GlobPro Advisors Private Limited

"Switch to intellect"

Budget Impact (Direct tax)

28 February 2013

Individuals

Tax rates for Individuals

For FY 2012-2013 & FY 2013-2014 *(Refer Notes)*	
Income slabs	**Rate (%)**
Up to ` 2,00,000*	NIL
` 2,00,001 to ` 500,000	10%
` 5,00,001 to ` 10,00,000	20%
Above `10,00,000	30%

Notes

- Threshold limit for a resident individual who is of the age ***of 60 years or more but less than 80 years*** and for a resident individual who is of the age of 80 years or more will be `2,50,000/- and ` 5,00,000/- respectively
- No Surcharge to be levied while computing total income for individuals having income upto `1 cr
  Surcharge at 10% if income exceeds ` 1 Cr
- Education Cess @ 2% and Secondary and Higher education cess @ 1% leviable on tax

Rebates/ Deductions/ Incentives for Individuals

Tax rebate of ` 2,000 for Resident Individuals for FY 2013-2014

- Total Income does not exceed ` **5** lacs
- Thus, no tax on effective total income of ` 2,20,000 and accordingly no WHT upto the said income

Deduction for interest on housing loan sanctioned during FY 2013 – 2014 for acquiring residential property

- New section 80EE introduced
- Loan taken from specified Financial institution
- Deduction shall not exceed ` **1 lacs**

Rebates/ Deductions/ Incentives for Individuals

Deduction for interest on housing loan sanctioned during FY 2013 – 2014 for acquiring residential property- Conditions

- Loan is ***sanctioned during FY 2013-2014***
- Loan sanctioned does not exceed **` 25 lacs**
- ***Value*** of residential house property does not exceed **` 40 lacs**
- Assessee ***does not own*** any residential house property on date of sanction of loan

Open issues:

- Loan sanctioned in FY 2012-2013 and disbursed in FY 2013-2014 may not be eligible for deduction?
- Meaning of value of residential house? (It may mean stamp duty value)
- Financial institution term to be defined?

Rebates/ Deductions/ Incentives for Individuals – Eligible Listed shares

Expansion and relaxation in provisions of 80CCG (RGESS)

<u>Current scheme of RGESS</u>

- One time deduction of 50% of the amount invested or ` 25,000 (least of two) in specified listed shares to first time Investors
- Gross total income does not exceed ` 10,00,000

<u>Proposed liberalization/ changes</u>

- Investment in listed units of an equity oriented fund eligible for deduction
- Deduction for 3 consecutive years
- Gross total Income (‘GTI’) does not exceed ` 12,00,000 ***<u>(What if GTI exceeds ` 12 lacs in year 2 or Year 3?)</u>***
- Amendment effective from FY 2013-2014

Rebates/ Deductions/ Incentives for Individuals

Increase in the limit of percentage of eligible premium for life insurance policies of persons with disability or disease

- Premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person with disability or severe disability shall be allowed to the extent the ***premium paid does not exceed 15% of the actual capital sum assured (Under the extant provisions***

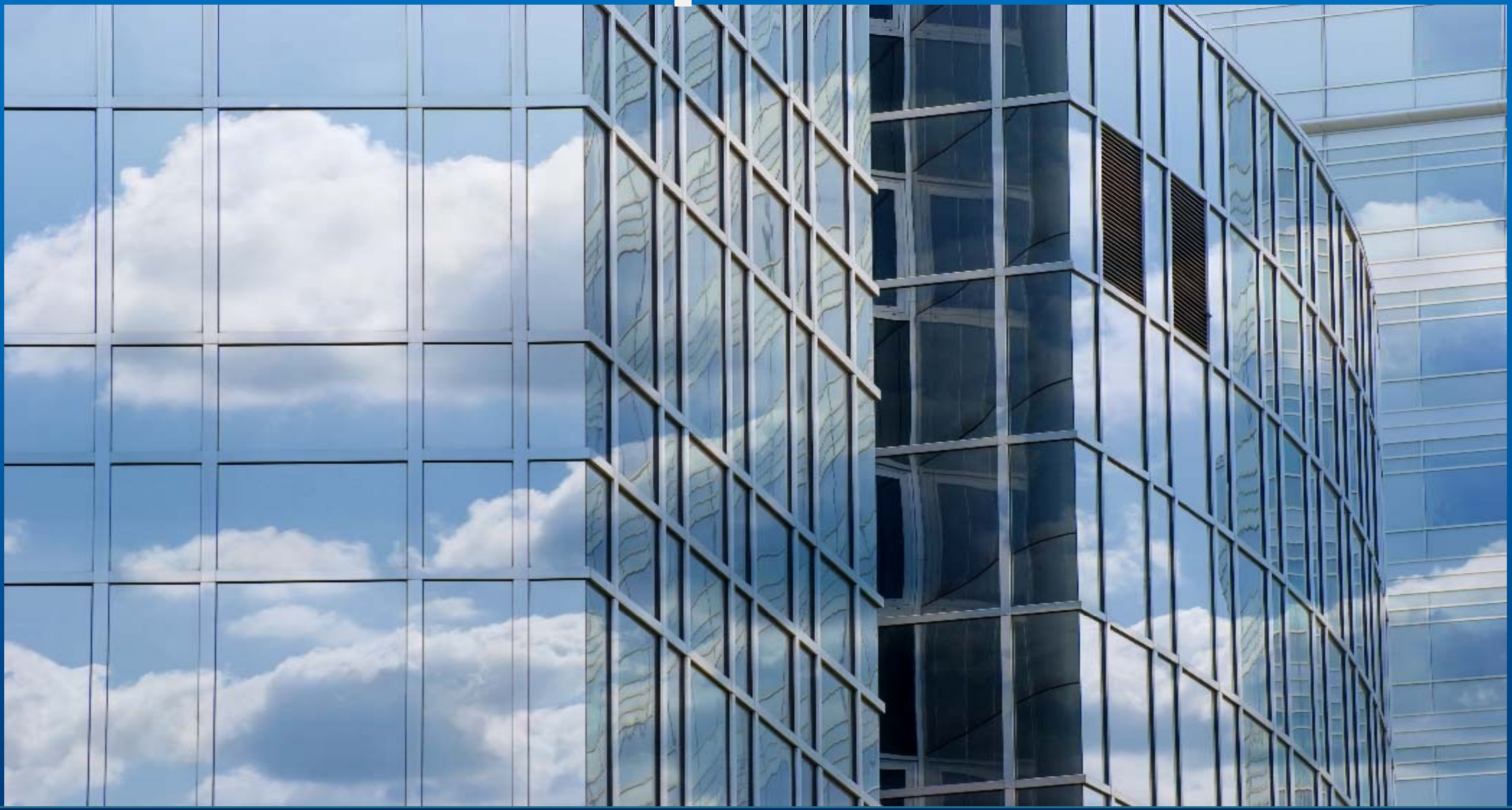
Expansion in scope of medical insurance for CG/SG schemes

- Other health schemes of the Central and State Governments, which are similar to the CGHS shall also be eligible for deduction under section 80D

Immovable property received for inadequate consideration

- Current provisions cover only transfer of immovable property received by an individual or HUF without consideration ***(inadequate consideration not covered)***
- Extant provisions have been amended to cover transfer of Immovable property received for inadequate consideration and the same shall be taxable under Income from other sources

Corporate



Tax rates for other Entities

Particulars	Domestic Co	Foreign Co	Co operative society	Firms/LLP
Existing rate	32.445%	42.024%[2]	30.9%	30.9%
Proposed rate	33.99%[1]	43.26%[2]	33.99% [3]	33.99%[4]

Notes

1. Surcharge at 10% if income exceeds `10 Cr as against current rate of 5% if income exceeds ` 1 Cr
2. Surcharge at 5% if income exceeds `10 Cr as against current rate of 2% if income exceeds ` 1 Cr
3. Existing rate and proposed rate for Co-operative society having income more than ` 20,000. The proposed increase in rate is applicable if income exceeds ` 1 Cr
4. Surcharge not applicable to LLP/Firms earlier. It is proposed to introduce surcharge at 10% if income exceeds ` 1 Cr

Special deduction for Investment in P&M exceeding ` 100 Cr

Conditions

- **Company** engaged in business of **manufacture of an article or thing**
- Investment of more than ***` 100 Cr in new assets (plant or machinery)*** from 1 April 2013 to 31 March 2015
- Deduction of upto ***15% each for 2 AYs*** of the aggregate amount of new asset acquired and installed during the aforementioned period
- Such P&M cannot be transferred upto 5 years period

Open issues:

- Eligibility restricted to Company only
- Definition could have been widened to include Buildings etc.
- Would computer software be termed as *'Article or thing'?*
- What if the part of the P&M is transferred in 5 year period? (Proportionate/ Full disallowance)

Sunset clause for Power and related undertakings u/s 80 – IA

Sunset clause extended from 31 March 2013 to 31 March 2014 for Assessee engaged in following:

- Generation or generation and distribution of power
- Transmission or distribution by laying a network of new transmission or distribution lines
- substantial renovation and modernization of the existing network of transmission or distribution lines

Lower rate of tax on dividends received from F Co's

- Under the current provisions (section 115BBD) ***gross dividends*** received by an Indian company from a specified F Co (in which it has shareholding of 26% or more) ***taxed at 15%***

- To give incentive for attracting repatriation of income earned by residents from investments made abroad the same has been ***extended for FY 2013-2014***

- It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act

Cascading effect of DDT for Foreign sourced dividends

- Any dividend distributed by the holding company in the ***same year***, to the extent of such dividends, shall not be subject to DDT u/s 115-O of the Act if:
  - Tax on dividends received from the foreign subsidiary is paid u/s 115BBD by the holding domestic company

Open issues:

- In case dividend received in FY 2012-2013 from Foreign Subsidiary and Indian Co distributes the same in FY 2013-2014, then DDT may be applicable?

Additional tax on distributed income by unlisted Company for buy-back

Need of provision

- Unlisted Companies, as part of tax avoidance scheme were resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate

New Provisions wef 1 June 2013

- Applicable for unlisted shares
- Company liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable shall be the final tax on similar lines as DDT

Additional tax on distributed income by unlisted Company for buy-back

New Provisions wef 1 June 2013

- The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares

WHT on payments to NR/ Foreign Co

Withholding tax (‘WHT’) on payments in nature of Royalty/ FTS:

- WHT under domestic laws increased from 10 to 25% for payments made to NR/Foreign Co
- However, Foreign Co/NR can resort to lower WHT rate under DTAA provided the conditions under the relevant article are complied

Surcharge on payments made to NR/ Foreign Co ie on WHT

Particulars	Surcharge
Payment to NR	Surcharge at 10% if income exceeds ` 1 Cr
Payment to Foreign Co	Surcharge at 2% if income exceeds `1 Cr but upto `10 Cr Surcharge at 5% in case income exceeds `10 Cr

Transfer of immovable property in certain cases – Deemed value

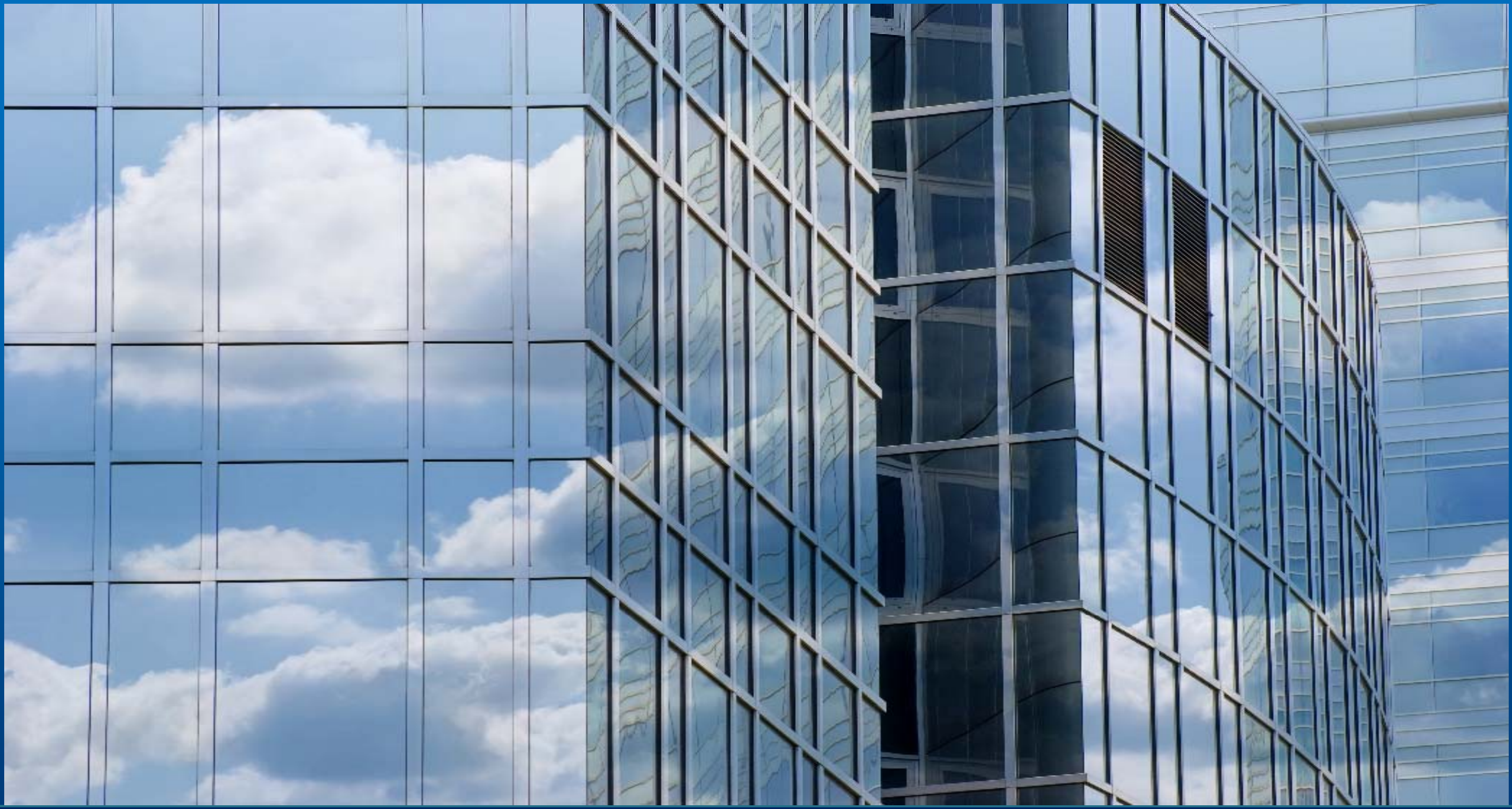
New Provisions wef FY 2013-2014

- Provisions of stamp duty value (section 50C) as deemed value for sale consideration were not applicable to transfer of immovable property, held by the transferor as stock-in-trade (ie for Real estate developers etc)
- New section 43CA introduced
- If the consideration for the transfer of an asset being ***land or building or both***, is ***less than the stamp duty value***, the stamp duty value shall be deemed to be the full value of the consideration for the purposes of computing business income

Clarification of the phrase ‘tax due’ for recovery from Directors

- Section 179 of the Act provides that where the ***tax due*** from a private company cannot be recovered, then the director shall be jointly and severally liable for payment of tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part
- The expression ***“tax due”*** to include penalty, interest or any other sum payable under the Act
- Liability of directors widened under the Act

Other Provisions



TDS on transfer of Immovable Property

<u>Need of provision</u>

- Albeit it is mandatory to quote Permanent Account Number (PAN) on purchase or sale of immovable property for value of ` 5 lacs, however most of the transactions go unreported
- To have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time

<u>New Provisions</u>

- New section ***<u>194-IA introduced</u>***
- ***<u>Every transferee</u>***, at the time of making payment or crediting of any sum as consideration ***<u>for transfer of immovable property (other than agricultural land)</u>*** to a ***<u>resident transferor</u>***, shall ***<u>deduct tax, at the rate of 1%</u>***

TDS on transfer of Immovable Property

New Provisions

- Effective from 1 June 2013

Open issues:

- The current provisions may not be applicable on sale of property by Non resident transferor as the same is restricted to resident transferor only? (Was this the intent of the provisions?)
- TDS may be applicable at 20% u/s 206AA in case Transferor does not have PAN?
- Agricultural land exempt (rural/urban both)
- Planning opportunity as the same is effective from 1 June 2013

Commodity Transaction Tax (‘CTT’)

S.No.	Taxable commodities	Transaction Rate	Payable by
1.	Sale of commodity derivative	0.01 per cent	Seller

1. Applicable to sale of commodity derivatives ***other than agricultural commodities,*** traded in Recognized Associations
2. CTT will be deductible expenditure in the hands of seller if the income is taxable under the head *‘Profit and Gains from Business and Profession’*
3. Applicable from FY 2013-2014

Securities Transaction Tax (‘STT’)

S. No	Nature of taxable securities transaction	Payable by	Existing Rates (in%)	New Rates (in%)
1.	Delivery based ***purchase*** of units of an Equity Oriented Fund entered in a recognized stock exchange ***(RSE)***	Purchaser	0.1	**Nil**
2.	Delivery based ***sale*** of units of an equity oriented fund in a ***RSE***	Seller	0.1	0.001
3.	***Sale of a futures*** in securities	Seller	0.017	0.01
4.	***Sale*** of a unit of an equity oriented fund ***to the mutual fund***	Seller	0.25	0.001

Definition of *'Agricultural land' revised*

- Amendment to section 2(14)(iii)(b) of the Act *(Exclusion of agricultural land from capital asset definition)*

It would be termed as capital asset if:

Land situated in any area within the distance, ***measured aerially (shortest aerial distance) and***

1. **Within two kilometers**, from the local limits of any municipality or cantonment board referred to in item (a) **and** which has a **population** of more than ten thousand but **not exceeding one lacs; or**

Definition of *'Agricultural land' revised*

2. **<u>Within six kilometers</u>**, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lacs but **<u>not exceeding ten lacs</u>**; or

3. **<u>Within eight kilometers</u>**, from the local limits of any municipality or cantonment board referred to in item (a) **and** which has a population of more than ten lacs

- Proposed to define the expression ***<u>"population"</u>*** to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year

Other amendments

- Submission of a Tax Residency Certificate ('TRC') is a necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A
- Return of Income ('ROI') filed without payment of self- assessment tax to be treated as defective return
- Expression ***"nature and complexity of the accounts" under section 142(2A) for special audit widened***
  - Special audit to be directed having regard to the nature and complexity of the accounts the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the Assessee

Policy Measures

- GAAR applicable from AY 2016-2017 (FY 2015-2016). Other amendments made in GAAR
- E filing for wealth tax returns to be introduced
- DTC to be introduced soon in Budget Session
- Insurance and PFRDA bill to be passed
- GST constitutional bill to be amended
- Rules for Safe Harbor to be notified

Disclaimer

- The views and opinions expressed in this article are personal and do not necessarily reflect the official policy or position of any agency of the Indian tax Authorities
- Assumptions made within the analysis are not reflective of the position of any Indian tax Authorities

THANK YOU!

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