

**Suggestions of ICAI in its Post Budget Memorandum-2011 considered in the amendments to Finance Bill, 2011 as passed in the Lok Sabha**

Clause	Section	Proposed Amendment	Suggestion Given in Post-Budget Memorandum, 2011	Suggestions considered
7A	36(1)(iva)	The employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD is proposed to be allowed as deduction under section 36(1). However, the deduction would be restricted to 10% of salary of the employee	<p>Since only the funds referred to in sections 36(1)(iv) and (v) are exempted from the applicability of disallowance under section 40A(9). Therefore, such disallowance may be attracted in respect of contribution under section 36(1)(iva).</p> <p>It was suggested that section 40A(9) may be amended to exclude the proposed section 36(1)(iva) from the applicability of disallowance under section 40A(9).</p>	<p>This suggestion has been accepted in toto.</p> <p>(See Sl. No.1 of Notice of Amendments to Finance Bill, 2011)</p>
16	115BBD	Dividends received by Indian companies from foreign subsidiaries to be subject to a concessional rate of 15% as against the existing rate of 30%. This rate of 15% would be applied on gross dividend, in the sense, that no expenditure is allowable in respect of such dividend.	There may be many foreign companies where Indian companies have made investment but the holding in these companies may not be more than 50%. The proposed amendment does not take into consideration that in many joint ventures, an Indian company may not be holding more than 50% equity of the foreign company on	This suggestion has been partially accepted. The term "subsidiary" has been substituted by the term "specified". The specified a foreign company has been defined to mean foreign company in which an Indian company holds 26% or more in the nominal value of the equity share capital of the

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		<p>For this purpose, a subsidiary foreign company has been defined to mean a foreign company in which an Indian company holds more than half the nominal value of the equity share capital of the company.</p>	<p>account of restriction on the percentage of holding imposed by local laws (similar to, say, Indian Foreign Direct Investment (FDI) Regulations).</p> <p>Further, there may be more than two partners in the joint venture and each of the partners may not be holding more than 50% equity. Also, even the Indian entity may have made investment through group companies and each of these companies may not be individually holding more than 50% equity of the foreign company though as a group, the holding may be more than 50%.</p> <p>Since the legislative intent of this provision is to encourage Indian companies to repatriate more dividends so as to bring more funds into India, this benefit should not be limited only for the dividends received by an Indian company from its foreign subsidiary company but should be extended to dividend received by an</p>	<p>company. In effect, the scope of benefit of concessional rate of tax under section 115BBD is proposed to be extended to dividends received by an Indian Company from a foreign company in which it holds 26% or more (even if it is less than 50%) in nominal value of equity share capital.</p> <p>(See Sl. Nos.2 ,3&amp; 4 of Notice of Amendments to Finance Bill, 2011)</p>

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			<p data-bbox="895 354 1371 424">Indian company from any foreign company.</p> <p data-bbox="895 464 1371 644">Therefore, it was suggested that that sub-section (1) of Section 115BBD may be appropriately amended by removing the word "subsidiary" before the words "foreign company".</p> <p data-bbox="895 683 1371 824">Further, the definition of "subsidiary foreign company" in clause (ii) of sub-section (3) of section 115BBD may be deleted.</p>	