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, said section 37 has been amended to clarify that for the purposes of sub-section (1) of section 37 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 said section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

**13.4 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

#### **14. Disallowance of expenditure for non- deduction of tax at source**

**14.1** The provisions of section 40(a)(i) of the Income-tax Act, prior to the amendment by the Act, provided that certain payments such as interest, royalty and fee for technical services made to a non-resident shall not be allowed as deduction in computing business income if tax on such payments had not been deducted, or after deduction, has not been paid within the time prescribed under section 200(1) of the Income-tax Act. The Income-tax Act contains similar provisions for disallowance of business expenditure in respect of certain payments made to residents. Under section 40(a)(ia) of the Income-tax Act, 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) of the Income-tax Act. However, in case of disallowance for non-payment of tax from payments made to non-residents, this extended time limit of payment of tax deducted at source up to the date of filing of return of income under section 139(1) was not available.

**14.2** In order to provide similar extended time limit for payment of tax deducted from payments made to non-residents, section 40(a)(i) of the Income-tax Act has been amended so as 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) of the Income-tax Act.

**14.3** As mentioned above, in case of non-deduction of tax at source or non-payment of tax so deducted 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 causes hardship, especially in case of payment made to a resident in whose case the withholding of tax is only a mode of collection of tax and does not result into final discharge of tax liability.

**14.4** Accordingly, section 40(a)(ia) of the Income-tax Act has been amended to provide that in case of non-deduction of tax at source or non-payment of tax so deducted on payments made to residents as specified in section 40(a)(ia) of the Income-tax Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed.

**14.5** Further, the first proviso to section 40(a)(ia) of the Income-tax Act, prior to its amendment by the Act, provided that sum, which was disallowed due to non-deduction of tax at source or non-payment of tax so deducted, shall be allowed deduction in the previous year in which such tax deducted at source has been paid. As the disallowance under the amended section 40(a)(ia) of the Income-tax Act has been restricted to 30% of the amount of expenditure, the first proviso to the said section 40(a)(ia) has also been amended to provide that deduction of 30% of the amount of expenditure shall be allowed in the previous year in which the tax so deducted has been paid. In this regard, it is hereby clarified that in respect of the amount disallowed for assessment year commencing on or before 1<sup>st</sup> day of April 2014, the deduction for the whole of the amount disallowed under section 40(a)(ia) of the Income-tax Act, shall be allowed under the first proviso to section 40(a)(ia) in the previous year in which tax deducted at source has been paid.

**14.6** Further, provisions of section 40(a)(ia) of the Income-tax Act, prior to its amendment by the Act, provided 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 of the Income-tax Act mandates deduction of tax from certain other payments such as salary, directors fee, which were not specified in section 40(a)(ia) of the Income-tax Act. The payments on which tax is deductible under Chapter XVII-B but not specified under section 40(a)(ia) of the Income-tax Act may also be claimed as expenditure for the purposes of computation of income under the head "Profits and gains from business or profession".

**14.7** Section 40(a)(ia) of the Income-tax Act has proved to be an effective tool for ensuring compliance of TDS provisions by the payers. Therefore, in order to improve the TDS compliance in respect of payments to residents which were not specified in section 40(a)(ia) of the Income-tax Act, the said section 40(a)(ia) has been amended to provide that the disallowance under the said section shall extend to all expenditure on which tax is deductible under Chapter XVII-B of the Income-tax Act.

**14.8 Applicability:-** These amendments takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

## **15. Speculative transaction in respect of commodity derivatives**

**15.1** The provisions contained in clause (5) of section 43 of the Income-tax Act define the term speculative transaction. The proviso to the said clause (5) of section 43 excludes certain category of transactions as speculative transactions. The 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 clause (5) of section 43 of the Income-tax Act 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.

**15.2** Accordingly, clause (e) of the proviso to the said clause (5) of section 43 of the Income-tax Act has been amended 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.

**15.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2014 and will accordingly apply, in relation to the assessment year 2014-15 and subsequent assessment years.

## **16. Business of Plying, Hiring or Leasing Goods Carriages**

**16.1** The provisions of section 44AE of the Income-tax Act, prior to its amendment by the Act, provided 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 Taxation
Heavy Goods Vehicle(HGV)	RS. 5,000 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.

Vehicle other than HGV	Rs 4,500 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.
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**16.1.1** The amount of presumptive income was revised by the Finance (No.2) Act, 2009. Further, the provisions of said section 44AE made a distinction between HGV and vehicle other than HGV for specifying the amount of presumptive income.

**16.1.2** 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, section 44AE has been amended to provide for a uniform amount of presumptive income of Rs.7,500 for every month (or part of a month) for all types of goods carriage without any distinction between HGV and vehicle other than HGV.

**16.2 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

## **17. Capital gains arising from transfer of an asset by way of compulsory acquisition**

**17.1** The existing provisions contained in section 45 of Income-tax Act provide for charging of any profits or gains arising from transfer of a capital asset. Sub-section (5) of the said section provides for the manner of dealing with capital gains arising from transfer by way of compulsory acquisition and where the compensation is enhanced or further enhanced by the court, Tribunal or any other authority. Clause (b) of the said sub-section 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.

**17.2** There was 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.

**17.3** Therefore, sub-section (5) of section 45 of the Income-tax Act, has been amended 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 the 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.

**17.4 Applicability:-**This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **18. Transfer of Government Security by one non-resident to another non-resident**

**18.1** The provisions contained in section 47 of the Income-tax Act provide that certain transactions shall not be considered as transfer for the purpose of charging of capital gains.

**18.2** With a view to facilitate listing and trading of Government securities outside India, clause (viib) has been inserted in section 47 of the Income-tax Act so as 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 considered as transfer for the purpose of charging capital gains.

**18.3 *Applicability***:- This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

## **19. Cost Inflation Index**

**19.1** The provisions contained in section 48 of the Income-tax Act prescribe the mode of computation of income chargeable under the head "Capital gains". Clause (v) of the Explanation to the said section prior to its amendment by the Act defined the term "Cost Inflation Index" (CII) which in relation to a previous year meant such index as may be notified by the Government having regard to seventy-five percent 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.

**19.2** The release of CPI for UNME has been discontinued. Accordingly, clause (v) of the Explanation to section 48 of the Income-tax Act has been amended 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 seventy-five percent of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

**19.3 *Applicability***:-This amendment takes effect from 1<sup>st</sup> April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

## **20. Capital gains exemption in case of investment in a residential house property**

**20.1** The provisions contained in sub-section (1) of section 54 of the Income-tax Act, before its amendment by the Act, *inter alia*, provided 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 of the Income-tax Act.

**20.2** The provisions contained in sub-section (1) of section 54F of the Income-tax Act, before its amendment by the Act, *inter-alia*, provided 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.

**20.3** Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.

**20.4** Similarly, sub-section (1) of section 54F of the Income-tax Act has been amended to provide that the exemption is available if the investment is made in one residential house situated in India.

**20.5 *Applicability:*** - These amendments take effect from 1<sup>st</sup> April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.

## **21. Capital gains exemption on investment in Specified Bonds**

**21.1** The provisions contained in sub-section (1) of section 54EC of the Income-tax Act, 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 fifty lakh rupees.

**21.2** 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 one crore rupees as against the intended limit for relief of fifty lakh rupees.

**21.3** Accordingly, a proviso in sub-section (1) of section 54EC of the Income-tax Act has been inserted 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 assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

**21.4 *Applicability***:-This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

## **22. Taxability of advance for transfer of a capital asset**

**22.1** The provisions contained in section 56 of the Income-tax Act, inter-alia, provide that income of every kind which is not to be excluded from the total income under the Income-tax Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any other head of income.

**22.2** Sub-section (2) of section 56 of the Income-tax Act provides for the specific category of incomes that shall be chargeable to income-tax under the head "Income from other sources".

**22.3** A new clause (ix) has been inserted in said sub-section (2) of section 56 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 such sum is forfeited and the negotiations do not result in transfer of such capital asset.

**22.4** A consequential amendment in clause (24) of section (2) of the Income-tax Act has also been made to include such sum in the definition of the term 'income'.

**22.5** The provisions of section 51 of the Income-tax Act, before amendment by the Act, provided that any advance retained or received shall be reduced from the cost



of acquisition of the asset or the written down value or the fair market value of the asset. In order to avoid double taxation of the advance received and retained, said section 51 has 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 clause (ix) of sub-section (2) of section 56, 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.

**22.6 Applicability:** - These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

### **23. Losses in Speculation Business**

**23.1** The provisions of section 73 of the Income-tax Act 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 said section 73, before its amendment by the Act, provided 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. Sub-section (5) of section 43 of the Income-tax Act 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.

**23.2** Accordingly, an amendment has been made in Explanation to section 73 of the Income-tax Act 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.

**23.3 Applicability:**-This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

## **24. Raising the limit of deduction under section 80C of the Income-tax Act**

**24.1** Under the provisions of section 80C of the Income-tax Act, before amendment by the Act, an individual or a Hindu undivided family was allowed a deduction from income of an amount not exceeding one lakh rupees with respect to sums paid or deposited in the previous year, in certain specified instruments.

**24.2** The investments eligible for deduction, specified under sub-section (2) of section 80C, include life insurance premia, contributions to provident fund, schemes for deferred annuities etc. The assessee had the freedom to invest in any one or more of the eligible instruments within the overall ceiling of Rs. 1 lakh.

**24.3** The limit of above investments eligible for deduction under section 80C was fixed vide Finance Act, 2005. In order to encourage household savings, the limit of deduction allowed under section 80C has been raised from the existing Rs. 1 lakh to Rs.1.5 lakh. In view of the same, consequential amendment has been carried out in section 80CCE of the Act. The limit of employer's contribution to a notified pension scheme is, however, retained at Rs. 1 lakh u/s 80CCD.

**24.4 *Applicability***:-These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **25. Extension of tax benefits under section 80CCD of the Income-tax Act to private sector employees**

**25.1** Under the provisions contained in sub-section (1) of section 80CCD of the Income-tax Act, before amendment by the Act, if an individual, employed by the Central Government or any other employer on or after 1st January, 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 ten per cent. 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 sub-section (2) of section 80CCD, to the extent it does not exceed ten per cent. of the salary of the individual in the previous year.

**25.2** 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, the provisions of section 80CCD have been amended to provide that the condition of the date of joining the service on or after 1.1.2004 is not applicable to them for the purposes of deduction under the said section.

**25.3 *Applicability***:- This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

## **26. Extension of the sunset date under section 80-IA of the Income-tax Act for the power sector**

**26.1** Under the provisions contained in the clause (iv) of sub-section (4) of section 80-IA of the Income-tax Act, before amendment by the Act, a deduction of profits and gains is allowed to an undertaking which, –

- (a) is set up in any part of India for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2014;
- (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2014;
- (c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2014.

**26.2** With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the above provisions have been amended to extend the terminal date for a further period up to 31st March, 2017 i.e. till the end of the 12th Five Year Plan.

**26.3 *Applicability:-*** These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **27. Rationalisation of the definition of International Transaction**

**27.1** The provisions of section 92B of the Income-tax Act, before its amendment by the Act, defined '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.

**27.2** Sub-section (2) of the said section extended 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 relevant 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 wordings of sub-section (2) of section 92B, prior to its amendment, had led to a doubt whether for the transaction to be treated as an international transaction, the unrelated person should also be a non-resident.

**27.3** With a view to clarify the intention of the legislature, section 92B has been amended 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.

**27.4 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **28. Providing for use of range concept in determination of Arm's Length Price**

**28.1** Section 92C of the Income-tax Act provides for computation of Arm's Length Price (ALP) of an international transaction or specified domestic transaction. Sub-section (1) provides that ALP shall be determined by the most appropriate method. Sub-section (2), *inter alia*, provides that where more than one price is determined by the most appropriate method, the ALP shall be taken to be arithmetical mean of such price.

**28.2** The use of arithmetical mean for determination of ALP is a unique feature of Indian transfer pricing regime introduced in 2002. This was necessitated on account of lack of publically available data in respect of comparables. Internationally, most countries employ a "range" concept for determination of ALP where more than one price is determined.

**28.3** With a view to introduce 'range concept' for determination of ALP, sub-section (2) of section 92C has been amended to provide that in respect of international transaction or specified domestic transaction undertaken on or after 01.04.2014, where more than one price is determined by the most appropriate method, the ALP shall be computed in the manner as may be prescribed. However, the arithmetic mean concept will continue to apply where number of comparables is inadequate.

**28.4 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **29. Roll back provision in Advance Pricing Agreement Scheme**

**29.1** Section 92CC of the Income-tax Act 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 that person. The agreement entered into is valid for a period, not exceeding five previous years, as may be specified 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.

**29.2** 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 refer 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 for such a mechanism in Indian legislation would reduce litigation which is currently pending or may arise in future in respect of the transfer pricing matters.

**29.3** Therefore, section 92CC of the Income-tax Act has been amended to provide for roll back mechanism in the APA scheme. It has been provided that the 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 the arm’s length price is to 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 for which the advance pricing agreement applies in respect of the international transaction to be undertaken in future.

**29.4 *Applicability:*** - This amendment takes effect from 1<sup>st</sup> October, 2014.

### **30. Tax on long-term capital gains on units**

**30.1** The provisions contained in section 112 of the Income-tax Act provide for tax payable in the case of income arising from the transfer of a long-term capital asset. The proviso to sub-section (1) , before amendment made by the Act, provided that where the tax payable in respect of any income arising from transfer of a long-term capital asset, being listed securities or unit or zero coupon bond is more than ten per cent of the amount of capital gains without indexation adjustment, then such excess shall be ignored.

**30.2** The aforesaid proviso has been amended to provide that where the tax payable in respect of any income arising from transfer of a long-term capital asset, being listed securities (other than a unit) or zero coupon bond exceeds ten per cent of the amount of capital gains without indexation adjustment, such excess shall be ignored. However, where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being a unit of a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, during the period beginning on 1st April, 2014 and ending on 10th July, 2014, exceeds ten per cent of the amount of

capital gains before giving effect to the provisions of the second proviso to section 48 of the Income-tax Act, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee.

**30.3 *Applicability:*** - This amendment takes effect from 1<sup>st</sup> April, 2015 and will accordingly apply, in relation to the assessment year 2015-16 and subsequent assessment years.

### **31. Anonymous donations under section 115BBC of the Income-tax Act**

**31.1** The provisions of section 115BBC of the Income-tax Act, before amendment by the Act, provided for levy of tax at the rate of 30 per cent. in case of certain assesseees, being university, hospital, charitable organisation, etc. on the amount of aggregate anonymous donations exceeding five per cent of the total donations received by the assessee or one lakh rupees, whichever is higher.

**31.2** Due to the mechanism of aggregation of tax provided in section 115BBC, while tax at the rate of 30 per cent. was levied on the amount of anonymous donations exceeding the threshold, the remaining tax was 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 per cent.

**31.3** Therefore, section 115BBC has been amended to provide that the income-tax payable shall be the aggregate of the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of five per cent of the total donations received by the assessee or one lakh rupees, 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 five per cent of the total donations received by the assessee or one lakh rupees, as the case may be.

**31.4 *Applicability:-*** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

### **32. Reduction in tax rate on certain dividends received from foreign companies**

**32.1** Section 115BBD of the Income-tax Act 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 a concessional rate of 15 per cent. if such dividend is included in the total income for the assessment year 2012-13 or 2013-14 or 2014-2015.

**32.2** With a view to encourage Indian companies to repatriate foreign dividends into the country, section 115BBD has been amended 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%.

**32.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

### **33. Alternate Minimum Tax**

**33.1** The provisions of section 115JC of the Income-tax Act, before its amendment by the Act, 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 rate of eighteen and one half per cent on its adjusted total income. The section further provides that the total income shall be increased by deductions claimed under Part C of Chapter VI-A, and under section 10AA to arrive at adjusted total income.

**33.2** 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).

**33.3** 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, section 115JC has been amended to provide that total income shall be increased by the deduction claimed under section 35AD for the 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.

Example:

Total income	:	Rs. 60
Deduction claimed under Chapter VI-A	:	Rs. 40
Deduction claimed under section 35AD on a capital asset	:	Rs. 100
<u>Computation of adjusted total income for the purposes of AMT</u>		
Total income	:	Rs. 60
ADDITIONS		
(i) deduction under Chapter VI-A (on non-specified business)	:	Rs. 40
(ii) deduction under section 35AD(on specified business)	Rs. 100	
LESS: depreciation under section 32	Rs. 15	:
		Rs. 85

**33.4 *Applicability:-*** These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

#### **34. Credit of Alternate Minimum Tax**

**34.1** The provisions of sub-section (1) of section 115JEE of the Income-tax Act, before amendment by the Act, provided that the provisions of Chapter-XII BA shall be applicable to any person who has claimed a deduction under part C of Chapter VI-A or claimed a deduction u/s 10AA. Further the provisions of sub-section (2) of section 115JEE, before amendment by the Act, provided that the Chapter shall not be applicable to an individual, HUF, association of persons , a body of individuals (whether incorporated or not) or an artificial juridical person if the adjusted total income does not exceed twenty lakh rupees. 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 twenty lakh rupees or there is no claim of any deduction under section 10AA or Chapter VI-A.

**34.2** Sub-section (1) of section 115JEE has been amended to provide that Chapter XII-BA shall also be applicable to a person who has claimed any deduction under section 35AD of the Income-tax Act.

**34.3** Further, with a view to enable an assessee to claim credit of alternate minimum tax paid in any earlier previous year, section 115JEE has been amended 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 sub-section (1) or (2) of section 115JEE.

**34.4 *Applicability:*** - This amendment takes effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

#### **35. Dividend and Income Distribution Tax**

**35.1** Section 115-O of the Income-tax Act provides that a domestic company shall be liable for payment of additional income-tax at the rate of 15 per cent. 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.



**35.2** Similarly, section 115 R of the Income-tax Act provides for levy of additional income-tax in respect of income distributed by the mutual fund to its investors at the rates specified in the said section.

**35.3** 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% was applicable but this rate was being applied on the amount paid as dividend after reduction of distribution tax by the company.

**35.4** Therefore, the tax was computed by the company with reference to the net amount. Similar was the case when income was distributed by mutual funds. Due to difference in the base of the income distributed or dividend on which the distribution tax is calculated, the effective tax rate was lower than the rate provided in the respective sections.

**35.5** 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 the mutual fund or shareholders of the domestic company, as the case may be, were required to be grossed up for the purpose of computing the additional tax.

**35.6** Accordingly, section 115-O has been amended so as to provide that for the purposes of determining the tax on distributed profits payable in accordance with the provisions of section 115-O, any amount by way of dividends referred to in sub-section (1) of the said section, as reduced by the amount referred to in sub-section (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 sub-section (1), be equal to the net distributed profits. Thus, where the amount of dividend paid or distributed by a company is Rs. 85, then DDT under the amended provision would be calculated as follows:

Dividend amount distributed = Rs. 85  
Increase by Rs. 15 [i.e.  $(85 \times 0.15) / (1 - 0.15)$ ]  
Increased amount = Rs. 100  
DDT @ 15% of Rs. 100 = Rs. 15  
Tax payable u/s 115-O is Rs. 15

Dividend distributed to shareholders = Rs. 85

**35.7** Similarly, section 115R has been amended to provide that for the purposes of determining the additional income-tax payable in accordance with sub-section (2) of the said section, 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 sub-section (2), be equal to the amount of income distributed by the Mutual Fund.

**35.8** **Applicability:-**These amendments take effect from 1<sup>st</sup> October, 2014.

### **36. Taxation Regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invit)**

**36.1** The Securities and Exchange Board of India (SEBI) has notified regulations relating to two new categories of investment vehicles namely, the Real Estate Investment Trust (REIT) & Infrastructure Investment Trust (Invit) on 26<sup>th</sup> September, 2014. These are SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014.

**36.2** The income-investment model of 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 non-resident 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.

**36.3** Accordingly, the Income-tax Act has been amended to put in place a specific taxation regime which provides for 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:—

(i) The listed units of a business trust, when traded on a recognised stock exchange, would be liable to securities transaction tax (STT), and the long term capital gains shall be exempt and the short term capital gains shall be taxable at the rate of 15%.

(ii) 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 tax on gains shall be levied at the time of disposal of units by the sponsor. However, the preferential capital gains regime (consequential to levy of STT) available in respect of units of business trust, will not be available to the sponsor in respect of these units at the time of transfer. Further, for the purpose of computing capital gain, the cost of these units shall be considered as cost of the shares to the sponsor. The holding period of shares shall also be included in the holding period of such units.

(iii) 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 and no withholding tax at the level of SPV. However, withholding tax at the rate of 5 per cent. in case of payment of interest component of

income distributed to non-resident unit holders, and at the rate of 10 per cent. in respect of payment of interest component of distributed income to a resident unit holder shall be effected by the trust.

(iv) In case of external commercial borrowings by the business trust, the benefit of reduced rate of 5 per cent. tax on interest payments to non-resident lenders shall be available on similar conditions, for such period as is provided in section 194LC of the Income-tax Act.

(v) The dividend received by the trust shall be subject to dividend distribution tax at the level of SPV but will be exempt in the hands of the trust, and the dividend component of the income distributed by the trust to unit holders will also be exempt.

(vi) 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.

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

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

**36.5 *Applicability:*** - This amendment takes effect from 1<sup>st</sup> October, 2014.

## **37. Income-tax Authorities**

**37.1** Section 116 of the Income-tax Act specifies income-tax authorities for the purposes of the Income-tax Act 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 of the Income-tax Act 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.

**37.2** In view of the creation of new income-tax authorities, section 116 of the Income-tax Act has been amended so as to include the newly created income-tax authorities. Further, clauses (34A), (34B), (34C) and (34D) in section 2 of the Income-tax Act have been inserted so as to define the terms "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 of the Income-tax Act. Consequential amendments in clauses (15A), (16) and (21) of section 2 and in other sections of the Income-tax Act have also been made.

**37.3 *Applicability:-*** These amendments take effect retrospectively from 1<sup>st</sup> June, 2013.

### **38. Enabling CBDT to relax provisions relating to levy of fee under section 234E of the Income-tax Act:**

**38.1** As per the existing provisions of the Income-tax Act, a deductor/collector is required to furnish periodical tax deducted at source (TDS)/tax collected at source (TCS) statements (quarterly) containing the details of deduction/collection of tax made during the quarter by the prescribed due date. Delay in furnishing of TDS/TCS statement results in delay in granting of credit of TDS/TCS to the deductee/collectee and consequently leads to delay in issue of refunds to the deductee/collectee or raising of infructuous demand against the deductee/collectee.

**38.2** In order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Income-tax Act to provide for levy of fee of Rs.200 per day for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. The levy of fee under section 234E of the Income-tax Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor/collector. However, the levy of fee under section 234E of the Income-tax Act could not be waived / reduced even in the cases where the delay in filing of TDS/TCS statement was due to circumstances beyond the control of the deductor/collector.

**38.3** For removing the genuine hardship faced by the deductors/collectors due to levy of fee mandated by the section 234E of the Income-tax Act, section 119 (2)(a) of the Income-tax Act has been amended to enable the CBDT to relax the provisions of the section 234E of the Income-tax Act in suitable cases.

**38.4 *Applicability***:- This amendment takes effect from the 1<sup>st</sup> October, 2014.

### **39. Power of Survey**

**39.1** The provisions contained in section 133A of the Income-tax Act enable 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, prior to its amendment by the Act, the said section provided that such income-tax authority shall not retain in his custody any such books of account or document for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case maybe.

**39.2** An income-tax authority acting under section 133A has the powers as conferred upon it under sub-section (1) of section 131 of the Income-tax Act. With a view to align the time period and the authority for approval for retention of books of account or other documents beyond the specified time period, section 133A has been amended to provide that the income-tax authority shall not retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be.

**39.3** Section 133A has further been amended 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 or Chapter XVII-BB, 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 the said 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.

**39.4** It has also been provided that an income-tax authority while acting under sub-section (2A) of section 133A, 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 Income-tax Act. However, while acting under said sub-section (2A), the income-tax authority shall not impound and retain in his custody any books of accounts or documents inspected by him or make an inventory of any cash, stock or other valuables.

**39.5 *Applicability***:- These amendments take effect from 1<sup>st</sup> October, 2014.

#### **40. Inquiry by prescribed income-tax authority**

**40.1** With a view to enable prescribed income-tax authority to verify the information in its possession relating to any person, a new section 133C has been inserted in the Income-tax Act 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 this Act.

**40.2 Applicability:** - This amendment takes effect from 1<sup>st</sup> October, 2014.

#### **41. Mutual Funds, Securitisation Trusts and Venture Capital Companies or Venture Capital Funds to file return of income**

**41.1** The provisions contained in section 139 of the Income-tax Act provide that every person being a company or a firm or being a person (other than a company or firm) if his total income or the total income of any other person in respect of which he is assessable under the said Act during the previous year exceeds the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. Apart from the above, certain other entities, which are not chargeable to income-tax in accordance with the provisions of section 10 of the Income-tax Act, are required to file their return of income if their total income without giving effect to the provisions of said section 10, exceeds the maximum amount which is not chargeable to income-tax.

**41.2** Clause (23D) of section 10 of the Income-tax Act exempts the income of a Mutual Fund, clause (23DA) of section 10 of the said Act exempts the income of a securitisation trust from the activity of securitisation and clause (23FB) of section 10 of the Income-tax Act exempts the income of a venture capital company (VCC) or venture capital fund (VCF) from investment in a venture capital undertaking. Before amendments made by the Act, the Mutual Fund or securitisation trust or VCC or VCF were not obligated to furnish their return of income under section 139 of the Income-tax Act. Instead they were required to furnish a statement giving details of the nature of the income paid or credited or income distributed during the previous year and such other relevant details as may be prescribed.

**41.3** Sub-section (4C) of section 139 of the Income-tax Act has been amended to provide that Mutual Fund referred to in clause (23D) of section 10, securitization trust referred to in clause (23DA) of section 10 and Venture Capital Company or Venture Capital Fund referred to in clause (23FB) of section 10 of the Income-tax Act 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 of the Income-tax Act, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed

manner and setting forth such other particulars as may be prescribed and all the provisions of the Income-tax Act, so far as may be, apply as if it were a return required to be furnished under sub-section (1) of section 139 of the said Act.

**41.4** Further, in the case of the Mutual Funds and securitisation trusts referred to above, the requirement of filing of statements before an income-tax authority has been dispensed with by omitting sub-section (3A) of section 115R and sub-section (3) of section 115TA.

**41.5 *Applicability***:-These amendments take effect from 1<sup>st</sup> April, 2015.

## **42. Signing and verification of return of income**

**42.1** The provisions under section 140 of the Income-tax Act, before amendment by the Act, provided that the return under section 139 shall be signed and verified in the manner specified therein.

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

**42.3 *Applicability***:- This amendment takes effect from 1<sup>st</sup> October, 2014.

## **43. Estimate of value of assets by Valuation Officer and time limit for completion of assessments where reference made**

**43.1** The provisions contained in section 142A of the Income-tax Act, before its amendment by the Act, provided that 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, any bullion, jewellery or fair market value of any property. 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.

**43.2** Section 142A of the Income-tax Act 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, the said section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer.

**43.3** Accordingly, section 142A has been substituted so as to provide that the Assessing Officer may, for the purposes of assessment or reassessment, require the assistance of a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him. 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. The Valuation Officer, 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. The Valuation Officer is required to 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 or gathered, after giving an opportunity of being heard to the assessee. 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.

**43.4** It has also been provided that the Valuation Officer shall send a copy of his estimate 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. On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

**43.5** Sections 153 and 153B of the Income-tax Act have also been amended 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 section for completion of assessment or reassessment.

**43.6 *Applicability***:- These amendments take effect from 1<sup>st</sup> October, 2014.

#### **44. Income Computation and Disclosure Standards**

**44.1** Section 145 of the Income-tax Act 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 assessee 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.

**44.2** 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 Income-tax 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 Income-tax 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 of the Income-tax Act 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.

**44.3** In order to clarify that the standards notified under subsection (2) of section 145 of the Income-tax Act are to be followed for computation of income and disclosure of information by any class of assesseees or for any class of income, section 145(2) has been amended to provide 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 assesseees or in respect of any class of income.

**44.3.1** Section 145(2) has been further amended to provide that the Assessing Officer may make an assessment in the manner provided in section 144 of the Income-tax Act, if the income has not been computed in accordance with the standards notified under subsection (2) of section 145 of the Income-tax Act.

**44.4 Applicability:-** These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

## **45. Assessment of income of a person other than the person who has been searched**

**45.1** Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been initiated or requisition is made. The provisions contained in sub-section (1) of section 153C of Income-tax Act, before its amendment by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, 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 153A of the said Act, 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 153A of the Income-tax Act.

**45.2** Section 153C of the Income-tax Act has been amended to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, 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 of the said Act, 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 153A 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 sub-section (1) of section 153A of the Income-tax Act .

**45.3 Applicability:-**This amendment takes effect from 1<sup>st</sup> October, 2014.

#### **46. Tax deduction at source from non-exempt payments under life insurance policy**

46.1 The provisions of section 10(10D) of the Income-tax Act provide that 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 said section 10(10D). 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 of the Income-tax Act.

46.2 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 exempt under section 10(10D) of the Income-tax Act, a new section 194DA has been inserted in the Income-tax Act to provide for deduction of tax at the rate of 2 per cent on sum paid under a life insurance policy, including the sum allocated by way of bonus, which is not exempt under section 10(10D) of the Income-tax Act. In order to reduce the compliance burden on the small tax payers, it has been provided that no deduction under this provision shall be made if the aggregate sum paid in a financial year to an assessee is less than Rs.1,00,000/-.

**46.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> October, 2014.

## **47. Concessional rate of tax on overseas borrowing**

**47.1** The provisions of section 194LC of the Income-tax Act, before amendment by the Act, provided for lower withholding tax rate of 5 per cent. 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 the 1st day of July, 2012 but before the 1st day of July, 2015 subject to certain conditions.

**47.2** In order to further incentivise low cost long-term foreign borrowings by Indian companies, section 194LC has been amended to extend 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.

**47.3** Further, the period of borrowing has also been extended by two years. The concessional rate of withholding tax will now be available in respect of borrowings made on or after the 1<sup>st</sup> day of July, 2012 but before the 1st day of July, 2017.

**47.4** Section 206AA of the Income-tax Act provides for deduction of tax at source at a higher rate if the recipient of income does not provide his permanent account number to the deductor. An exception from applicability of section 206AA was made in respect of payment of interest on long-term infrastructure bonds eligible for benefit under section 194LC.

**47.5** Consequent to amendment of section 194LC, amendment in section 206AA has also been made to provide that the provisions of the said section are not applicable in respect of the payment of interest on any long-term bond referred to in section 194LC.

**47.6 *Applicability:-*** These amendments take effect from 1<sup>st</sup> October, 2014.

## **48. Tax Deduction at Source**

**48.1** Under Chapter XVII-B of the Income-tax Act, 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.

**48.2** 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 15th January, 2013. However, there does not exist any express provision in the Income-tax Act for enabling a deductor to file correction statement.

**48.3** In order to bring clarity in the matter relating to filing of correction statement, Section 200 of the Income-tax Act has been amended to allow the deductor to file correction statements.

**48.3.1** Consequently, provisions of section 200A of the Income-tax Act have also amended to enable the processing of correction statement filed.

**48.3.2** The provisions of section 201(1) of the Income-tax Act 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 of the Income-tax Act. Section 201(3) of the Income-tax Act provides for the time limit for passing of order under section 201(1) of the Income-tax Act for deeming a payer as assessee in default for failure to deduct tax from payments made to a resident. Clause (i) of subsection (3) of section 201 of the Income-tax Act provided that no order under sub-section (1) of section 201 of the Income-tax Act shall be passed after expiry of two years from the end of the financial year in which the TDS statement has been filed. Currently, the processing of TDS statement is done in the computerised environment and mainly focuses on the transactions reported in the TDS statement filed by the deductor. Therefore, there is no rationale for not treating the deductor as assessee in default in respect of the TDS default after two years only on the ground that the deductor has filed TDS statement whereas TDS defaults are generally in respect of the transaction not reported in the TDS statement. Therefore, clause (i) of sub-section (3) of section 201 of the Income-tax Act which provided time limit of two years for passing order under section 201(1) of the Income-tax Act for cases in which TDS statement have been filed, has been omitted.

**48.3.3** Clause (ii) of subsection(3) of section 201 of the Income-tax Act provided a time limit of six years from the end of the financial year in which payment/credit is made, for passing of an order under section 201(1) of the Income-tax Act in cases in which TDS statement has not been filed. However, notice under section 148 of the Income-tax Act may be issued for reassessment up to 6 years from the end of the assessment year for which the income has escaped assessment. Therefore, section 148 of the Income-tax Act allows reopening of cases of one more preceding previous year than specified under clause (ii) of subsection (3) of section 201 of the Income-tax Act. Due to this, order under subsection(1) of section 201 of the Income-tax Act could not be passed in respect of defaults relating to TDS which came to the notice during search/reassessment proceeding in respect of the previous year which were covered under section 148 of the Income-tax Act but not under section 201(3)(ii) of the Income-tax Act. In order to align the time limit provided under section 201(3)(ii) with that provided under section 148 of the Income-tax Act, , section 201 has been amended and accordingly the time limit provided under section 201(3)(ii) of the Income-tax Act for passing an order under section 201(1) of the income-tax Act has been extended by one more year.

**48.3.4** The provisions of section 271H of the Income-tax Act provide for levy of penalty for failure to furnish TDS/TCS statements in certain cases or furnishing of incorrect information in TDS/TCS statements. However, section 271H of the Income-tax Act did 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 of the Income-tax Act shall be levied by the Assessing officer.

**48.4 Applicability:-** These amendments take effect from 1<sup>st</sup> October, 2014.

#### **49. Interest payable by the assessee under section 220 of the Income-tax Act**

**49.1** The provisions contained in sub-section (1) of section 220 of the Income-tax Act, provide that any amount specified as payable in a notice of demand under section 156 of the Income-tax Act shall be paid within thirty days of the service of notice at the place and to the person mentioned in the notice. Sub-section (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 one per cent 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 sub-section (1) and ending with the day on which the amount is paid. The proviso to sub-section (2) stated that where as a result of an order under sections 154, 155, 250, 254, 260, 262, 264 or sub-section (4) of section 245D of the Income-tax Act, the amount on which interest payable under the said section 220 had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

**49.2** Liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back. Accordingly, subsection (1A) has been inserted in section 220 of the Income-tax Act 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.

**49.3** It has been further provided that where as a result of an order under sections 154, 155, 250, 254, 260, 262, 264 or sub-section (4) of section 245D of the Income-tax Act, the amount on which interest was payable under section 220 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 sub-section (2) of the said section 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 sub section (1) of the said section 220 and ending with the day on which the amount is paid.

**49.4 Applicability:-**These amendments take effect from the 1<sup>st</sup> October, 2014.

## **50. Enlarging the scope of Settlement Commission**

**50.1** Clause (b) of section 245A provides the definition of 'case' which means any proceeding for assessment under the Income-tax Act, of any person in respect of any assessment year or assessment years which may be pending before an assessing officer. However, the proviso to the said clause, before its amendment by the Act, provided that proceedings for assessment or reassessment under section 147 or a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264 of the Income-tax Act, setting aside or cancelling an assessment shall not be a proceeding for assessment for the purpose of this clause.

**50.2** In order to enlarge the scope of Settlement Commission, the proviso to clause (b) of section 245A of the Income-tax Act has been omitted to enable proceedings under section 147 and proceedings for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264 of the Income-tax Act, setting aside or cancelling an assessment also be eligible for settlement before the Settlement Commission. Similar amendment has also been made in section 22A of the Wealth -tax Act.

**50.3 Applicability:-** These amendments take effect from 1<sup>st</sup> October, 2014.

## **51. Enlarging the scope of Authority for Advance Rulings**

**51.1** Chapter XIX-B (Sections 245N to 245V) of the Income-tax Act provides that a person can make an application to the "Authority for Advance Rulings (AAR)" to obtain an advance ruling on the tax liability arising out of a transaction undertaken, or proposed to be undertaken by a non-resident. A ruling can also be obtained by certain notified residents in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal.

**51.2** In order to enlarge the scope of Advance Rulings, section 245N has been amended to provide that the "advance ruling" shall also include 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 and such determination shall include the determination of any question of law or of fact specified in the application.

**51.3** It has also been provided that a resident as may be notified in the Official Gazette by the Central Government may apply to the Authority for Advance Rulings. The said notification has been issued vide notification no. 73/2014 dated 28-11-2014.

**51.4** Section 245-O of the Income-tax Act, before its amendment by the Act, provided for single Authority for Advance Rulings with its office located in Delhi. In order to handle the enlarged scope of the Authority for Advance Rulings, section 245-O of the Income-tax Act has been amended to provide for more than one benches of the Authority. It has also been provided that the Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at places notified by the Central Government. It has also been provided that besides the Chairman, revenue Member and law Member; the Authority shall consist of such number of Vice-chairmen, as the Central Government may, appoint. Qualification for appointment as Vice-Chairman has been provided to be a judge of a High Court.

**51.5 Applicability:-** These amendments take effect from the 1<sup>st</sup> October, 2014.

## **52. Mode of acceptance or repayment of loans and deposits**

**52.1** The provisions contained in section 269SS of the Income-tax Act, before its amendment by the Act, *inter-alia*, provided 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 twenty thousand rupees or more. Similarly, the provisions of section 269T of the Income-tax Act, before amendment made by the Act, *inter-alia*, provided 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 twenty thousand rupees or more.

**52.2** In the present times many banking transactions take place by way of internet banking facilities or by use of payment gateways. Accordingly, the provisions of the said sections 269SS and 269T have been amended to provide that 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.

**52.3 Applicability:-** These amendments take effect from 1<sup>st</sup> April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

### **53. Levy of Penalty under section 271G of the Income-tax Act by Transfer Pricing Officers**

**53.1** The provisions of section 271G of the Income-tax Act, before amendment by the Act, provided 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 of the Income-tax Act, then such person shall be liable to penalty which may be levied by the Assessing Officer or the Commissioner (Appeals).

**53.2** Section 92CA of the Income-tax Act provides that an Assessing Officer may make a reference to a Transfer Pricing Officer (TPO) for computation 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 of the Income-tax Act. The determination of arm's length price in several cases is done by the TPO.

**53.3** Therefore, section 271G has been amended 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).

**53.4 Applicability:** - This amendment takes effect from 1<sup>st</sup> October, 2014.

### **54. Failure to produce accounts and documents**

**54.1** The provisions of section 276D of the Income-tax Act, before amendment by the Act, provided that if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 of the Income-tax Act or wilfully fails to comply with a direction issued to him under sub-section (2A) of said section 142, 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 four rupees or more than ten rupees for every day during which the default continues, or with both.

**54.2** The monetary limit in the section was fixed in the year 1971. The low limit has become irrelevant today. Accordingly, the provisions of section 276D of the Income-tax Act have been amended so as to provide that if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of



section 142 of the Income-tax Act or wilfully fails to comply with a direction issued to him under sub-section (2A) of said section 142, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

**54.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> October, 2014.

## **55. Provisional attachment under section 281B of the Income-tax Act**

**55.1** The provisions of sub-section (1) section 281B of the Income-tax Act provide that during the pendency of any proceeding for assessment or reassessment the Assessing Officer may, in order to protect the interests of revenue, with the previous approval of the Chief Commissioner or Commissioner, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. Sub-section (2) of section 281B of the Income-tax Act, before its amendment by the Act, provided that the provisional attachment shall cease to have effect after the expiry of six months. However, the Chief Commissioner or Commissioner may extend the period up to a total period of two years.

**55.2** It has been observed that in certain cases the maximum period of extension of 2 years expires before the assessment order is passed. Recovery proceedings can be initiated only after the assessment order is passed and demand is raised. Accordingly, the proviso to sub-section (2) of section 281B has been amended 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 up to sixty days after the date of assessment or reassessment, whichever is later.

**55.3 Applicability:-** This amendment takes effect from 1<sup>st</sup> October, 2014.

## **56. Obligation to furnish statement of Information**

**56.1** The provisions of section 285BA of the Income-tax Act, prior to its amendment by the Act, provided 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 of the Income-tax Act to the prescribed income-tax authority.

**56.2** With a view to facilitate effective exchange of information in respect of residents and non-residents, section 285BA of the Income-tax Act has been amended to provide for furnishing of statement by a prescribed reporting financial institution in

respect of a specified financial transaction or reportable account to the prescribed income-tax authority. It has also been provided that the statement of information shall be furnished within such time, and in such form and manner as may be prescribed.

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

**56.4** It has also been provided that the Central Government may, by rules, specify,- (a) the persons referred to in sub-section (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 to in (a) for the purpose of identification of any reportable account referred to in sub-section (1) of section 285BA.

**56.5** Further, the provisions of section 271FA of the Income-tax Act, before amendment by the Act, provided for penalty for failure to furnish an annual information return. The said section 271FA has been amended to provide for penalty for failure to furnish statement of information or reportable account.

**56.6** A new section 271FAA has been inserted in the Income-tax Act to provide that if a person referred to in clause (k) of sub-section (1) of section 285BA of the said Act, who is required to furnish a statement of financial transaction or reportable account, provides inaccurate information in the statement and where, (a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section (7) of said section 285BA or is deliberate on the part of the person; or (b) 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 (c) 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 said section 285BA, then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

**56.7 Applicability:-** These amendments take effect from 1<sup>st</sup> April, 2015.

## **57. Extension of income-tax exemption to Specified Undertaking of Unit Trust of India (SUUTI)**

**57.1** The Specified Undertaking of the Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. SUUTI is the successor of UTI. The mandate of SUUTI is to liquidate Government liabilities on account of the erstwhile UTI.

**57.2** Vide section 13(1) of the said Repeal Act, SUUTI is exempt from income-tax or any other tax or any income, profits or gains derived, or any amount received in relation to the specified undertaking for a period of five years, computed from the appointed day, i.e. 1st day of February, 2003. This exemption was to come to an end on 31<sup>st</sup> January, 2008. However, the exemption was extended up to the 31<sup>st</sup> March, 2009 and thereafter, up to the 31<sup>st</sup> March, 2014.

**57.3** Since some of the tasks of SUUTI are still pending closure, the said section 13(1) has been amended so as to extend the exemption for a further period of five years that is upto 31<sup>st</sup> March, 2019.

**[Amit Katoch]**

**Under Secretary to the Government of India**

Dated 21.01.2015

[F. No. 142/13/2014-TPL]

### **Copy to:-**

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2. PS to Secretary (Revenue)/OSD to Advisor to FM.
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/Director General of Income-tax – with a request to circulate amongst all officers in their regions/charges.
5. DGIT (International Taxation)/DGIT (Systems)/DGIT (Vigilance)/DGIT (Admn.)/DGIT (NADT)/DGIT (L&R).
6. Media Co-ordinator and Official spokesperson of CBDT.
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8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list.

**[Amit Katoch]**

**Under Secretary to the Government of India**