PREFACE

India is in debt trap and always under security threat. That is the reason 24 per cent of the expenditure of the Indian Economy is spent on interest payments for loan taken in past to cover deficits. Another 13 per cent is spent for defence services and 15 per cent is spent on subsidies. If we look into sources of revenue, India is taking fresh loan of 27 per cent of total expenditure each year to cover the deficit. In the last two years, we had seen an era of low GDP growth and almost static industrial growth, a moderate increase in indirect taxes, a large subsidy burden and not so encouraging tax buoyancy. Our Hon'ble Finance Minister is really having a difficult task of managing Indian economy. The buoyancy in the stock market before the budget was unrealistic. At this stage, we could not have expected major tax sops. The Hon'ble Finance Minister has referred to IFRS, GST, Tax Accounting Standards, DTC etc. It is expected that the present Government will take decisions. It is relevant to reproduce extracts of Budget Speech on GST, IFRS etc.

IFRS

"There is an urgent need to converge the current Indian accounting standards with the International Financial Reporting Standards (IFRS). I propose for adoption of the new Indian Accounting Standards (Ind AS) by the Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis. Based on the international consensus, the regulators will separately notify the date of implementation of AS Ind for the Banks, Insurance companies etc. Standards for the computation of tax would be notified separately."

The above mentioned statements of the Honourable Finance Minister clearly indicate his intention to converge the International Financial Reporting Standards with the Indian Accounting Standards.

GST AND DTC

"The debate whether to introduce a Goods and Services Tax (GST) must now come to an end. We have discussed the issue for the past many years. Some States have been apprehensive about surrendering their taxation jurisdiction; others want to be adequately compensated. I have discussed the matter with the States both individually

and collectively. I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST. This will streamline the tax administration, avoid harassment of the business and result in higher revenue collection both for the Centre and the States. I assure all States that government will be more than fair in dealing with them."

"The Direct Taxes Code Bill, 2010 has lapsed with the dissolution of the 15th Lok Sabha. Having considered the report of the Standing Committee on Finance and the views expressed by the stakeholders, my predecessor had placed a revised Code in the public domain in March, 2014. The Government shall consider the comments received from the stakeholders on the revised Code. The Government will also review the DTC in its present shape and take a view in the whole matter."

However, when we read the fine prints of budget, it is seen that there are several provisions, which are going to make matters worse for taxpayers, while dealing with the Department. This was not warranted. It is also seen that in the Finance Bill, corrective amendments consequent to repeal of Companies Act, 1956 by Companies Act, 2013 has not been made. In other words, the present Income Tax Act contains reference to various sections of Companies Act, 1956. A comprehensive pre-budget memorandum was sent by ICAI to make corrective amendments while making reference to specific provisions of Companies Act, 2013. However, no action has been taken in this regard.

In this booklet, we have tried to discuss various budgetary provisions on direct taxes to make it simple to understand its implications. In the short time, we have tried our best to cover the various issues. However, readers are suggested to take specific professional opinion, before acting on it. In the post-budget era, the Finance Minister has made certain commitments to correct certain provisions of the Finance Bill. Let us hope for the best.

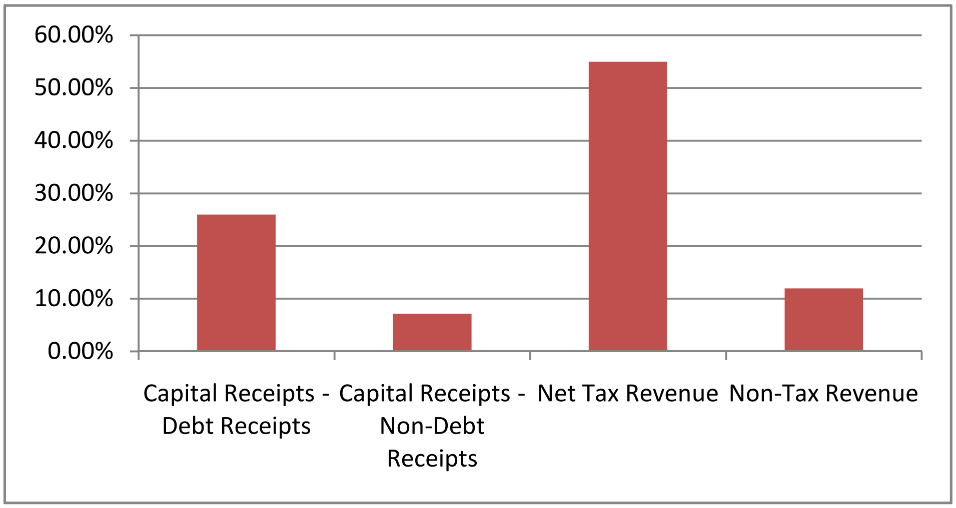
Best Regards

CA. K.K. Chhaparia

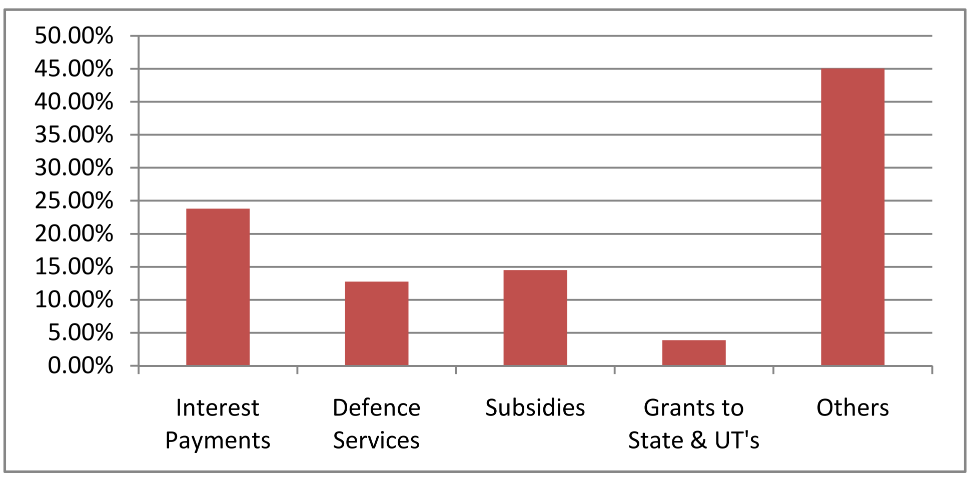
12.07.2014

BUDGET AT A GLANCE

SOURCES OF REVENUE



HEADS OF EXPENDITURE



OUTFLOW AND INFLOW

(figures in Rs. crore)

	2011-12 (Actuals)	2012-13 (Actuals)	2013-14 (Budgeted)	2013-14 (Revised)	2014-15 (Budgeted)
Tax Revenue (net to centre)	629765	741877	884078	836026	977258
Non-Tax Revenue	121672	137355	172252	193226	212505
Total Expenditure	1304365	1410371	1665297	1590434	1794892
Non-Plan Expenditure	891990	996746	1109975	1114902	1219892
Plan Expenditure	412375	413625	555322	475532	575000

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1. INCOME TAX RATES (For Asst year 2015-16)

1.1 Basic exemption limit for Individuals (other than super senior citizen) have been increased by Rs.50, 000/-. No change in tax rates for other assesses. The tax structure after proposed amendments can be summarised as below:

1.2 ***Individuals (Resident Man and Woman) and HUF***

- Other than Senior Citizen and Super Senior Citizen

Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to Rs. 5,00,000	10 per cent
Rs. 5,00,001 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Senior Citizen (60 years or more but below the age of 80 years)

Upto Rs. 3,00,000	NIL
Rs. 3,00,001 to Rs. 5,00,000	10 per cent
Rs. 5,00,001 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (80 years and above)

Upto Rs. 5,00,000	NIL
Rs. 5,00,001 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

Surcharge: The amount of Income-Tax computed as above, shall be increased by surcharge @ 10% of such Income-Tax in the case, the person has taxable income exceeding Rs.1 Crore.

Cess: 3% cess on tax in all cases

Rebate: The rebate under Section 87A inserted by Finance Act, 2013 being Rs.2,000/- for individual resident assessee, whose Taxable Income does not exceed Rs.5,00,000/- to continue. In other words, such assessee shall be entitled to compulsory tax rebate of Rs.2,000/- subject to limit of their tax liability.

1.3 ***Firms*** **–** Tax rate 30%. Cess 3% on tax, Surcharge @ 10%, if Taxable Income exceeds Rs.1 Crore.

1.4 ***Domestic Company*** **-** Tax Rate 30%, Cess 3% on tax

Taxable Income	**Surcharge**
Upto Rs. 1 Crore	NIL
> Rs.1 Crore ≤ Rs.10 Crores	5 per cent
> Rs.10 Crores	10 per cent

1.5 ***Marginal Relief on Surcharge*** **–** The amount payable as Income Tax and Surcharge on Total Income exceeding Rs.1 Crore (or Rs.10 Crores for certain companies) shall not exceed the total amount payable as Income Tax on Total Income of Rs. 1 Crore (or Rs.10 Crores) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs.10 Crores).

1.6 ***Deduction u/s 80C*** **–** The limit of investments eligible for deduction under section 80C has been increased from Rs.1,00,000/- to Rs.1,50,000/-.

2. INCOME COMPUTATION AND DISCLOSURE STANDARDS

2.1 Tax Computation under "Profits and Gains from Business or Profession" have always been subject matter of litigation. In order to reduce the litigation, The Finance Act, 1995 empowered the Central Government to notify Accounting Standards (AS) for any class of assesses 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.

2.2 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 various Tax Accounting Standards. 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 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.

2.3 In order to clarify that the standards notified under section 145(2) of the Act are to be followed for computation of income and disclosure of information by any class of assessees or for any class of income, it is proposed 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 or in respect of any class of income. It is further proposed to provide that the Assessing Officer may make an assessment in the manner provided in section 144 of the Act, if the income has not been computed in accordance with the standards notified under section 145(2) of the Act.

2.4 This amendment will take effect from assessment year 2015-16 and subsequent assessment years.

Comments:

- *The Accounting Standard Committee constituted by CBDT have notified following Tax Accounting Standards :*
    - *Tax AS for Accounting Policies (Corresponding to ICAI AS-1)*
    - *Tax AS for Valuation of Inventories (Corresponding to ICAI AS-2)*
    - *Tax AS for Events occurring after the End of Tax Year (Corresponding to ICAI AS-4)*
    - *Tax AS for Prior Period Expense (Corresponding to ICAI AS-5)*
    - *Tax AS on Construction Contracts (Corresponding to ICAI AS-7)*
    - *Tax AS for Revenue Recognition (Corresponding to ICAI AS-9)*
    - *Tax AS for Tangible Fixed Assets (Corresponding to ICAI AS-10)*
    - *Tax AS for Effects of Changes in Foreign Exchange Rates (Corresponding to ICAI AS-11)*
    - *Tax AS for Government Grants (Corresponding to ICAI AS-12)*
    - *Tax AS for Securities (Corresponding to ICAI AS-13)*
    - *Tax AS for Leases (Corresponding to ICAI AS-19)*
    - *Tax AS on Intangible Assets (Corresponding to ICAI AS-26)*
    - *Tax AS for Provisions, Contingent Liabilities and Contingent Assets (Corresponding to ICAI AS-29)*
- *The Tax Accounting Standards have different tax treatments for a number of transactions vis-a-vis Accounting Standards issued by CA Institute. With the*

proposed amendment, it seems that the Government is keen to bring the proposed tax accounting standards as part of statute book even before Direct Tax Code is enacted.

3. LOSSES IN SPECULATION BUSINESS

3.1 The existing provisions of section 73 of the 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 section 73 provides that in case of a company deriving its income mainly under the head "Profits and gains of business or profession" (other than a company whose principal business is business of banking or granting of loans and advances), and where any part of its business consists of purchase or sale of shares, such business shall be deemed to be speculation business for the purpose of this section. Sub-section (5) of section 43 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.

3.2 It is proposed to amend the aforesaid *Explanation* so as to provide that the provision of the *Explanation* shall also not be applicable to a company the principal business of which is the business of trading in shares.

3.3 This amendment will take effect from assessment year 2015-16 and subsequent assessment years.

Comments:

- *At present, Section 43(5), of Income-tax Act defines "speculative transaction". Ordinarily, speculative transaction means a transaction in which contract for sale or purchase of any commodity or shares is settled otherwise than by actual delivery.*

- *The proviso to that section provides exceptions to certain transactions, which are not to be treated as speculative. As per the proviso, all transaction in F&O Segment of certain stock exchanges are treated as non-speculative, though as per the present capital market norms, transactions in F&O Segment cannot have actual delivery and by their very nature are speculative.*

- *Explanation to Section 73 creates a deeming fiction whereby, actual delivery transactions in shares by companies (barring exceptions as provided in the section) are treated as deemed speculation.*

- *Thus, on one hand, actual delivery transactions in shares by certain companies are treated as speculative, while on the other hand, a non-delivery transaction(derivatives-F&O) are treated as non-speculative, though both types of transactions may have been carried on from the same computer and same exchange. This has been causing undue hardships to many corporate, especially share brokers engaged in self trading. .*

- *The proposed amendment is intended to reduce the hardship by excluding companies, whose principal business is trading of shares, outside the ambit of this deeming provision.*

- *In my opinion, the proposed amendment in the present form will open wide litigations. The term 'principal business' has been subject matter of debate. In the case of CIT vs. Kanoria Investments Pvt. Ltd. [232 ITR 7], it was held that fund deployment test is an important criteria to determine principal business. In the case of Haldia Investments Ltd. [85 ITD 212 (Kolkata)], income criteria was held to be an important criteria to determine principle business. In DCIT Vs. Venkateshwar Inv. & Finance (P) Ltd. [(2004) 92 TTJ 1129 (Cal)], it was held that loss in share dealings in one particular year cannot be a criteria to determine principal business and the principal business will depend on several factors including past history, objects in memorandum of association, deployment of funds, break up of income earned, nature of activities etc.*

- *Consequent to above amendment, landmark Calcutta High Court decision in Arvind Investments Limited will not be applicable from assessment year 2015-16.*

- *The better course of amendment could have been to remove Explanation to Section 73 and insert the exception in Section 43(5) itself, whereby transactions in trading in securities in recognized stock exchange could have been kept outside the purview of Deemed Speculation loss. It is worth discussing here that Explanation to Section 73 was inserted based on Wanchoo Committee Report, to curb the devises used by certain corporate houses whereby they used to sell shares of group companies to offset their other income. But with screen based trading in place and delivery through Demat system, the purpose of introduction of Explanation to Section 73 has been negated in course of time.*

4. SPECULATIVE TRANSACTION IN RESPECT OF COMMODITY DERIVATIVES

4.1 The existing provisions contained in clause (5) of section 43 define the term speculative transaction. The proviso to the said clause (5) excludes certain category of transactions as speculative transactions. Finance Act, 2013 made a provision for levy of commodities transaction tax on commodity derivatives in respect of commodities other than agricultural commodities. As a consequence to the levy of commodities transaction tax, clause (e) was inserted in the proviso to clause (5) of section 43 of the 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.

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

4.3 This amendment is proposed to take effect retrospectively from assessment year 2014-15 and subsequent assessment years.

Comments:

- *A retrospective amendment effective from assessment year 2004-05.*
- *In the Explanatory Memorandum to the present Finance Bill, it has been mentioned that 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.*
- *In my opinion, however, the Circular as above was not in accordance with the amendment brought in by Finance Act 2013. Infact in the Finance Act, 2013, 43(5)(e) was inserted to provide that eligible transaction in respect of trading in commodity derivatives carried out in recognised associations was to be treated as non-speculative. There was no mention that only those transactions on which CTT has been paid are to be treated as non-speculative.*

- *This retrospective amendment may have far reaching implications, as most of the traders in commodity derivatives may have already paid taxes in Financial Year 2013-14 on the basis of what was provided in the Act.*

5. CORPORATE SOCIAL RESPONSIBILITY (CSR)

5.1 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 at least 2% of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

5.2 It is proposed to clarify that for the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

5.3 This amendment will take effect from assessment year 2015-16 and subsequent years.

Comments:

- *This is a disappointing proposal. Representations were given by various chambers and institutions in their pre-budget memoranda that expenses incurred on CSR consequent to Companies Act 2013 should be allowed as a business expense. However, instead of giving any relief for CSR, the amendment has sought to disallow the expenses.*

- *The proposed amendment, if not inserted, would have been better because, one can hardly find any expenses incurred for social responsibility, which can be treated as business expense u/s 30 to 36 of the Act.*

- *It is expected that companies will form their own charitable trust u/s 12AA of the Act, to comply with CSR, so that they are entitled to get at least 50% deduction for donation made to such trusts under section 80G of the Act.*

6. TAXABILITY OF ADVANCE FOR TRANSFER OF A CAPITAL ASSET

6.1 The existing provisions of section 51 provide that any advance retained or received towards a capital asset shall be reduced from the cost of acquisition of the asset or the written down value or the fair market value of the asset.

6.2 It is proposed to insert a new clause (ix) in sub-section (2) of section 56 to provide for taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset.

6.3 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.

6.4 A consequential amendment in clause (24) of section (2) is also being made to include such sum in the definition of the term 'income'.

6.5 In order to avoid double taxation of the advance received and retained, section 51 is also proposed to be 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.

6.6 These amendments will take effect from assessment year 2015-16 and subsequent assessment years.

Comments:

- *To clarify the proposed amendment, let us take an example-*

  An individual 'A' is owning a house costing Rs.10 Crores. Another person 'B' gives an advance of Rs 8 Crores to 'A' for proposed purchase of such house. However, the transaction could not materialise resulting in forfeiture of advance money of Rs.8 Crores by 'A'.

  As per the present provisions of the Act, this forfeited money is not to be treated as Income, but to be deducted from the cost of the asset. Thus, 'A' was not liable to income tax on forfeiture of advance of Rs.8 Crores. However, the proposed amendment seeks to treat Rs.8 Crores as Income from Other Sources in the hands of the recipient. This amendment is in line with the proposed Direct Taxes Code (DTC).

- *Incidentally, this amendment will even affect all transactions for the Finance Year 2014-15, even those transactions carried out prior to introduction of this budget.*

7. DIVIDEND AND INCOME DISTRIBUTION TAX

7.1 Section 115-O of the Act provides that a domestic company shall be liable for payment of additional tax at the rate of 15 percent on any amount declared, distributed or paid by way of dividends to its shareholders. Section 115-R of the Act similarly provides for levy of additional income-tax in respect of income distributed by the mutual funds to its investors at the rates provided.

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

7.3 This can be substantiated as below :

Particulars	Amount (Rs.)
Dividend amount distributed	85
Increase by Rs.15 [i.e., (85 X 0.15) / (1-0.15)]	15
Increased Amount	100
DDT @ 15% of Rs.100	15
Tax payable u/s 115-O	15
Dividend distributed to shareholders	85

7.4 In other words, dividends referred to in 115-O (1) as reduced by the amount referred to in 115-O (1A) shall be increase to such amount, which would after reduction of the dividend distribution tax on such increase dividend, be equal to the dividend paid to the shareholders.

7.5 And for mutual funds, the amount distributed as income as per 115R(2) shall be increased to such amount, which would after reduction of income distribution tax on such increased amount, be equal to the amount of income distributed by the Mutual Fund.

7.6 This amendment will take effect from 1st October, 2014.

Comments:

- *It is expected that the Companies and mutual funds, in order to save tax, would be declaring dividends by 30th September, 2014 and it is expected that there would be a dry period for dividends from 1st October, 2014 to 31st March 2015.*

- *The effective rate of DDT shall be 19.995% as computed below :*

  Assuming Dividend is Rs.100.Then DDT will become

100/85 X 15	*= 17.6470%*
Add : Surcharge @ 10%	*= 1.7647 %*
Add : Education Cess @ 3%	*= 0.5833%*
Total	*19.995%*

  Thus, the company after paying 33.99% as Income tax, will be required to pay additional tax of around 20% of dividends.

- *The problem does not end here. Since the dividend is tax free in the hands of shareholders, he may be subject to disallowance under section 14A read with Rule 8D of the Act. There has been cases wherein, dividend amount received by a shareholder is Rs.3 Lakhs and the disallowance under section 14A read with Rule 8D is Rs.1 Crore. To make matter worse, CBDT recently came out with a circular clarifying that 14A disallowance will be applicable, even if no dividend is received.*
  In other words, if a person has invested in shares and not earned anything, even then a part of his expenses may be a subject matter of disallowance.

- *Recently, some Court rulings have held that if a person does not claim dividend as tax free income, no disallowance under section 14A should be made. At times, it may make sense not to claim dividend as tax free, though actually it is not tax free, being suffered tax at source of declaring. Infact, disallowance u/s14A is one of most litigated issue at present. The assessees would have been better off, had the dividend been made taxable.*

8. CHANGE IN PERIOD OF HOLDING TO BE QUALIFIED AS LONG TERM CAPITAL ASSET

8.1 The existing provisions contained in clause 42A of section 2 of the Act provides that short-term capital asset means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, 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 is not more than twelve months. 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.

8.2 Now it is proposed 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.

8.3 In the budget speech, the finance minister said that there is tax arbitrage opportunity in the case of mutual funds other than equity-oriented funds. The capital gains arising on transfer of units held for more than a year is taxed at a concessional rate of 10 per cent whereas direct investments in banks and other debt instruments attract a higher rate of tax. This arbitrage has hardly benefitted retail investors as their percentage is very small among such mutual fund investors.

8.4 With a view to remove this tax arbitrage, the finance minister has proposed to increase the rate of tax on long term capital gains from 10 per cent to 20 per cent on transfer of units of such funds.

8.5 These amendments will take effect from assessment year 2015-16.

Comments:

- *The equity-oriented mutual funds are not affected by the proposed amendment. Period of Holding for such units will continue to be 12 months for treatment as Long Term Capital Asset and the Long Term Capital Gain thereon shall continue to be exempt u/s 10(38) of the Act.*

- *However, the capital gains on all units of mutual fund, other than equity-oriented mutual fund shall be taxed as follows for all capital gains after 01.04.2014 :*

    - *Short Term Capital Gain – 30%*

- *Long Term Capital Gain – 20% (holding more than 36 months)*

- *Unlisted shares will be treated as Long Term if held for more than 36 months.*

- *Again, this amendment is effective transactions for entire financial year 2014-15. In my opinion, representations should be given for its applicability from a date after the Finance Bill has been passed.*

9. CAPITAL GAINS EXEMPTION IN CASE OF INVESTMENT IN A RESIDENTIAL HOUSE PROPERTY

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

9.2 The existing provisions contained in sub-section (1) of section 54F, inter alia, provide that where capital gains arises from transfer of a long-term capital asset, not being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, *a residential house* then the portion of capital gains in the ratio of cost of new asset to the net consideration received on transfer is not chargeable to tax.

9.3 There has been dispute regarding the interpretation of the words *a residential house*. There was ambiguity regarding whether the said words imply one residential house or a house intended for residential purpose.

9.4 Accordingly, it is proposed to amend the aforesaid sub-section (1) of section 54 and sub-section (1) of section 54F so as to provide that the rollover relief under the said sections is available if the investment is made in *one* residential house situated in India.

9.5 These amendments will apply in relation to assessment year 2015-16 and subsequent assessment years.

Comments:

- *There has been some interpretations that the term 'residential house' can imply, even more than one residential house. In a recent judgment in the case of Syed Ali, Andhra Pradesh High Court held that, re-investment in a residential house, did not indicate a single house.*

- *After the Budget was announced, there has been some apprehension that exemption u/s 54 and 54F will now be available if, the new residential house is the only house of the assessee. This is not so. Section 54 does not cast any restriction on the number of houses the assessee can have. Section 54F states that the assessee should not have more than one residential house, other than the new house, on the date of transfer of the original asset.*

- *In other words, as per Section 54, if an individual or HUF transfer a residential house being a long term capital asset, and invest the capital gains for purchase or construction of a residential house, then the entire capital gains was exempted. Some assesses were purchasing more than one residential house and claiming the acquisition cost of all such houses as being eligible for deduction u/s 54. Now it is clarified that the acquisition cost of only one new house will be entitled to benefit u/s 54. It is worth mentioning here that if more than one residential house is being sold and the aggregate capital gains are invested in one residential house, then the assessee would be eligible for deduction u/s 54.*

- *Similar amendment is proposed in section 54F. In other words, if an individual or HUF transfer a long term capital asset (other than residential house), and invest the consideration for purchase or construction of one residential house, then the capital gains shall be exempt u/s 54F. However, in this section, the assessee should be existing owner of more than one residential house. However, as per section 54 there is no such restriction that one should not own more than one residential house.*

- *Another amendment proposed in one residential house situated in India. There has been conflicting decisions of various Tribunals whether the residential house should be situated in India. In the case of Leena J. Shah v.*

ACIT 6 SOT 721 (Ahd), the honourable Tribunal held that the residential house should be situated in India. While arriving at this decision, the Tribunal referred to the legislative intent, Notes, Memorandum and Circular behind issue of Section 54F. In another judgment in the case of Prema P.Shah v. ITO 100 ITD 60 (Mum), the Tribunal held that the residential house may be situated outside India. Now, it is proposed that exemption u/s 54 or 54F will be allowed only when the residential house is situated in India.

10. CAPITAL GAINS EXEMPTION ON INVESTMENT IN SPECIFIED BONDS

10.1 The existing provisions contained in sub-section (1) of section 54EC of the 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.

10.2 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.

10.3 This resulted in the claim for relief of one crore rupees as against the intended limit for relief of fifty lakh rupees.

10.4 Accordingly, it is proposed to insert a proviso in sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

10.5 This amendment will, apply in relation to assessment year 2015-16 and subsequent assessment years.

Comments:

- *As per Proviso below section 54EC, investment made on or after 1.4.2007 in 54EC Bonds by an assessee during any financial year should not exceed rupees fifty lakhs. As per some recent judgments including Panaji Tribunal Decision in the case of ITO V. Ms. Rania Faleiro [(2013) 33 taxmann.com 611], it has been held that if an assessee sells a long term capital asset in January 2013 thereby having capital gains of Rs.120 lakhs, he could have invested Rs. 50 lakhs in Financial year 2013-14 and another Rs. 50 within June 13 (Financial year 2014-15) thereby getting exemption of Rs. 100 lacs. Now these judgments would not hold good from Asst year 2015-16.*

11. <u>POWER OF SURVEY</u>

11.1 It is proposed to amend section 133A of the Act to provide that an income-tax authority under section 133A of the Act shall not retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) (instead of ten days earlier) without obtaining the approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director therefore, as the case may be.

11.2 Further, it is also proposed to amend section 133A to insert sub-section (2A) to provide that an income-tax authority may for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B 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 this section by such income-tax authority who is assigned the area within which such place is situated where books of account or documents are kept. The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

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

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

11.3 It is also proposed to provide that an income-tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. However, while acting under sub-section (2A) he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuables.

11.4 These amendments will take effect from 1st October, 2014.

Comments :

- *On the face of it, the powers under survey seems to have been increased. However, going by the fine prints, in fact, the power of TDS officer under survey has decreased. Now, they don't have the power under clause 3(ia) i.e., impounding of books or 3(ii) i.e., making inventory of cash or other valuable article or thing. In other words, they have limited power to make marks of identification on the books of accounts or other documents, inspected by them or make or caused to be made, extracts or copies thereof and record the statement of any person.*

12. ESTIMATE OF VALUE OF ASSETS BY VALUATION OFFICER

12.1 Under the existing provisions contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or reassessment, require the Valuation Officer to make an estimate of the value of any investment, 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.

12.2 Now entire Section 142A is proposed to be 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.

12.3 It is proposed that the Assessing Officer may make a reference 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.

12.4 It is also proposed to provide 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.

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

12.6 It is also proposed to amend sections 153 and 153B of the Act so as to provide that the time period beginning with the date on which the reference is made to the Valuation Officer and ending with the date on which his report is received by the Assessing Officer shall be excluded from the time limit provided under the aforesaid section for completion of assessment or reassessment.

12.7 These amendments will take effect from 1st October, 2014.

Comments :

- *The power to make a reference to valuation officer has increased. Earlier, reference to valuation officer was made to estimate value of investments referred to in Section 69 or 69B or property referred to in Section 56(2). However, the proposed amendment has given power to estimate the fair value of any asset, which may also include stock.*

- *Earlier, there was no provision that the time limit of passing the Assessment Order shall get extended when reference is made to the valuation officer. Now, the intervening time period shall be excluded from the time limit provided u/s 153B and 153C for completion of assessment or reassessment.*

- *In the Finance Act 2013, amendment was made with respect to special audit, wherein power of assessing officer to direct special audit was increased. Now, the power to get valuation done has increased. It seems that the government in days to come intend that Assessing officer may take help from expert professionals for completion of their assessment.*

13. INVESTMENT ALLOWANCE TO A MANUFACTURING COMPANY

13.1 The investment allowance, being 15% of new assets (plant and machinery) was introduced by Finance Act 2013 to encourage manufacturing sector to make investment in plant and machinery. However, the criteria for eligibility was investment in plant and machinery exceeding Rs. 100 Crores within the period 1.4.2013 to 31.03.2015.

13.2 It is proposed to extend the deduction available under section 32AC of the Act for investment made in plant and machinery up to 31.03.2017.

13.3 Further the benefit is proposed to be extended to make medium size investments in plant and machinery eligible for deduction. Accordingly, it is also proposed that this deduction shall be allowed to a company, if it invests more than Rs.25 crore in plant and machinery in a previous year after 31.03.2014.

13.4 It is also proposed 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 proposed new threshold limit of investment of Rs.25 crore during the previous year.

13.5 This amendment is proposed to take effect from assessment year 2015-16 onwards.

Comments:

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 existing sec. 32AC(1)*
	Deduction allowable	*Nil*	*16.50*	-	-	
2.	*Amount of Investment*	*30*	*40*	-	-	*Under proposed sec. 32AC(1A)*
	Deduction allowable	*Nil*	*6*	-	-	
3.	*Amount of Investment*	*150*	*10*	-	-	*Under existing sec. 32AC(1)*
	Deduction allowable	*22.50*	*1.50*	-	-	
4.	*Amount of Investment*	*60*	*20*	-	-	*No deduction in 32AC(1) nor (1A)*
	Deduction allowable	*Nil*	*Nil*	-	-	

5.	*Amount of Investment*	*30*	*30*	*30*	*40*	*Under proposed sec. 32AC(1A)*
	Deduction allowable	*Nil*	*4.50*	*4.50*	*6*	
6.	Amount of Investment	150	20	70	20	Deduction in both 32AC(1) & (1A)
	Deduction allowable	22.50	3	10.50	Nil	

- *This benefit is available only to company assessee. Even LLP are not entitled for this benefit.*

- *The assessee is entitled to such benefit even in the form of carry forward of loss. In other words, unlike Chapter VIA deduction where the deduction is restricted to G.T.I. of a year, here, in the absence of sufficient taxable profits, an assessee shall be entitled to carry forward investment allowance to the extent it could not be set off against current profit.*

14. DEDUCTION IN RESPECT OF CAPITAL EXPENDITURE ON SPECIFIED BUSINESS

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

14.2 Currently, 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;

14.3 It is proposed to include two new businesses as “specified business” for the purposes of the investment-linked deduction under section 35AD so as to promote investment in these sectors, 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.

14.4 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, it is proposed to insert sub-section (7A) 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.

14.5 This amendment shall be effective from assessment year 2015-16 and subsequent assessment years.

Comments:

- *Deduction u/s 35AD is allowed for entire capital expenditure incurred wholly and exclusively for the purposes of any specified business, in the year of commencement of operations. For this purpose, capital expenditure includes investment in building, but doesn’t include investment in land, goodwill or financial instrument. Once deduction u/s 35AD is claimed, the assessee is not entitled to claim deduction under Chapter VI-A in respect of such specified business or depreciation or other expenditure on such capital investments. Now, sometimes, it may make sense not to claim deduction u/s 35AD, rather claim deduction under Chapter VI-A, if the expected profits from specified business exceed the capital expenditure. In my opinion, there* *is no option available to the assessee not to claim deduction u/s 33AD if he has commenced any specified business.*

- *Prima facie, the benefit u/s 35AD is generally fruitful to such assesses who have income from business other than specified business and they set up a specified business. For example, a real estate company having profits of Rs. 20 Crores sets up a three star hotel at a capital expenditure of Rs. 20 Crores. In that case, the taxable income shall become nil in the year in which three star hotel is set up.*

15. ROLL BACK PROVISION IN ADVANCE PRICING AGREEMENT SCHEME

15.1 Section 92CC of the Act provides for Advance Pricing Agreement (APA). It empowers the CBDT, with the approval of the Central Government, to enter into an APA with any person for determining the Arm's Length Price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by the person.

15.2 The agreement entered into is valid for a period, not exceeding 5 previous years, as may be mentioned in the agreement. Once the agreement is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such an APA.

15.3 It is proposed to amend the Act to provide roll back mechanism in the APA scheme. The APA may, subject to such prescribed conditions, procedure and manner, provide for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction entered into by a 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.

15.4 This amendment is sought to be effective from 1st October, 2014**.**

Comments:

- *In many countries the APA scheme provides for "roll back" mechanism for dealing with ALP issues relating to transactions entered into during the period prior to APA. The "roll back" provisions refers to the applicability of methodology of determination of ALP, or the ALP, to be applied to* *international transactions which had already been entered into in a period prior to the period covered under an APA.*

- *This is a welcome amendment and providing of such a mechanism in Indian legislation may lead to reduction in large scale litigation which is currently pending or may arise in future in respect of the transfer pricing matters.*

16. CHARACTERISATION OF INCOME IN CASE OF FOREIGN INSTITUTIONAL INVESTORS

16.1 The foreign portfolio investors (referred as foreign institutional investors in the Act) face difficulty in characterisation of their income arising from transaction in securities as to whether it is capital gain or business income. Further, the fund manager managing the funds of such investor remains outside India under the apprehension that its presence in India may have adverse tax consequences.

16.2 In order to end this uncertainty, it is proposed to amend the Act to provide that any security, held by foreign institutional investor, which has invested in such security in accordance with the regulations made under the SEBI Act, 1992 would be treated as capital asset only, so that any income arising from transfer of such security by a Foreign Portfolio Investor (FPI) would be in the nature of capital gain.

16.3 This amendment is proposed to be effective from Assessment year 2015-16 and subsequent assessment years.

Comments:

- *As per section 2(h) of Securities Contracts (Regulation) Act, 1956, securities include derivatives. Thus, it appears that even transactions in Future and Options by FPI may also be treated as capital gains in the hands of FPI.*

17. ALTERNATE MINIMUM TAX

17.1 The existing provisions of section 11 5JC of 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 deductions claimed under section 10AA to arrive at adjusted total income.

17.2 It is proposed to amend the section so as to provide that total income shall be increased by the deduction claimed under section 35AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

17.3 These amendments will take effect from assessment year 2015-16 and subsequent assessment years.

Comments:

- *The proposed amendment is illustrated as under:*

Particulars	*Amount (Rs.)*
Total income	*60*
Deduction claimed under Chapter VI-A	*40*
Deduction claimed under section 35AD on a capital asset	*100*

Computation of adjusted total income for the purposes of AMT

Particulars	*Amount (Rs.)*	*Amount (Rs.)*
Total income		*60*
Add : deduction under Chapter VI-A (on non-specified business)		*40*
Add : deduction under section 35AD (on specified business) *Less : depreciation under section 32*	*100* *15*	*85*
Adjusted total income under section 115JC		*185*

18. AMENDMENTS WITH RESPECT TO CHARITABLE TRUSTS AND INSTITUTIONS

18.1 It is proposed to amend the Act 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)]. Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income).

18.2 This amendment will take effect assessment year 2015-16 and subsequent assessment years.

<u>*Comments:*</u>

- *Trusts/ Institutions cannot claim exemption u/s 10 with respect to dividends, long term capital gains etc. u/s 10. In other words, their gross income shall include these exempt income.*

18.3 It is also proposed to amend the Act to provide that under section 11 and section 10(23C), income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year. This will ensure that double benefit is not enjoyed by the trusts and institutions, first when income when it is applied to acquire a capital asset and then by claiming notional deduction by way of depreciation etc.

18.4 This amendment will take effect assessment year 2015-16 and subsequent assessment years.

<u>*Comments:*</u>

- *The proposed amendments has the effect of overruling the judgments of Bombay, Delhi, Gujarat, Karnataka, Madras, Madhya Pradesh and Punjab & Haryana High Courts which have taken the view that depreciation would be allowable as a deduction even in such cases, where the capital expenditure had been allowed as an application of income for charitable purposes. The only judgment which have favoured revenue has recently been passed by Kerala High Court which held that depreciation should not be* *treated as application of income for charitable purposes if the relevant capital asset on which depreciation has been claimed has been treated as application of income for charitable purposes. Now the proposed amendment has sought to end this litigation though prospectively*.

Impact of Registration on earlier years

18.5 In order to provide relief to trusts and remove hardship in genuine cases, it is proposed to amend section 12A of the Act to provide that in case where a trust or institution has been granted registration under section 12AA of the Act, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

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

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

18.8 This amendments will take effect from 1st October, 2014**.**

Comments:

- *As per the present provisions, the benefit of Section 11 and 12 is available to a charitable trust or institution from the assessment year immediately following the financial year in which application for registration is made. In other words, if a Trust has been formed in FY 2005-06 and applies for registration u/s 12A in FY 2013-14, it cannot get benefits u/s 11 or 12 for FY 2005-06 to 2012-13.*

- *However, before the amendment by Finance Act 2007, the CIT or DI (Exemptions) had power to allow the benefits of provisions of section 11 or 12 for earlier years.*
- *Now, it is proposed that when registration u/s 12AA is granted by the CIT or DI(E), then the provisions of section 11 and 12 shall apply to such trust, even for earlier assessment year, prior to the year of application, for which proceedings are pending with the Assessing Officer.*
- *However, if the proceedings are pending with appellate authorities or if no proceedings are pending, then the trust may not be entitled to take benefit of provisions of sections 11 or 12 of such years.*
- *The proposal that no action u/s 147 shall be taken by the AO for preceding years only for non registration of such trust in the earlier years is a welcome proposal. Presently old trusts /institutions who had not applied for registration u/s 12AA earlier, always had a fear, that as soon as they apply for registration, their earlier assessment proceedings will be reopened.*

Cancellation of Registration

18.9 It is proposed to amend section 12AA of the Act 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 ensure for the benefit of general public;

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

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

(iv) its funds are invested in prohibited modes,then the Principal Commissioner or the Commissioner may 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 above manner.

18.10 This amendment is proposed to be effective from 1st October, 2014**.**

<u>*Comments:*</u>

- *Presently the Commissioner has power to cancel registration if he is satisfied that the activities of the trust or institution are not genuine or are not being carried out in accordance with the objects of the trust. Only if either or both* *the conditions specified in section 12AA of the Act are met, would the Commissioner be empowered to cancel the registration, and not otherwise. There have been cases where trusts, particularly in the year in which they have substantial income claimed to be exempt under other provisions of the Act, deliberately violate provisions of section 13 by investing in prohibited mode etc. Similarly, there have been cases where the income is not properly applied for charitable purposes or has been diverted for benefit of certain interested persons. Due to restrictive interpretation of the powers of the Commissioner under section 12AA, registration of such trusts or institutions continues to be in force. The proposed amendment seeks to give more powers to the CIT for cancellation.*

- *Though the amendment is proposed to be effective from 1st October 2014, however, in my opinion, this amendment may be treated as retrospective, because, registration, if cancelled, may imply retrospective implications.*

Anonymous Donations u/s 115BBC of I.T. Act

18.11 Existing provisions of section 115BBC of the Act provide for levy of tax at the rate of 30% in case of certain assessees, being university, hospital, charitable organisation, etc. on the amount of aggregate anonymous donations exceeding five per cent of the total donations received by the assessee or one lakh rupees, whichever is higher.

18.12 Due to this mechanism of aggregation of tax provided in section 115BBC, while tax at the rate of 30% is levied on the amount of anonymous donations exceeding the threshold, the remaining tax is chargeable on total income after reducing the full amount of anonymous donations.

18.13 However, the proper way of computation, is to reduce the income by the amount which has been taxed at the rate of 30%.

18.14 Therefore, it is proposed to amend section 115BBC to provide for manner of computation of the same.

18.15 This amendment will take effect from Assessment Year 2015-16 and subsequent assessment years.

19. RATIONALISATION OF DEFINITION OF INTERNATIONAL TRANSACTION

19.1 Sub-section (2) of section 92B extends the scope of the definition of international transaction by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between the other person and the associated enterprise.

19.2 It is proposed to amend section 92B of the Act 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.

19.3 This amendment will take effect from assessment year 2015-16 and subsequent assessment years.

Comments:

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

- *The amendment proposes to cover even transactions between residents subject to certain conditions.*

- *The above proposal seeks to unsettle the principles laid down by Hyderabad ITAT in the case of Swarnandhra IJMII Integrated Township Development Company Private Limited*

20. LEVY OF PENALTY U/S 271G BY TRANSFER PRICING OFFICERS

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

20.2 Section 92CA provides that an Assessing Officer may make reference to a Transfer Pricing Officer (TPO) for determination of arm's length price (ALP). The determination of arm’s length price in several cases is done by the TPO.

20.3 It is proposed to amend section 271G of the Act 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).

20.4 This amendment is proposed to be effective from 1st October, 2014.

Comments:

- *The proposed amendment will further increase the proceedings. For the same assessment year, assessee may be required to face two penalty proceedings, one for the regular assessment and one for the determination of ALP by TPO.*

21. DISALLOWANCE OF EXPENDITURE FOR NON- DEDUCTION OF TAX AT SOURCE

Payment to Non residents

21.1 The existing provisions as contained in section 40(a)(i) provide that payment to a non resident on which TDS provisions are applicable, shall be allowed if the TDS is deposited within the previous year or in the subsequent year, within the due date specified u/s 200(1), i.e., within the due date for deposit of TDS.

21.2 It is now proposed that such payment shall be allowed even if such TDS is paid till the time of filing of return u/s 139(1) of I.T. Act.

21.3 The aforesaid amendment is proposed to be effective from assessment year 2015-16.

Comments:

- *The proposed amendment is brought in line with TDS on payments to residents u/s 40(a)(ia).*

Payment to Residents

21.4 Presently provisions of section 40(a)(ia) covers payments such as interest, commission, brokerage, rent, royalty, fee and contract payments to a resident. However, certain payments on which TDS provisions are applicable are not covered in this sub-section, for instance salary, director fees, etc. Now it is proposed that disallowance u/s 40(a)(ia) shall extent to all expenditures on which tax is deductible under Chapter XVII-B.

21.5 In case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the disallowance is proposed to be restricted to 30% (instead of 100%) of the amount of expenditure claimed.

21.6 The aforesaid amendments are proposed to be effective from assessment year 2015-16.

Comments:

- *A welcome change that disallowance u/s 40(a)(ia) shall be 30% and not 100%.*

22. TAX DEDUCTED AT SOURCE

Correction Statement of TDS

22.1 It is proposed to amend section 200 of the Act to allow the deductor to file correction statements. Consequently, it is also proposed to amend provisions of section 200A of the Act for enabling processing of correction statement filed.

22.2 The aforesaid amendment is proposed to be effective from 1st October 2014.

<u>*Comments:*</u>

- *The proposed amendment is sought to bring clarity in the matter relating to filing of correction statement. Currently, a deductor is allowed to file correction statement for rectification / updation of 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 Act for enabling a deductor to file correction statement.*

- *Though the Act has used the term 'may', however, an assessee doesn't get credit of taxes paid as per TDS Intimation, unless a correction statement has been filed. Thus, if an assessee is liable for interest of say, Rs. 100 or penalty of say Rs. 500 in the TDS intimation, the payment of challan would not serve the purpose. He has to file the TDS (Correction statement) again after payment of challan.*

Time limit of passing TDS order

22.3 It is proposed to amend section 201(3) of the Act to provide that no order u/s 201(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of financial year in which payment is made or credit is given.

22.4 The aforesaid amendment is proposed to be effective from 1st October 2014.

<u>*Comments:*</u>

- *To make it simple, TDS Intimation provisions are being compared with Normal assessment provisions.*

Type of order	*Assessment provisions*	*TDS assessment provisions*
Intimation	*143(1)*	*200A*
Scrutiny Asst	*143(3)*	*201(3)(i)*
Reassessment	*147*	*201(3)(ii)*

- *The above table gives a glance of present TDS Act. Now it is proposed to merge section 201(3)(i) and 201(3)(ii) into one single section 201(3), implying that TDS assessment may be made within extended time of six years. The period of six years has now been increased to seven years.*

- *Existing provisions of section 201(1) of the 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. Section 201(3) of the Act provides for time limit for passing of order under section 201(1) of the Act for deeming a payer as assessee in default for failure to deduct tax from payments made to a resident.*

- *Though the proposed amendment is sought to be effective from prospective date, however, the impact will be that TDS officers will now have power to pass 201 orders for all returns within seven years. Thus, up to 30.09.2014 they will have power for six years, which will increase to seven years after 01.10.2014.*

23. BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES

23.1 It is proposed to provide for a uniform amount of presumptive income of Rs.7500/- for every month (or part of a month) for all types of goods carriage without any distinction between Heavy Goods Vehicle (HGV) and vehicle other than HGV.

23.2 This amendment will take effect assessment year 2015-16 and subsequent assessment years.

Comments:

- *The existing provisions of section 44AE of the Act provides for presumptive taxation in the case of an assessee who is engaged in the business of plying, hiring or leasing goods carriages and not owning more than ten goods carriages at any time during the previous year. The existing provisions provides for presumptive income at Rs. 5000/- per vehicle per month for HGV and Rs. 4500/- per vehicle per month in case of non HGV. Now, the slab is proposed to increase at 7500/- per month without any distinction between HGV and non HGV.*

24. INTEREST PAYABLE BY THE ASSESSEE UNDER SECTION 220

24.1 It is proposed to insert a new sub-section in section 220 of the Act so as to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

24.2 It is further proposed to provide that where as a result of an order under sections specified in the first proviso to section 220(2) of the Act, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under section 220 is increased, the assessee shall be liable to pay interest under 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 and ending with the day on which the amount is paid.

24.3 These amendments will take effect from the 1st day of October, 2014.

Comments:

- *As per present provisions, when a demand is raised pursuant to an assessment order and the assessee has filed appeal against the said order, the assessee is still treated as ássessee in default' unless he has paid the taxes arising consequent to assessment order or has been granted stay u/s 220(6) of the Act. However, if the appellate authority grants relief to the assessee consequent to which the demand is nullified, then the assessee is not treated as assessee in default. It may be possible that the Department have gone for further appeal, but the assessee is not treated as assessee in default. Now it is provided that the assessee shall continue to be treated as assessee in default till the disposal of appeal by final appellate authority or disposal of the proceedings. Thus, it imply that the if the Department have filed at any forum, be it High Court or Supreme Court, the assessee may be asked to make payments as per original assessment order, though the CIT(A) or ITAT may have passed favourable orders in favour of the assessee. In my opinion, this provision is very harsh, and we may find a number of writ petitions in the days to come.*

25. ANNUAL INFORMATION RETURN (A.I.R.)

Purview of A.I.R. to increase

25.1 It is proposed to amend the provisions of section 285BA of the Act so as 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 is further proposed that the statement of information shall be furnished within such time, in the form and manner as may be prescribed.

25.2 The amendment is proposed to be effective from 1st April 2015.

Comments:

- *As per present provisions, Annual Information Return is required to be filed by certain person. Rule 114E prescribes the transactions which are presently required to be reported annually. Now, it is expected that more and more transactions will come within the purview of Annual Information Return.*

- *Entire Section 285BA has been replaced. The new section has provided new provisions with respect to rectification of return, defective return, time limit for compliances etc. These amendments are mostly procedural in nature and are not being discussed here. However, to my understanding, no time limit has been prescribed for issue of notice by an income tax authority requiring him to file or clarify Annual Information Return.*

Penalty provisions under A.I.R.

25.3 It is proposed to insert a new section 271 FAA so as to provide that if a person referred to in clause *(k)* of sub-section *(1)* of section 285BA, who is required to furnish a statement of financial transaction or reportable account, provides inaccurate information in the statement and where *(a)* the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section *(7)* of section 285BA or is deliberate on the part of that 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 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.

25.4 This amendment will take effect from 1st April, 2015.

Comments:

- *As per present provisions, Section 271FA deal with penalty provisions for non furnishing of Annual Information Return which varies from Rs. 100 to Rs. 500 per day of default. Presently there is no specific penalty for furnishing inaccurate particulars in Annual Information Return. The proposed insertion of section 271FFA seeks to give this power. However, the penalty is fixed at 50000/- .*

26. ASSESSMENT OF INCOME OF A PERSON OTHER THAN THE PERSON WHO HAS BEEN SEARCHED

26.1 It is proposed to amend section 153C of the Act to provide that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then such 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* .

26.2 The amendment will take effect from 1st October, 2014.

Comments:

- *This is a welcome proposal. As per the present provisions, once some books of accounts or documents or assets belonging to say X is seized from the custody of say Y, who was covered under search operations, then the Assessing Officer of Y hands over such books of accounts, documents or assets belonging to X to the assessing officer of X. Then the assessing officer of X has to issue notice u/s 153A for six years, even if such documents or assets may not have a bearing on income of various years. Now the assessing officer of X may not issue notices u/s 153A if he is satisfied that such books of accounts, or documents or assets are already covered in the regular returns of X.*

27. FAILURE TO PRODUCE ACCOUNTS AND DOCUMENTS

27.1 It is proposed to amend the provisions of section 276D of the Act 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 or wilfully fails to comply with a direction issued to him under sub-section (2A) of section 142, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine (instead of 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.

27.2 This amendment will take effect from 1st October, 2014.

Comments:

- *This is a very serious amendment. The substitution of the word 'and' from 'or' imply that whenever a person wilfully fails to comply with notice u/s 142 or 142(2A), he shall be punishable with rigorous imprisonment along with fine. Earlier the assessing officer had option to initiate prosecution proceeding or levy fine. Even the penalty amount was not very severe and could always be subject matter of appeal. Now, whenever an Assessing Officer wants to initiate penalty proceedings under section 271(1)(b) of the Act, he has to simultaneously initiate prosecution proceedings. This one amendment may be a nightmare, both for assessing officer and assessee.*

28. INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY

28.1 It is proposed to insert a new section 133C in the 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.

28.2 This amendment will take effect from 1st October 2014.

Comments:

- *As per the present provisions, the rank of assessing officer and above already has these powers u/s 133 of the Act. However, the Bill has used the word 'prescribed income tax authority'. In my opinion, the 'prescribed income tax authority' may now include a Tax Recovery Officer and an Inspector of Income Tax, similar to definition contained in Explanation (a) below section 133A(6) of the Act.*

29. TAXATION REGIME FOR REAL ESTATE INVESTMENT TRUST (REIT) AND INFRASTRUCTURE INVESTMENT TRUST (INVIT)

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

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

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

29.3 It is proposed to amend the Act to put in place a specific taxation regime for providing the way the income in the hands of such trusts is to be taxed and the taxability of the income distributed by such business trusts in the hands of the unit holders of such trusts. Such regime has the following main features:–

(i) Capital Gains on sale of REIT and Invit Units

The listed units of a business trust, when traded on a recognised stock exchange, would attract same levy of securities transaction tax (STT), and would be given the same tax benefits in respect of taxability of capital gains as equity shares of a company i.e., long term capital gains, would be exempt and short term capital gains would be taxable at the rate of 15%.

(ii) Capital Gains on transfer of assets by Sponsor Company to the Business Trusts

In case of capital gains arising to the sponsor at the time of exchange of shares in SPVs with units of the business trust, the taxation of gains shall be deferred and taxed at the time of disposal of units by the sponsor. However, 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 disposal. 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) Interest received from SPV by the Business Trusts

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, 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) TDS on borrowings by the Business Trusts

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 Act.

(v) Dividend Distribution Tax on dividend received and distributed by the Business Trusts

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) Capital Gain on sale of assets by the Business Trusts

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) Procedural Provisions

a) The business trust is required to furnish its return of income.
b) The necessary forms to be filed and other reporting requirements to be met by the trust shall be prescribed to implement the above scheme.

29.4 This amendment is proposed to be effective from 1st October, 2014.

Comments:

- *The concept of Business Trust is similar to Mutual Funds. Both require registration from Securities and Exchange Board of India (SEBI). In case of Mutual Funds, they hold securities, debt instruments or commodities. However, in the case of Business Trusts, they hold infrastructure projects and real estate assets. In both Mutual Funds and Business Trusts, there is a sponsor who manages the funds and investments are made in such funds in the form of units.*

- *SEBI through a Consultation Paper released in December'2013 had proposed to introduce a framework to primary and financing/re-financing of infrastructure projects and enable developers to unlock capital. Thus, the Business Trusts in the days to come are expected to be major resource driver and enable private-public partnership for development of roads and highways, ports, power and transmission projects and major real estate projects.*

- *In the present Finance Bill, the various aspects of taxation in the case of Business Trusts have been spelt out. The taxation in the hands of investor of units of such Business Trusts shall be similar to units of equity oriented Mutual Funds.*

30. OTHER AMENDMENTS

Extension of the sunset date u/s 80 IA for the power sector

30.1 The sunset date for deduction under section 80IA for power sector units has been extended till 31st March, 2017 to provide further time to the undertakings to commence the eligible activity to avail the tax incentive.

30.2 This amendment will take effect from the assessment year 2015-16 and subsequent years.

Concessional Rate of Tax on Overseas Borrowings

30.3 The existing provisions of section 194LC of the Act provide for lower withholding tax rate of 5% on interest paid by an Indian company to non-residents, on monies borrowed by it in foreign currency, from a source outside India, under a *loan agreement* or through *issue of long-term infrastructure bonds* at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 subject to certain conditions.

30.4 In order to further incentivise low cost long-term foreign borrowings by Indian companies, it is proposed to amend section 194LC 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.

30.5 It is further proposed to extend by two years the period of borrowing for which this benefit shall be available. The concessional rate of withholding tax will now be available in respect of borrowings made before 1st day of July, 2017

30.6 206AA of the Act provides for levy of higher rate of withholding tax in case the recipient of income does not provide permanent account number to the deductor. An exception from applicability of section 206AA in respect of payment of interest on long-term infrastructure bonds eligible for benefit under section 194LC is currently provided in sub-section (7) of this section.

30.7 These amendments will take effect from 1st October, 2014.

Reduction in tax rate on certain dividends received from foreign companies

30.8 With a view to encourage Indian Companies to repatriate foreign dividends into the country, it is proposed to amend section 115BBD to extend the benefit of lower rate of taxation of 15 % without limiting it to a particular assessment year (previously available only for assessment years 2012-13, 2013-14 or 2014-15). 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%.

30.9 This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

Extension of Income Tax Exemption to UTI

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

30.11 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.

30.12 This exemption was to come to an end by 31st March, 2008. Then it was extended upto 31st March, 2009 & thereafter upto 31st March, 2014.

30.13 Since some of the tasks of SUUTI are still pending closure, it is proposed to amend section 13(1) so as to extend the exemption for a further period of five years that is upto 31st March, 2019.

30.14 This amendment will take effect retrospectively from 1st April, 2014.

Transfer of Government Security by one Non Resident to another Non Resident

30.15 The existing provision contained in section 47 of the Act provides that certain transactions shall not be considered as transfer for the purpose of charging of capital gains.

30.16 With a view to facilitate listing and trading of Government securities outside India, it is proposed to insert clause (viib) in the said section 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.

30.17 The aforesaid amendment is proposed to be effective from assessment year 2015-16.

Provisional Attachment under section 281B

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

30.19 It is proposed to amend Section 281B of the Act relating to provisional attachment. This will enable the Chief Commissioner, Commissioner, Director General or Director to extend the period of provisional attachment so that the total period of extension does not exceed 2 years or upto 60 days after the date of assessment or re-assessment, whichever is later.

30.20 This amendment will take effect from 1st October, 2014.

Deduction from Income from House Property

30.21 Section 24 of the Act provides 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.

30.22 It is proposed to amend the second proviso to clause (b) of said section 24, 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 to two lakh rupees from one lakh fifty thousand rupees.

30.23 This amendment will take effect from assessment year 2015-16.

Tax Deduction at Source from Non-exempt payments made under Life Insurance Policy

30.24 Under the existing provisions of section 10(10D) of the Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt, subject to fulfilment of conditions specified under the said section.

30.25 Therefore, the sum received under a life insurance policy which does not fulfil the conditions specified under section 10(10D) are taxable under the provisions of the Act.

30.26 In order to have a mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempted under section 10(10D) of the Act, it is proposed to insert a new section in the 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 are not exempt under section 10(10D) of the Act. In order to reduce the compliance burden on the small tax payers, it has also been proposed 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/-.

30.27 This amendment will take effect from 1st October, 2014.

Introduction of Clarificatory Definition in respect of Section 10(23C) of the Act

30.28 The existing provisions of sub-clause (iiiab) and (iiiac) of section 10(23C) of the 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.

30.29 Absence of a definition of the phrase “substantially financed by the Government” has led to litigation and varying decisions of judicial authorities who have, for this purpose, relied upon various other provisions of the Income-tax Act and other Acts.

30.30 Therefore, it is proposed to amend section 10(23C) by inserting an Explanation that if, the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) 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.

30.31 This amendment will take effect from assessment year 2015-16.

Credit of Alternate Minimum Tax

30.32 The existing provisions of section 115JEE of the Act creates 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.

30.33 With a view to enable an assessee who has paid alternate minimum tax in any earlier previous year to claim credit of the same, in any subsequent year, it is proposed to amend this section so as to provide that the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD, notwithstanding the conditions mentioned in sub-section (1) or (2) of section 115JEE.

30.34 This amendment will take effect from assessment year 2015-16.

Capital Gains arising from transfer of an Asset by way of Compulsory Acquisition

30.35 Sub-section (5) of section 45 of the Act provides for dealing with capital gains arising from transfer by way of compulsory acquisition where the compensation is enhanced or further enhanced by the court, Tribunal or any other authority. 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.

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

30.37 Accordingly, it is proposed to provide that the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head ‘Capital gains’ in the previous year in which the final order of such court, Tribunal or other authority is made.

30.38 These amendments will take effect from assessment year 2015-16.

Mode of Acceptance or Repayment of Loans and Deposits

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

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

30.41 These amendments will take effect from assessment year 2015-16.

Extension of Tax Benefits Under Section 80CCD to Private Sector Employees

30.42 Under the existing provisions contained in sub-section (1) of section 80CCD of 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. Considering the fact that for employees in the private sector, the date of joining the service is not relevant for joining the New Pension Scheme (NPS), it is proposed to amend the provisions of section 80CCD 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.

30.43 This amendment will take effect from assessment year 2015-16 and subsequent assessment years.

Mutual Funds, Securitisation Trusts and Venture Capital Companies or Venture Capital Funds to file Return of Income

30.44 It is proposed to amend sub-section (4C) of section 139 so as 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 shall, if the total income in respect of which such fund, trust or company is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed forms and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of the Act, so far as may be, apply as if it were a return required to be furnished under sub-section (1) of section 139.

30.45 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 is proposed to be dispensed with by omitting sub-section (3A) of section 115R and sub-section (3) of section 115TA.

30.46 These amendments will take effect from assessment year 2015-16.

HIGHLIGHTS OF BUDGET

DIRECT TAXES

- Personal Income-tax exemption limit raised by Rs. 50,000/- that is, from Rs. 2 lakh to Rs. 2.5 lakh in the case of individual taxpayers, below the age of 60 years. Exemption limit raised from Rs. 2.5 lakh to Rs. 3 lakh in the case of senior citizens.
- No change in the rate of surcharge either for the corporates or the individuals, HUFs, firms etc.
- The education cess to continue at 3%.
- Investment limit under section 80C of the Income-tax Act raised from Rs. 1 lakh to Rs. 1.5 lakh.
- Deduction limit on account of interest on loan in respect of self occupied house property raised from Rs. 1.5 lakh to Rs. 2 lakh.
- Conducive tax regime to Infrastructure Investment Trusts and Real Estate Investment Trusts to be set up in accordance with regulations of the Securities and Exchange Board of India.
- Investment allowance at the rate of 15% to a manufacturing company that invests more than Rs. 25 crore in any year in new plant and machinery. The benefit to be available for three years i.e. for investments upto 31.03.2017.
- Investment linked deduction extended to two new sectors, namely, slurry pipelines for the transportation of iron ore, and semi-conductor wafer fabrication manufacturing units.
- 10 year tax holiday extended to the undertakings which begin generation, distribution and transmission of power by 31.03.2017.
- Income arising to foreign portfolio investors from transaction in securities to be treated as

capital gains.

- Concessional rate of 15% on foreign dividends without any sunset date to be continued.
- The eligible date of borrowing in foreign currency extended from 30.06.2015 to 30.06.2017 for a concessional tax rate of 5% on interest payments. Tax incentive extended to all types of bonds instead of only infrastructure bonds.
- Introduction of a “Roll Back” provision in the Advanced Pricing Agreement (APA) scheme so that an APA entered into for future transactions is also applicable to international transactions undertaken in previous four years in specified circumstances.
- Introduction of range concept for determination of arm’s length price in transfer pricing regulations.
- To allow use of multiple year data for comparability analysis under transfer pricing regulations.
- To remove tax arbitrage, rate of tax on long term capital gains increased from 10% to 20% on transfer of units of Mutual Funds, other than equity oriented funds.
- Income and dividend distribution tax to be levied on gross amount instead of amount paid net of taxes.
- In case of non deduction of tax on payments, 30% of such payments will be disallowed instead of 100%.
- Government to review the DTC in its present shape and take a view in the whole matter.
- 60 more Ayakar Seva Kendras to be opened during the current financial year to promote excellence in service delivery.
- Net Effect of the direct tax proposals to result in revenue loss of Rs. 22,200 crore.

INDIRECT TAXES

- To encourage production of LCD and LED TVs below 19 inches in India, basic customs duty on LCD and LED TV panels of below 19 inches reduced from 10% to Nil.
- To give an impetus to the stainless steel industry, increase in basic customs duty on

imported flat-rolled products of stainless steel from 5% to 7.5%.

- Concessional basic customs duty of 5% extended to machinery and equipment required for setting up of a project for solar energy production.

- Specified inputs for use in the manufacture of EVA sheets and back sheets and flat copper wire for the manufacture of PV ribbons exempted from basic customs duty.

- Reduction in basic customs duty from 10% to 5% on forged steel rings used in the manufacture of bearings of wind operated electricity generators. Exemption from SAD of 4% on parts and raw materials required for the manufacture of wind operated generators.

- Concessional basic customs duty of 5% on machinery and equipment required for setting up of compressed biogas plants (Bio-CNG).

- Anthracite coal, bituminous coal, coking coal, steam coal and other coal to attract 2.5 per cent basic customs duty and 2 per cent CVD to eliminate all assessment disputes and transaction costs associated with testing of various parameters of coal.

- Basic customs duty on metallurgical coke increased from Nil to 2.5% in line with the duty on coking coal.

- Duty on ship breaking scrap and melting scrap of iron or steel rationalized by reducing the basic customs duty on ships imported for breaking up from 5% to 2.5%.

- To prevent mis-use and avoid assessment disputes, basic customs duty on semi-processed, half cut or broken diamonds, cut and polished diamonds and coloured gemstones rationalized at 2.5%.

- Duty free entitlement for import of trimmings, embellishments and other specified items increased from 3% to 5% of the value of their export, for readymade garments.

- Export duty on bauxite increased from 10% to 20%.

- For passenger facilitation, free baggage allowance increased from Rs. 35,000 to Rs. 45,000.

- To incentivize expansion of processing capacity, reduction in excise duty on specified food processing and packaging machinery from 10% to 6%.

- Reduction in the excise duty from 12% to 6% on footwear of retail price exceeding Rs. 500

per pair but not exceeding Rs. 1,000 per pair.

- Withdraw concessional excise duty (2% without Cenvat benefit and 6% with Cenvat benefit) on smart cards and a uniform excise duty at 12%.

- Exemption to PSF and PFY manufactured from plastic waste and scrap including PET bottles from excise duty with effect from 29th June, 2010 to 7th May, 2012.

- Prospective levy of a nominal duty of 2% without Cenvat benefit and 6% with Cenvat benefit on such PSF and PFY.

- Concessional excise duty of 2% without Cenvat benefit and 6% with Cenvat benefit on sports gloves.

- Specific rates of excise duty increased on cigarettes in the range of 11 per cent to 72 per cent.

- Excise duty increased from 12% to 16% on pan masala, from 50% to 55% on unmanufactured tobacco and from 60% to 70% on gutkha and chewing tobacco.

- Levy of an additional duty of excise at 5% on aerated waters containing added sugar.

- To finance Clean Environment initiatives, Clean Energy Cess increased from Rs.50 per tonne to Rs. 100 per tonne.

SERVICE TAX

- To broaden the tax base in Service Tax, sale of space or time for advertisements in broadcast media, extended to cover such sales on other segments like online and mobile advertising. Sale of space for advertisements in print media however would remain excluded from service tax. Service provided by radio-taxis brought under service tax.

- Services by air-conditioned contract carriages and technical testing of newly developed drugs on human participants brought under service tax.

- Provision of services rules to be amended and tax incidence to be reduced on transport of goods through coastal vessels to promote Indian Shipping industry.

- Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India to be taken out of the tax net and Cenvat credit for services of rent-a-cab and tour operators to be allowed to promote tourism.

- Service tax exempted on loading, unloading, storage, warehousing and transportation of cotton, whether ginned or baled.
- Services provided by the Employees' State Insurance Corporation for the period prior to 1st July 2012 exempted, from service tax.
- Exemption available for specified micro insurance schemes expanded to cover all life micro-insurance schemes where the sum assured does not exceed Rs.50, 000 per life insured.
- For safe disposal of medical and clinical wastes, services provided by common bio-medical waste treatment facilities exempted.
- Tax proposals on the indirect taxes side are estimated to yield Rs. 7525 crore.
- 'Indian Customs Single Window Project' to facilitate trade, to be implemented.
- The scheme of Advance Ruling in indirect taxes to be expanded to cover resident private limited companies. The scope of Settlement Commission to be enlarged to facilitate quick dispute resolution.
- Customs and Central Excise Acts to be amended to expedite the process of disposal of appeals.