DAY 4: CERTAIN THEORETICAL AMENDMENTS

1. Section 10(23FB) [Effective from A.Y. 2013-14]

Question 1

From the followings, identify the entity / entities which can claim exemption under section 10 (23FB) and thereafter mention the conditions subject to which exemption is granted?

(1) Social Venture Fund
(2) Venture Capital Fund
(3) Private equity Fund
(4) Hedge Fund
(5) Venture Capital Company

Before, we go to the answer, lets comprehend amendment first.

(a) The SEBI (Alternative Investment Funds) Regulations, 2012 [hereinafter referred to as AIF regulations] have replaced the SEBI (Venture Capital Fund) Regulations, 1996 [hereinafter referred to as VCF regulations] from May 21, 2012.

(b) As a result, following amendments were carried out by the Finance Act, 2013

(i) **VCCs/VCFs registered prior to 21st May 2012** under SEBI (VCF) **Regulations, 1996 (VCF regulations),** will continue to be eligible for "pass through status" under section 10(23FB) read with section 115U.

(ii) AIFs registered on or after 21st May, 2012 under AIF Regulations are:

<table>
<tr><th>Category</th><th>Sub-Categories</th><th>Tax status in the event AIF is registered on or after 21 May 2012</th></tr>
<tr><td rowspan="2">I.</td><td>(a) VCF, being trust & VCC</td><td>Would qualify for exemption under section 10(23FB).</td></tr>
<tr><td>(b) SME Fund Social Venture Fund Infrastructure Fund</td><td rowspan="3">Will not qualify for exemption under section 10(23FB)</td></tr>
<tr><td>II.</td><td>Generally includes private equity and debt funds</td></tr>
<tr><td>III.</td><td>Generally includes hedge funds</td></tr>
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Answer 1:

Considering the above amendment, Venture Capital Fund (VCF) and Venture Capital Company (VCC) are eligible for exemption under section 10(23FB).

The above entities are eligible for exemption subject to the following conditions:

1. Shares of company/units of trust set up as an AIF are not listed on a recognized stock exchange.
2. Has invested not less than 2/3rd of its investible funds in unlisted equity shares/equity linked instruments of VCUs
3. Has not invested in associate VCUs.

Question 2

Write a short note on Venture Capital Undertaking under SEBI (Alternate Investments Funds) Regulations, 2012.

Answer 2:

Venture Capital Undertaking (VCU) as defined in clause (aa) of Regulation 2(1) of the AIF Regulations, 2012 means

A domestic company -

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

  (1) NBFCs i.e., non-banking financial companies;

  (2) gold financing;

  (3) activities not permitted under industrial policy of Government of India;

  (4) any other activity which may be specified by the Board in consultation with Government of India from time to time.

2. Section 10(48) [Effective from A.Y. 2014-15]

Question

Scope of exemption under section 10(48) has been widened by Finance Act, 2013. Critically examine the correctness of this statement.

Answer:

Eligible Assessee	*Nature of income*		*Conditions*
Foreign Company	*FOR A.Y. 2013-14* Income received **on account of sale of crude oil to any person in India**	*W.E.F A.Y. 2014-15 FOLLOWING CLAUSE IS INSERTED :* Income received on account of sale of crude oil, **any other goods or rendering of services as may be notified by Central Government in this behalf**	**Conditions:** (i) Recipient of income is a foreign company. (ii) Income is received in India in Indian currency. (iii) Receipt of such income in India by the foreign company is pursuant to an agreement/arrangement entered into by the Central Government or approved by the Central Government. (iv) The foreign company and the agreement/arrangement are notified by the Central Government in this behalf.**[Name of Notified company is:- National Iranian Oil Company]**

Considering the above amendment, it can be said that the statement is correct.

3. Section 10(49) [Effective from A.Y. 2013-14]

Question

National Financial Holdings Company Ltd seeks your advice for taxability under Income Tax Act, 1961 in respect of following Assessment Years:-

(1) A.Y. 2012-13
(2) A.Y. 2013-14
(3) A.Y. 2014-15
(4) A.Y. 2015-16

Before, we go to the answer, lets comprehend amendment first.

Any income of the ***National Financial Holdings Company Limited***, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing ***on or before the 1st day of April, 2014 is exempt.***

Answer:

On the plain reading of above section, it shall be noted that any income of above mentioned company upto assessment year 2014-15 is exempt from tax.

Sr. No.	Assessment Year	Taxability
(1)	A.Y. 2012-13	Exempt
(2)	A.Y. 2013-14	Exempt
(3)	A.Y. 2014-15	Exempt
(4)	A.Y. 2015-16	Taxable