AMENDMENTS BY FINANCE ACT 2011 (DIRECT TAXES)

FOR

CA FINAL May 2012

COMPILED BY

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MUMBAI (INDIA)

INDEX

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IMPORTANT NOTES

Amendments constitutes substantial part of question paper in May term of CA FINAL (Direct taxes). If we see the trends of question paper of proceeding 8-10 terms, we can find that on an average 30-40% of the question are from Amendments. If we thoroughly go through the amendments, WE CAN SCORE VERY GOOD MARKS.

It's my sincere advice to first go through the detail notes on various amendments, then refer the summary of Amendments.

BEST OF LUCK

SUMMARY OF AMENDMENTS MADE BY FINANCE ACT, 2011

Section	Effective Date of Amendment	Effect of Amendment
2(15)	**01-04-2012**	Section 2(15) defines charitable purpose. The first proviso to section 2(15) provides that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. The second proviso to section 2(15) provides that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to in the first proviso is ten lakh rupees or less in the previous year. The second proviso shall be **amended** to provide that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to in the first proviso is **twenty-five lakh rupees or less** in the previous year.
10(34)	**01-06-2011**	Explanation to section 10(34) clarify that the dividend referred to in section 115O shall not be included in the total income of the assessee, being a Developer or entrepreneur. This Explanation to section 10(34) is **omitted.**
10(45)	**01-04-2008**	A new clause (45) is **inserted** in section 10 so as to provide exemption to any allowance or perquisite, as may be notified by the Central Government in the official Gazette in this behalf, paid to the Chairman or a retired Chairman or any other member or retired member of union public service commission.
10(46)	**06-01-2011**	**A new clause (46) is inserted** in section 10 so as to provide that any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) which is constituted or established by or under a Central, State or Provincial Act or has been constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of general public shall be exempt if it is not engaged in commercial activity and is specified by the Central Government by notification in the official gazette. Explanation to section 10(46) enables the central government to notify the nature and extent of the income of the body or the authority or board or trust or commission which shall constitute the specified income.
10(47)	**01-06-2011**	A **new clause (47) is inserted** in section 10 so as to enable the Central Government to notify any infrastructure debt fund which is set up in accordance with the guidelines as may be prescribed and the income of such notified fund will be exempt from income-tax.
35	**01-04-2012**	The existing provisions contained in clause (a) of subsection (2AA) of section 35 provide for a weighted deduction to the extent of **one and three-fourth times** (**175%**) the sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for the purpose of an approved scientific

		research programme. Clause (a) of section 35(2AA) shall be **amended so as to enhance the weighted deduction to two times <u>(200%)</u> the sum paid**.
35AD	**01-04-2012**	The existing provisions contained in sub-section (5) of section 35AD provide for the date of commencement of operations of the specified businesses referred to in sub-section (2) for the purposes of availing the deduction. Further, the existing provisions of clause (c) of sub-section (8) define the expression '*specified business*'. **Section 35AD is amended to include two new businesses as 'specified business'** along with their dates of commencement and also to **<u>omit</u>** the word **<u>new</u>** from the existing definition of specified business in respect of **<u>new hotel and new hospital.</u>** A **new clause (ad) shall be inserted** in sub-section (5) so as to provide that the date of commencement of operations shall be on or after 1-4-2011 where a business is in the nature of **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 this behalf in accordance with the guidelines as may be prescribed. A **new clause (ae) shall** be inserted in sub-section (5) to specify that the date of commencement of operations shall be on or after 1-4-2011 in a new plant or in a newly installed capacity in an existing plant for production of fertilizer. **The word "new" is omitted from the expressions 'new hotel' and 'new hospital'** in sub-clauses (iv) and (v) of clause (c) of sub-section (8) from the definition of specified business. **New sub-clause (viii) shall be inserted** in clause (c) of sub-section (8) so as to include production of fertilizer in India as a '**specified business**'.
36(1)	**01-04-2012**	**New clause (iva) shall be inserted** in sub-section (1) of section 36 so as to provide that any sum paid by the assessee as an employer by way of **contribution towards a pension scheme** as referred to in section 80CCD on account of an employee to the **extent it does not exceed ten per cent of the salary** of the employee in the previous year shall be allowed as a deduction.
40A(9)	**01-04-2012**	Amendment in section 40A (9) is consequential in nature.
80CCE	**01-04-2012**	Section 80CCE shall be amended so as to provide that contribution made by the Central Government or any other employer to a pension scheme under sub-section (2) of section 80CCD **shall not be included in the limit of deduction of one lakh rupees provided under section 80CCE**.
80CCF	**01-04-2012**	Under the existing provisions contained in section 80CCF, deduction is allowed to the extent of such amount which does not exceed twenty-thousand rupees, paid or deposited during the previous year relevant to the assessment year beginning on 01-

		04-2011 as subscription to long term infrastructure bonds. Section 80CCF shall be amended so as to provide the same deduction for the amount paid or deposited during the previous year relevant to the assessment year beginning on 1-4-2012.
80-IA	**01-04-2012**	Under the existing provisions contained in clause (iv) be of sub-section (4) of section 80-IA, a deduction is allowed to an undertaking which, (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1-4-1993 and ending on 31-3-2011; (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1-4-1999 and ending on 31-3-2011; or (c) undertakes substantial renovation and modernization of the existing network of transmission or distribution lines at any time during the period beginning on 1-4-2004 and ending on 31-3-2011. **Clause (iv) shall be amended so as to extend the time limit from 31-3-2011 to 31-3-2012**.
80-IB	**01-04-2012**	Sub-section (9) of section 80-IB provides that the amount of deduction to an undertaking shall be hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils certain conditions stipulated therein. Clause (ii) of sub-section (9) requires that such undertaking is located in any part of India and has begun or begins commercial production of mineral oil on or after 1-4-1997. **A proviso shall be inserted** in clause (ii) which provides that the provisions of clause (ii) shall not apply to blocks licensed under a contract awarded after 31-3-2011 under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10-2-1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.
92C	**01-04-2012**	Under the existing provisions contained in sub-section (2) of section 92C, where more than one price is determined by the most appropriate method, then the arms length price shall be taken to be arithmetical mean of such price. Further, the second proviso to the said sub-section provides that if the variation between the arms length price as determined and price at which the international transaction has actually been undertaken **does not exceed five per cent of the latter**, the price at which the international transaction has actually been undertaken shall be deemed to be the arms length price. The second proviso to sub-section (2) shall be amended so as to provide that the allowable variation will be such percentage as may be notified by the Central Government in this behalf.
92CA	**01-06-2011**	Under the existing provisions contained in sub-section (1) of section 92CA, where an assessee has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary, he may, with the previous approval of the Commissioner, refer the computation of the arms length price in relation to the international transaction under section 92C to the Transfer Pricing Officer.

		Sub-section (2) of section 92CA, inter alia, provides that the Transfer Pricing Officer, for the purpose of determining the arms length price in respect of international transactions referred to him by the Assessing Officer shall serve a notice on the assessee requiring him to produce evidence in support of computation of the arms length price of such transactions. **New sub-section (2A) is inserted** so as to enable the Transfer Pricing Officer to take into account any other international transaction which comes to his notice subsequently during the course of the proceeding before him as if such transaction is an international transaction referred under sub- section (1) and the provisions of Chapter X shall apply accordingly. Sub-section (7) of section 92CA provides that for the purposes of determining arms length price, the Transfer Pricing Officer shall have the powers as provided under sub-section (1) of section 131 and clause (6) of section 133. Sub-section (7) is amended so as to enable the Transfer Pricing Officer to exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.
94A	**01-06-2011**	New section 94A is inserted relating to special measures in respect of transactions with persons located in a notified jurisdictional area. The Central Government can notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as notified jurisdictional area. Further, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A, and that transaction shall be deemed to be an international transaction within the meaning of section 92B and, accordingly, the provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply to such transaction. Further, notwithstanding anything contained in the Income-tax Act, no deduction in respect of any payment made to any financial institution located in the notified jurisdictional area shall be allowed unless the assessee furnishes an authorization in the prescribed form authorizing the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution and no deduction in respect of any other expenditure or allowance (including the depreciation) arising from the transaction with a person located in a notified territory shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnishes the information as may be prescribed. If any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee

		notwithstanding anything to the contrary contained in the Act. Further, any payment made to a person located in the notified jurisdictional area shall be liable to the highest of the rates of tax deduction specified therein (i.e., rate in force, rate specified in the Act, or rate of 30%). The expressions "person located in a notified jurisdictional areas', permanent establishments and transaction are defined for the purposes of the section.
115A	**01-06-2011**	Under the existing provisions contained in sub-section of section 115A, the rates at which income-tax shall be payable is prescribed, where the total income of a non-resident (not being a company) or a foreign company, includes any income by way of dividends (other than dividends referred to in section 115-0); or interest received from the Government or an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency; or income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India. Sub-clause (ii) of clause (a) of sub-section (1) of section 115A is amended so as to provide that the rates at which income-tax shall be payable, where the total income of a non-resident (not being a company) or a foreign company, includes any income by way of interest received from Government or an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency, **not being the interest received from an infrastructure debt fund referred to in clause (47) of section 10.** Further, a new sub-clause (iia) is inserted in clause (a) of sub-section (1) of section 115A so as to provide that the rates at which income-tax shall be payable, where the total income of a non-resident (not being a company) or a foreign company, **includes any income by way of interest received from an infrastructure debt fund referred to in clause (47) of section 10** **New item (BA) is inserted** after item (B) of clause (a) of sub-section (1) of section 115A to provide that the **tax shall be deductible at the rate of five per cent** on any interest income received by a non-resident from an infrastructure debt fund referred to in clause (47) of section 10.
115BBD	**01-04-2012**	New section 115BBD shall be inserted relating to tax on certain dividends received from foreign companies. Under the existing provisions of the Income-tax Act, dividend received from foreign companies is taxable in the hands of the recipient at applicable marginal rate of tax. Therefore, in case of companies who receive foreign dividend, such dividend is taxable at the rate **of thirty per cent plus applicable surcharge and cess**. Sub-section (1) of new section 115BBD provides that where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on 1-4-2012**, includes any income by way of dividends declared, distributed or paid by a specified foreign company**, the income-tax

		payable shall be the aggregate of the amount of income-tax calculated on the income by way of such dividends at the rate of **fifteen per cent** and the amount of income-tax with which the assessee would have been chargeable had its total income been reduced by the amount of aforesaid income by way of dividends. Sub-section (2) of new section provides that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Income-tax Act in computing its income by way of dividends. Sub-section (3) of new section defines the expressions "dividend and "specified foreign company"
115JB	**01-04-2012**	The existing provisions contained in sub-section (1) of section 115JB provide that in case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after 1-4-2011, **is less than eighteen per cent of its book profit (18%)**, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be eighteen per cent of such book profit. Sub-section (1) of section 115JB shall be amended to provide that if the income-tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after 1-4-2012 is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be **eighteen and one-half per cent (18.5%)** of such book profit. Sub-section (6) of section 115JB provides that the provisions of section 115JB shall not apply to the income accrued or arising on or after 1-4-2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be. A proviso to sub-section (6) shall be inserted so as to provide that the provisions of that sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after 1-4-2012.
115JC – 115JF	**01-04-2012**	**New Chapter XII-BA [consisting of new sections 115JC, 115JD, 115JE and 115JF**] contains special provisions relating to certain limited liability partnerships. These sections are quite similar to MAT provisions. Under the provisions of newly inserted section 115JC, where the regular income-tax payable for a previous year by any limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such limited liability partnership and it shall be **liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.** New section 115JD provides that the credit for tax paid by a limited liability partnership

		under section 115JC shall be the excess of the alternate minimum tax paid over the regular income-tax payable. This shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such tax credit becomes allowable and shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax. New section 115JE provides that save as provided in the newly inserted Chapter XII-BA, all other provisions of the Income-tax Act shall apply to a limited liability partnership. New section 115JF defines the expressions accountants, alternate minimum tax, 'limited liability partnerships and regular income tax for the purposes of newly inserted Chapter XII-BA.
115O	**01-06-2011**	Sub-section (6) of section 115-0 provides that in sub-section (6) notwithstanding anything contained in section 115-0, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after 1-4-2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend. A proviso is inserted to sub-section (6) to provide that the **provisions of sub-section shall cease to have effect from 1-6-2011.** Accordingly, **tax on distributed profits shall be chargeable** under this section on any amount declared, distributed or paid by way of dividends by the aforesaid undertaking or enterprise on or after 1-6-2011.
115R	**01-06-2011**	Under the existing provisions contained in sub-section (2), of section 115 R, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified and company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate of twenty-five per cent on income distributed by a money market mutual fund or a liquid fund; twelve and one-half per cent on income distributed to any person being an individual or a Hindu undivided family by a fund other than a money market mutual fund or a liquid fund; and twenty per cent on income distributed to any other person by a fund other than a money market mutual fund or a liquid fund. Clause (i) of sub-section (2) of section 115 R is amended to specifically provide that **additional income-tax at the rate of twenty-five per cent** shall be leviable on any income distributed to an individual or a Hindu undivided family by a money market mutual fund or a liquid fund. Further a new clause (ia) after clause (i) in subsection (2) of section 115 R is inserted to provide that any income distributed to any other person by a **money market mutual fund**

		or a liquid fund shall be liable to additional income-tax at the rate of thirty per cent. Also clause (iii) of sub-section (2) of section **115 R is amended** so as to increase the **rate of additional income- tax from twenty per cent to thirty per cent** on any income distributed to any other person by a fund other than a money market mutual fund or a liquid fund.
131	**01-06-2011**	Under the existing provisions contained in section 131, certain income-tax authorities have been conferred the same power, as available to a Civil Certain words Court while trying a suit in respect of discovery and inserted in sub inspection, enforcing the attendance of any person, section (3) including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions. **New sub-section (2) is inserted** in section 131 to provide that for the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of income-tax, as notified by the Board in this behalf, **to exercise the powers conferred under sub-section (1)** on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority. Further sub-section (3) is amended, so as to empower the aforesaid authority as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.
133	**01-06-2011**	Under the existing provisions contained in section 133, the income-tax authorities referred to in that section have been empowered to call for information which is useful for or relevant to, any proceeding under the Act A new proviso is inserted after second proviso to section 133 so as to provide that for the purposes of an agreement referred to in section 90 or section 90A, an income-tax authority notified under sub-section (2) of section 131 may exercise all the powers conferred under section 133, notwithstanding that no proceedings are pending before it or any other income-tax authority.
139	**01-04-2011**	Under the existing provisions contained in clause (a) of Explanation 2 to sub-section (1) of section 139, the due date for filing return of income, in the case of a company; or a person (other than a company) whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force; or a working partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force, shall be the 30th day of September of the assessment year. Section 92E contains provisions for furnishing a report from an accountant by a person entering into international transactions. Sub-clause (i) of clause (a) to Explanation 2 is amended and new clause (aa) is inserted

		after clause (a) so as to provide that for filing a return of income in case of an assessee being a company, which is required to furnish a report referred to in section 92E, the due date shall be the 30th day of November of the assessment year. Under the existing provisions contained in sub-section (1) of section 139, every person, if his total income or the total income of any other person in respect of which he is assessable under the Income-tax Act during the previous year exceeds the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year. A new sub-section (1C) is inserted in section 139 so as to empower the Central Government to exempt by notification in the Official Gazette any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification. Under the existing provisions contained in sub-section (4C) of section 139, every entity referred to therein shall, if the total income in respect of such entity (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. New clauses (g) and (h) are inserted in sub-section (4C) in order to require that any body or authority or Board or Trust or Commission referred to in clause (46) of section 10 and infrastructure debt fund referred to in clause (47) of section 10, respectively, shall also furnish a return of income.
143	**01-04-2011**	Under the existing provisions contained in sub-section (1B) of section 143, the Central Government may, save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A) of that section, by notification in the official Gazette, direct that any of the provisions of the Income-tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, so, however, that no direction shall be issued after 31-3-2011. **Sub-section (1B) of section 143 is amended to extend the said time limit to 31-3 2012**.
153	**01-06-2011**	Under the existing provisions contained in Explanation 1 to section 153, certain periods specified therein are to be excluded while computing the period of limitation laid down in sub-sections (1), (2) and (2A) of section 153 for completion of assessments and re-assessments. New clause (viii) is inserted in Explanation 1 to section 153 so as to provide that the <u>period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months</u>, whichever is less, <u>shall also be excluded</u>.

153B	**01-06-2011**	Under the existing provisions contained in the Explanation to section 153B, certain periods specified therein are to be excluded while computing the period of limitation laid down in sub-section (1) of section 153B for completion of assessment under section 153A. **New clause (viii) is inserted** in the Explanation to section 153B so as to provide that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less, shall also be excluded.
194LB	**01-06-2011**	New section 194LB provides that where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company**, by an infrastructure debt fund referred to in clause (47) of section 10,** the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, **deduct income -tax thereon at the rate of five per cent.**
245C	**01-06-2011**	The existing provisions contained in the proviso to sub-section (1) of section 245C provide that, no application shall be made before the Settlement Commission unless the proceedings under section 153A or under section 153C have been initiated against the applicant and the additional amount of income-tax payable on the income disclosed in the application **exceeds fifty lakh rupees** and in other cases if the **additional amount of income-tax payable** on the income disclosed in the application **exceeds ten lakh rupees.** A new clause (ia) is inserted in the proviso to subsection (1) of section 245C. It provides that no application shall be made unless, in a case where the applicant is related to the person referred to in clause (i) who has filed an application [referred as 'specified person']; and the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated, **the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.** Further Explanation is inserted after the said proviso defining the expressions 'applicant in relation to the specified person' and 'substantial interest' for the purposes of the new clause (ia).
245D	**01-06-2011**	The existing provisions contained in sub-section (4) of section 245D provide that the Settlement Commission may pass orders on the matters covered by the applications received by it. A new sub-section (6B) is **<u>inserted</u>** so as to provide that the Settlement Commission

		may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under subsection (4). It further provides that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.
282B	**01-06-2011**	Under the existing provisions contained in section 282B, every income-tax authority shall, on or after 17-2011, allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon. Section **282B is now omitted.**
285	**01-06-2011**	**A new section 285** is inserted relating to the submission of statement by a non-resident having liaison office. New section 285 provides that every person, being a non-resident having liaison office in India, set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.
296	**01-06-2011**	Sub-section (1C) is inserted in section 139 so as to empower the Central Government to exempt, by notification, any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification. Section 296 is amended so as to provide that every notification issued under sub-section (1C) of section 139 shall be laid before Parliament.
Part A 4^{th} Schedule	**01-01-2011**	Rule 3 in Part A of the Fourth Schedule provides that Chief Commissioner or Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under rule 4 in Part A of the Fourth Schedule and the conditions, which the Board may specify by rules. The first proviso to sub-rule (1) of rule 3 provides that in a case where recognition has been accorded to any provident fund on or before 31-3-2006, the same shall be withdrawn, if such fund does not satisfy, on or before 31-12-2010, the conditions set out in clause (ea) of rule 4, and any other conditions which the Board may, by rules, specify in this behalf. The said proviso to sub-rule (1) is amended so as to extend the said time limit to 31-3-2012.

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22D	**01-06-2011**	The existing provisions contained in sub-section (4) of section 22D provide that the Settlement Commission may pass orders on the matters covered by the applications received by it. A new sub-section (6B) is inserted in the said section so as to provide that the Settlement Commission may, **at any time within a period of six months from the date of the order,** with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4). Further, an amendment which has the effect of modifying liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

2. BUSINESS INCOME*

2.1 Enhancement of weighted deduction for payment to specified laboratory, etc.

Section 35(2AA) allows weighted deduction in respect of any sum paid by an assessee (in computing business income) to a National Laboratory or a University or an IIT or a specified person approved by prescribed authority, for carrying out programme of scientific research approved by the prescribed authority, of one and three-fourth time. Such contribution is not entitled to any other deduction under the Act.

2.1-1 Amendment

The Finance Act, 2011 increases the limit of weighted deduction from one and three-fourth time to **two times**, with effect from 1-4-2012, i.e. assessment year 2012-13 relevant to the previous year to end on 31-3 2012 and thereafter. Accordingly, an assessee making a contribution to the specified body, qualifying for deduction under subsection, the quantum of deduction would be double the amount of contribution.

To illustrate,
If an assessee contributed to the specified body, say, Rs. 100, up to assessment year 2011-12, he was entitled to weighted deduction of Rs. 175. From assessment year 2012-13, the weighted deduction would be Rs. 200.

2.2 Deduction in respect of expenditure on specified business (section 35AD)

Section 35AD was inserted by the Finance (No. 2) Act, 2009 with effect from assessment year 2010-11 to provide for an investment linked tax incentive to specified businesses. The salient features of the said section are as follows:

- The section applies to 'specified business' mentioned in section 35AD.
- The whole of expenditure of capital nature incurred wholly and exclusively for the purposes of any specified business carried on by the assessee is eligible for deduction. For this purpose, expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.
- The specified business should fulfil the conditions mentioned in the section (e.g. not set up by splitting up, or reconstruction of a business already in existence, etc.).
- Where a deduction under section 35AD is claimed and allowed for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading 'C. Deductions in respect of certain incomes' in relation to such specified business for the same or any other assessment year.

The definition of 'specified business' has been widened with effect from assessment year 2012-13 and the following categories of businesses have been included within the purview of 'specified business':

- A 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 this behalf in accordance with the guidelines as may be prescribed.
- A production of fertilizer in India.

The definition of 'specified business' included a business of a new hotel or a new hospital as mentioned in section 35AD (8)(c)(iv)/(v) respectively. The word 'new' has been removed from these sub-clauses with effect from 1-4-2011 with the result that specified business will include any hotel or hospital as mentioned in the said sub-section.

2.2-1 Commencement

The housing project should commence its operations on or after 1-4-2011. The fertilizer business should commence operations on or after 1-4-2011 in a new plant or in a newly installed capacity in an existing plant for production of fertilizer.

2.2-2 Housing Project

A reading of the relevant provision shows that a project is covered in the definition of "specified business" only if all the following conditions are satisfied:

a) The Central Government or a State Government has framed a scheme for affordable housing.
b) The CBDT has prescribed guidelines for notifying a housing project.
c) The specific housing project is under the scheme framed by Central Government or State Government.
d) The housing project is notified by the CBDT in this behalf in accordance with the prescribed guidelines.

The deduction is available to an assessee carrying on the business of "developing and building". Hence, it will not be available to a mere contractor, who is not in the business of development. The deduction is available qua housing projects, a term which has not been defined in the Act. Its meaning would possibly be governed by the scheme.

The deduction is available only to capital expenditure and in a developer case most of his expenditure would be in relation to acquisition of land and construction of buildings, both of which are revenue expenditure. Further, **section 35AD(8)(f) in any case provides that expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land**. Hence, a developer will not be eligible to claim deduction of such expenditure under section 35AD.

2.2-3 Fertilizer

The deduction is available in respect of a new plant or in a newly installed capacity in an existing plant. Hence, assessees who have commenced production of fertilizer before 1-4-2011 will also be eligible for a deduction in respect of new installed capacity created in an existing plant.

2.2-3 a Production : –

The plant should be for production of fertilizer. The term "production" has been explained by the Supreme Court in a series of decisions. According to the Oxford English Dictionary "production" means amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or efforts. The word "production" or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process, which may or may not amount to manufacture. [CIT v. N. C. Budharaja & Co. [1994] 204 ITR 412 (SC); CIT v. Sesa Goa Ltd. [2004] 271 ITR 331 (SC);

2.2-3b New Plant : –

The provision applies to new plant. Further, Courts have held that reconditioned machinery is not used machinery and in order to determine whether the machinery is reconditioned or not, it has to be seen as

≈ when the machinery were first manufactured
≈ for what period they were previously used
≈ what were the latest technical improvements incorporated in the machines
≈ what is the nature and cost of these improvements in relations to their nature and total cost.

Usually, where the cost of reconditioning exceeds the cost of the used machinery, it is considered to be new.

2 . 2-3 c Newly Installed Capacity :–
The production should commence on or after 1-4-2011 in a newly installed capacity in an existing plant. The term "installed capacitya has not been defined in the Act : Its dictionary meaning is "production capacity of plant based either on its rated (name plate capacity) or actual (practically determined capacity). Thus, unless there is an increase in the production capacity, it cannot be said that there is newly installed capacity within the meaning of the provision.

To illustrate,
Replacement of an equipment which does not increase the production capacity will not result in newly installed capacity. However, if any balancing equipment enhancing the production capacity is installed, it could be argued that this has resulted in a newly installed capacity. It appears that the additional capacity need not result in an independent viable unit or undertaking.

2.2-4 Hotel/Hospital

2.2-4a NO IMPACT ON DEDUCTION UNDER SECTION 35AD –
With the removal of the word "new", the definition of specified business, in relation to hotels/hospitals reads as follows:

(iv) building and operating, anywhere in India, a hotel of two star or above category as classified by the Central Government

(v)A building and operating, anywhere in India, a hospital with at least one hundred beds for patients.

The word "building" still remains in the definition. Again, no change is made in section 35AD(5) where it is provided that the provision of section 35AD shall apply only if the operations are commenced on or after 1-4-2010, where the specified business is in the nature of

(a) A building and operating a new hotel of two star or above category as classified by Central Government.
(b) A building and operating a new hospital with at least 100 beds for patients.

In view of the above, the deduction will continue to be obtained only new hotel/hospital, notwithstanding the removal of the word 'new' from the definition of specified business.

2.2-4b Impact on Section 73A: –
Section 73A provides that any loss in respect of any specified business referred to in section 35AD shall be allowed to be set-off only against profits and gains of any other specified business. On a literal reading, prior to the above referred amendment, an assessee having a hotel/hospital covered by section 35AD along with other hotel/hospital was not eligible to set off the profits of the other hotel/hospital against the losses of the new hotel/hospital. Now with the amendment in the definition of "specified business" it appears that such setoff will be permissible.

2.3 Deduction in respect of contributions to pension scheme

Section 36(1)(iva) has been inserted with effect from assessment year 2012-13 to provide that an assessee will get a deduction in respect of contribution towards a pension scheme referred in section 80 CCD on account of an employee to the extent it does not exceed 10% of the salary of the employee in the previous year.

For this purpose, "salary "includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

The Memorandum explaining the provisions of the Finance Bill states as follows :

> *Currently, the contribution made by an employer towards a recognized provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under section 36, subject to certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.*
> *It is, therefore, proposed to amend section 36 so as to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed ten per cent of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under the head 'Profits and gains of business or profession'.*

It appears that even otherwise, a deduction was available under section 37(1), subject to satisfaction of the conditions of the said section.

2.3-1 Sum 'paid' :

The deduction is available in respect of any sum paid. Section 43(2) defines "paid" as

> *"Paid "means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head 'Profits and gains of business or profession'.*

However, section 43B(b) provides that a deduction in respect of any sum payable by the assessee as an employer by way of contribution to provident fund, etc., or any other fund for the welfare of employees is available only upon actual payment. Further, in Jt. CIT v. ITC Ltd. [2008] 112 ITD 57 (Kol. - Trib.) (SB), it was observed that contribution to pension fund is dealt with by section 43B(b). It appears that a pension fund could be considered as a fund for the welfare of the employees and hence a **deduction in respect of such contribution will be available only upon actual payment.**

2.3-2 Scheme referred to in section 80CCD

Section 80CCD refers to pension scheme notified by the Central Government.

2.3-3 Allowance to the extent of 10% of salary

If an assessee contributes to the fund more than 10% of the salary of an employee, the deduction will be limited "to the extent of 10% of the salary": it is not that the entire amount will be disallowed.

To illustrate,

if an employer contributes 11% of the salary of an employee, he will get deduction to the extent of 10% and be liable to disallowance of 1%.

The limit of 10% has to be observed qua each employee.

To illustrate,

suppose an employer has two employees (A & B) drawing Rs. 5,00,000 each and he contributes to the fund Rs. 55,000 (11%) for employee A and Rs. 45,000 (9%) for employee B, he will face disallowance of Rs. 5,000 (Rs. 55,000 less Rs. 50,000, being 10%) qua employee A.

2.3-4 Employee

The term employee will include all employees, including director employees.

2.3-5 Meaning of salary

Salary would include commission.

2.4 Amendment to section 40A (9)

Hitherto, section 40A(9) provided that no deduction shall be allowed in respect of any sum paid by the assessee as an employer as contribution to any fund except where such sum was paid (a) for the purposes and to the extent provided by or under section 36(1)(iv) (Provident Fund) or section 36(1)(v) (Superannuation Fund) or (b) as required by or under any other law for the time being in force.

This section has been amended with effect from assessment year 2012-13 to provide for an exception to contribution to a pension fund under section 36(1)(iva). Hence, the contribution under section 36(1)(iva) would not be disallowed under section 40A(9).

3. EXEMPTIONS

3.1 Enhancement of Limit - Trust, Pursuing Other Objects : Section 2(15)

Section 2(15) of the Act, defining "charitable purpose" was amended by the Finance Act, 2008, by inserting first proviso, to provide that if the pursuit of '*advancement of any other object of general public utility*' involves carrying on of specified activity , it shall not be considered as charitable purpose.

The Finance Act, 2010 inserted second proviso, with retrospective effect from 1-4-2009 to provide that the first proviso would not apply, if the aggregate value of receipts from the specified activities is Rs. 10 lakhs or less in the previous year. Thus, if the receipts of a Trust, pursuing other object from the specified activities are **Rs. 10 lakhs or less**, other object would be considered as charitable purpose and enable the Trust to claim exemption, if any, subject to fulfillment of the conditions of sections 11 to 13 of the Act.

3.1-1 Amendment

The Finance Act, 2011 amends the second proviso, with effect from 1-4-2012, i.e. assessment year 2012 13, relevant to the previous year to end on 31-3-2012, **to raise the limit of Rs. 10 lakhs to Rs. 25 lakhs**.

The effect of the amendment is that if the receipts of a Trust, pursuing other object, from the specified activities, are Rs. 25 lakhs or less in the previous year to end on 31-3-2012 and thereafter, it would be considered as charitable purpose (irrespective of the first proviso) and enable the Trust to claim exemption, if any, subject to fulfillment of the other conditions under sections 11 to 13 of the Act.

3.2 Exemption to dividend income of a developer of Special (Economic Zone (SEZ) : Section 10(34)

Explanation to section 10(34) (inserted by way of a modification vide section 27 of the Special Economic Zones Act, 2005 read with the Second Schedule to it) clarified that the dividend referred to in section 1150 shall not be included in the total income of the assessee, being a Developer or entrepreneur of a SEZ.

As a consequence of the amendment to section 115-0(6) [see para 8.3], Explanation to section 10(34) has been omitted with effect from 1-6-2011.

The Explanation was only a clarificatory provision and despite its omission, the dividend income of a developer will continue to remain exempt under the principal part of section 10(34) itself, if it is covered by section 1150.

3.3 Exemption to certain perquisites of Chairman and Members of Union Public Service Commission : Section 10(45)

Section 10(45) has been inserted with retrospective effect from assessment year 2008-09 to provide exemption to any allowance or perquisite if

(a) it is paid to the chairman or a retired chairman or any member or retired member of the UPSC; and

(b) such allowance or perquisite is notified by the Central Government in the Official Gazette in this behalf.

3.4 Exemption to specified Government bodies, etc., for specified income : Section 10(46)

The Finance Act, 2011 inserts a new clause (46) in section 10 to provide for exemption of specified income of certain notified Government bodies, with effect from 1-6-2011.

The exemption is conferred on fulfillment of the following:

≈ It applies only to specified income, of the nature and to the extent, specified in Notification by Central Government.
≈ Specified income arising to the specified body is exempt.
≈ Specified body should be established or constituted, under the specified Acts or Government Resolutions (i.e., any authoritative decision taken by Central Government or State Government to establish or constitute specified body) with the object of regulating or administering any activity for the benefit of the general public.
≈ Specified body is notified by the Central Government for the purpose of the sub-section.
≈ Specified body should not be engaged in any commercial activity.

Thus, the exemption is conferred on a specified body and applies only in respect of the specified income of the nature and to the extent specified in the Notification.

3.4-1 Specified income
It is defined by Explanation below the sub-section to mean:

the income, of the nature and to the extent arising to a body (by whatever name called) referred in the clause, which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The Memorandum states that "*the nature and extent of income to be exempted will also be specified by the Central Government while notifying such entity*".

Prima facie, the exemption may not be in respect of the entire income of the specified body. The exemption could be based on the nature of income. Further, there could also be a limit specified and the exemption would be available only to the extent of the limit specified.
Apparently, the definition does not provide any guidance about the nature of income, which may be considered for the purpose of Notification. Similarly, there is no guidance for determining the extent to which the income can be exempted. Thus, the nature of income exempt and the extent thereof would be at the discretion of the Central Government.

It appears, the nature of income and the extent thereof may be determined having regard to the 'regulating or administering activity' for the benefit of the general public.

3.4-2 Specified body
The exemption applies to the following:

- A body
- An authority
- A Board
- A Trust
- A commission

By whatever name called , established or constituted by or under

- Central Act, or
- State Act, or
- Provincial Act, or
- Constituted by the Central Government or a State Government.

The specified body must have as its object -regulating or administering any activity for the benefit of the general public.

3.4-3 Conditions for the exemption

There are two conditions:
(a) Specified body should not be engaged in any commercial activity; and
(b) Specified body is notified by the Central Government.

3.4-3a Not Engaged in any commercial activity :

Commercial activity is neither defined nor explained. Generally stated, a commercial activity means or could mean "The very concept of any activity which can justly be called a commercial activity must imply some investment of capital and the activity must run the risk of profit or loss. In the context of the sub-section, prima facie, the meaning thereof also needs to be considered having regard to its object specified in the clause, namely, of regulating or administering any activity for the benefit of the general public.

To illustrate,

Central Government has established or set up various regulatory authorities to regulate certain types of businesses in the interests of general public. These authorities do charge fees or other consideration for conferring certain rights or relating to the business in respect of the specified services made available (by private players) to the general public. In that case, it may appear that such authorities may not qualify on the ground that they are engaged in commercial activity, although, the basic object is to regulate or administer the activity of providing services by the private players to the general public. In other words, the regulating or administering activities pertain to the business. In such a case can it be said that the regulating authority is engaged in commercial activity? The commonsense answer is no. However, having regard to the nature of the provision, an adverse view, considering the approach of authorities under the Act, that it is engaged in commercial activity cannot be ruled out.

As per the definition of specified income and, in particular, the power of the Central Government, to notify the nature and extent of income, possibly, a view can be taken that to the extent the income is considered as attributable to any activity in the nature of commercial activity, it may not be specified as income entitled to exemption. Hence, even in case of regulatory body or authorities, engaged in administering or regulating any business, the exemption may be available in respect of other income not connected with regulation or administration of the business.

3.4-4b Notification for the purpose of clause : –

It is not clear whether any specified body would be notified by the Central Government on its own initiative or otherwise. Perhaps, it may be difficult for the Central Government to identify the eligible bodies on its own. Hence, it appears, a specified body will have to initiate action on its own for the purpose of its notification under the clause.

3.4-5 Effective date

Clause (46) of section 10 is inserted with effect from 1-6-2011. Accordingly, it should apply to assessment year 2012-13 (as it would be in force on 1st day of assessment year 2012-13). Apparently, it is made effective from 1-6-2011 to facilitate the process of Notification. If a specified body is notified, say, before 31-3-2012, the specified income, of the nature and to the extent notified, for the entire previous year (1-4 2011 to 31-3-2012) may be exempt, subject to fulfillment of conditions of the sub-section and Notification.

3.4-6 Compliance contemplated for the exemption:

- Initiation of action (by a specified body) for a Notification under the sub-section including the nature and extent of specified income. That may involve examination of the relevant statutory provisions or provisions of GR; determining the nature of activity and whether they qualify; nature of income arising; whether the activity can be regarded as commercial activity and so on and so forth.

- If notified, compliance with the clause and the conditions, if any, imposed in Notification for eligibility to claim the exemption or avail the exemption including determination of specified income and the extent thereof.
- If the entire income is exempt under the clause, comply with the process of filing the return of income as required by section 139(4C) of the Act.
- If the entire income is not exempt, comply with the applicable provisions of the Act for payment of tax, if any, on the income not exempt under the clause and accordingly take the steps.
- There is no exemption from collection or deduction of tax at source. Accordingly, the specified body may have to comply with the applicable provisions of the Act.

3.5 Exemption to income of infrastructure debt fund : Section 10(47)

Section 10(47) has been inserted with effect from 1-6-2011 to provide that any income of infrastructure debt fund will be exempt from tax if

(a) the Fund is set up in accordance with the prescribed guidelines; and
(b) it is notified by the Central Government in the Official Gazette for the purposes of this section.

The section provides for exemption to any income of a fund. Hence, the exemption is not restricted to only interest income. The term infrastructure debt fund is not defined. This is unlike section 10(23G) which provided for exemption to income of a infrastructure capital fund and had defined such a fund. It appears that the term may be defined by the guidelines or its meaning would be ascertained from the guidelines.
The Fund would be required to file return of income under section 139(4C) of the Act.

4. CHAPTER VI-A DEDUCTIONS

4.1 Limit on deduction under sections 80C, 80CCC, 80CCD

Section 80CCE provides that the aggregate amount of deduction under sections 80C, 80CCC and 80CCD shall not exceed Rs. 1 lakh. Section 80CCD contemplates two types of contributions to New Pension Scheme ('NPS') of Central Government:

a) Contribution by the employee [sub-section (1)]; and
b) Contribution by the Central Government or any other employer - sub-section (2), subject to the limit specified therein.

4.1-1 Amendment

The Finance Act, 2011 amends section 80CCE (with effect from 1-4-2012, i.e. assessment year 2012-13) to substitute reference to section 80CCD by sub-section (1) of section 80CCD so as to provide that the contribution made by the Central Government or any other employer to NPS, referred in section 80CCD(2) shall be excluded while computing the limit of Rs. 1 lakh.

The effect of the amendment is:

a) The deduction in respect of contribution by the employee to NPS, referred in sub-section (1) of section 80CCD would be subject to the limit of Rs. 1 lakh; and
b) The deduction in respect of contribution by the Central Government or any other employer to NPS available under 80CCD(2) would not be subject to the limit specified in section 80CCE.

To illustrate,

An assessee has made various contributions or investments referred in sections 80C, 80CCC and 80CCD(1) of Rs. 1,10,000. In that, the contribution under section 80CCD(1) is Rs. 10,000. The contribution by the employer to NPS eligible for the deduction under section 80CCD(2) is, say, Rs. 10,000 within the limit specified therein. Thus, the aggregate amount eligible for deduction is Rs. 1,20,000.

Till assessment year 2011-12, the above deduction was subject to the limit of Rs. 1 lakh specified in section 80CCE. From assessment year 2012-13, the assessee would be eligible to a deduction of Rs. 1 lakh in respect of contributions/payments [other than referred in section 80CCD(2)] plus, he would be eligible for the deduction in respect of employer contribution to NPS under section 80CCD(2) of Rs. 10,000 aggregating to Rs.1,10,000.

4.2 Deduction for subscription to long term infrastructure bond: Section 80CCF

The Finance Act, 2010, inserted section 80CCF, only for assessment year 2011-12, to provide for deduction in respect of subscription to notified infrastructure bonds, subject to maximum of Rs. 20,000. The Finance Act, 2011 extends the above deduction to assessment year 2012-13.

Accordingly, if an assessee (being an individual or an HUF) pays or deposits any amount as subscription to notified long term infrastructure bonds, in the previous year 2011-12, relevant to assessment year 2012 13, he would be eligible for the deduction under section 80CCF, subject to a maximum of Rs. 20,000.

4.3 Extension of sunset clause for tax holiday under section 80-IA

Section 80-IA(4)(iv) provides for a deduction of profits and gains of an undertaking

(a) which is set up for the generation and distribution of power; or

(b) which starts transmission or distribution by laying a network of new transmission or distribution lines; or
(c) which undertakes substantial renovation and modernization of existing network of transmission of distribution lines.

The said section has been amended with effect from assessment year 2012-13 to extend the terminal date (that is, the date before which the respective operations should commence) for a further period of one year up to 31-3-2 012.

4.4 Sunset clause for deduction to certain undertakings engaged in commercial production of mineral oil: Section – 80-IB.

Under section 80-IB, a seven year profit linked deduction of 100% is available to an undertaking which is engaged in commercial production of mineral oil. A proviso has been inserted in section 80-IB(9)(ii) with effect from assessment year 2012-13 to provide that the aforesaid deduction will not be available for blocks licensed under a contract awarded after 31-3-2011 under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19 018/22/95-ONG.DO.VL, dated 10-2-1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

So far as the blocks licensed under a contract awarded before 31-3-2011 are concerned, the profits and gains derived from such blocks will continue to be eligible for deduction under section 80-IB.

5. ALTERNATE MINIMUM TAX (AMT) ON LIMITED LIABILITY PARTNERSHIP (LLP)

5.1 Introduction

The Finance Act, 2011 inserts a new Chapter in the Act, namely, Chapter XII-BA (Special Provisions relating to certain Limited Liability Partnerships) consisting of sections 115 JC to 115 JF, with effect from 1-4-2012, that is, assessment year 2012-13. It levies a special tax (MAT as imposed in case of companies) on certain Limited Liability Partnerships.
The Memorandum explains:

- An LLP being treated as a firm for taxation has the following tax advantages over a company...
- it is not subject to MAT ...
- it is not subject to DDT ...
- it is not subject to surcharge.

In order to preserve the tax base vis-à-vis profit linked deductions, it is proposed to insert a new Chapter ... containing special provisions relating to certain limited liability partnership.

AMT or Alternate Minimum Tax payable by LLP would be 18.5% of the adjusted total income, where tax payable in case of such LLP is computed under the provisions of the Act (excluding section 115 JC) is less than 18.5% of adjusted total income.

5.2 AMT in brief

Steps for computing AMT, in case of LLP:

≈ Compute total income, as per the normal provisions of the Act (other than the provisions of the Chapter) (Regular total income)
≈ Ascertain tax (regular income tax) on Regular total income
≈ Compute adjusted total income as per section 115 JC(2)
≈ Ascertain AMT, that is, 18.5% of adjusted total income
≈ If regular income tax payable is lower than 18.5% of adjusted total income, adjusted total income could be deemed as total income liable to tax 18.5%, i.e. AMT.

5.2-1 Provisions:

To give effect to AMT, the following sections are inserted by the Finance Act, 2011:

✓ Section 115JC: Sub-section (1) provides for the levy of AMT; sub-section (2) provides for determination of adjusted total income; and sub-section (3) provides for furnishing of audit report.
✓ Section 115JD provides for tax credit of AMT.
✓ Section 115JE provides that, save as otherwise provided in the Chapter, the other provisions of the Act shall apply.
✓ Section 115JF defines certain terms: accountant, alternate minimum tax, limited liability partnership and regular income tax.

5.3 The nature and scope of section 115JC

Essentially, it provides for substitution of Regular total income by the adjusted total income (deemed as total income for the purpose) to levy AMT at 18.5%.

5.3-1 Non obstante clause

To give effect to the substitution, the section starts with the clause *"notwithstanding anything contained in this Act"*. With a view to giving enacting part of the section, in case of conflict, the overriding effect over the provision of the Act mentioned, the non obstante clause is used;

Section 115JC(1) has a limited objective to substitute regular income tax payable by AMT. Thus the non obstante clause will override only those provisions which are inconsistent with or in conflict with the objective of providing for the payment of AMT. In other words, the other provisions would not be affected or rather cannot be considered as inconsistent with or in conflict with the provision.

Broadly stated, the section lays down:

- ✓ substitution of AMT for regular income tax [sub-section (1)];
- ✓ providing machinery for computation of adjusted total income [sub-section (2)];
- ✓ obtaining and furnishing Accountants Report [sub-section (3)]; and
- ✓ Application of the other provisions of the Act [section 115JE].

It would be appreciated that the section provides for the levy; machinery for computation; compliance with certain conditions, etc. However, it does not provide for the charge, collection and recovery, assessment, etc. The fiction, thus, has a limited field, namely:

- ✓ Substitution of regular income tax payable by AMT; and
- ✓ Computation of adjusted total income.

Thus, it appears that all the provisions of the Act including the provisions relating to charge, definitions, recovery, payment, assessment, etc., would apply in construing the provisions of section 115JC.

5.3-2 Constitutional validity of section 11 5JC (or the Chapter)

Constitutional validity of MAT provisions (section 115J or 115JA or 115JB) was upheld in the following cases:

- ≈ Karimtharuvi Tea Estates Ltd. v. Dy. CIT [2001] 247 ITR 22 (Ker.).
- ≈ Suryalatha Spinning Mills Ltd. v. Union of India [1997] 223 ITR 713 (AP).
- ≈ National Thermal Power Corporation Ltd. v. Union of India [1991] 192 ITR 187 (Delhi).

Having regard to the above, it appears constitutional validity of section 115JC may also be recognized.

5.3-3 Regular income-tax

It is defined by section 115JF (d) to mean:

- Income-tax payable,
- for a previous year ,
- by LLP,
- on its total income (or Regular total income),
- as per the provisions of the Act (other than the Chapter)

5.3-3a REGULAR T*TAL INCOME –

Determination of Regular total income (to recapitulate) would, normally, subject to claims, if any, involve:

- ≈ Computation of income under respective heads;
- ≈ Set-off losses, if any, under the said head (inter head/intra head) and determine carry forward of loss, if any, under respective head;
- ≈ Reduce deduction, if any, under section 10AA, from the profit of the qualifying business;
- ≈ Reduce deduction, if any, under Chapter VIA including Part C thereof (Part C); and

- ≈ Determine Regular total income.

Computation of Regular total income permits LLP to claim, inter alia, deductions under section 10AA and Part C, which reduces the tax base of LLP and AMT seeks to preserve the same.

5.3-3b INCOME TAX PAYABLE –
On Regular total income, tax chargeable by LLP, at applicable rate would constitute income tax payable. In the context, income tax payable would be tax so determined, without any deductions for the payments made (self-assessment or advance tax or TDs) or any credits available.

To illustrate,
Regular income-tax payable by LLP is Rs. 1,00,000. It has paid advance tax, say, of Rs. 60,000; tax deducted at source is, say, Rs. 20,000; credits available (of AMT and/or foreign tax credit) is, say, Rs. 10,000; and, tax payable upon self-assessment is Rs. 10,000. As explained, regular income tax payable, as defined, is Rs. 1,00,000 and not the tax payable on self-assessment of Rs. 10,000.

A further question arises as to whether in computing regular income-tax and AMT Education Cess and Higher Secondary Education Cess (collectively referred to as "the Cess") should be added or not.

Section 115JF(d) states that regular income tax means the income-tax payable for a previous year by LLP on its total income in accordance with the provisions of the Act other than the provisions of the Chapter.

The cess, as per the provisions of the Finance Act, 2011 constitutes additional surcharges. The Supreme Court in CIT v. K Srinivasan [1972] 83 ITR 346 has held that income-tax payable would include surcharge. Hence, regular income-tax would include the cess.

Now, alternate minimum tax has been defined in section 115JF (b) as the amount of tax computed on adjusted total income @ 18.5%. Hence, on a literal reading, the AMT should not include the cess.
On the other hand, normally a comparison can be between two like figures. Further, section 115JD(2) provides that the excess of AMT over the regular income-tax payable for that year shall be regarded as tax credit for carry forward and set off in subsequent years. This suggests that the AMT also has to be including cess as is the case for regular income-tax.

It appears that the second view is the better view. Having regard to the above, AMT credit (discussed in para 2.4) to be carried forward and set-off shall also be determined inclusive of the cess.

5.3-4 Alternate minimum tax :

It is defined by section 115JF(b) to mean:
- ≈ Amount of tax computed at 18.5%,
- ≈ on adjusted total income.

5.3-5 Limited liability partnership:
It is defined by section 115JF(c) of the Act to mean as defined in section 2(1)(n) of the Limited Liability Partnership Act, 2008. It reads as follows:

"means a partnership formed and registered under this Act"

Accordingly, AMT would be applicable only in case of LLP formed and registered in India. In other words, AMT would not apply to a foreign LLP [defined by section 2(m) of the Limited Liability Partnership Act, 2008 to mean: "a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India].

5.3-6 Adjusted total income:

Section 115JC (2) defines and also provides for the mode and manner of calculation of adjusted total income, as follows:

Regular total income

♦ Increased by:

- Deductions claimed, if any, under Part C; and
- Deduction claimed, if any, under section 10AA.

To illustrate, for assessment year 2012-13, Regular total income of LLP is, say, Rs. 1,00,000. In computing Regular total income, apart from claiming various allowances permitted and setting of the unabsorbed losses, etc., it has deducted an amount of Rs. 5,00,000 by way of deduction under section 10AA of the Act. The adjusted total income of LLP would be: Rs. 1,00,000 (total income) plus Rs. 5,00,000 (deduction under section 10AA) equal to Rs. 6,00,000.

5.3-6a Computation of Adjusted Total Income & Related Aspects :

It is evident from the provisions that :

- The starting point for computing adjusted total income is Regular total income.

- In computation of Regular total income, various allowances (like capital expenditure) and deductions are available including set off of loss etc. ("other deductions). Apart from that, in computation of Regular total income, deduction, if any under section 10AA as also Part C is available.

- To compute the adjusted total income, out of various allowances and deductions, Regular total income is to be increased only by the deduction, if any, under section 10AA or Part C, i.e., profits based deductions, on which AMT is levied, as explained in the Memorandum.

- In other words, in computing the adjusted total income, Regular total income should not be increased by other deductions (not being deduction, if any, under section 10AA or Part C). To illustrate, exemptions under section 10(34) (dividend income) or under section 10(38) (long term capital gains). The other deduction(s), if any, may impact determination of deduction under section 10AA or Part C. To illustrate, remuneration to a partner may impact deduction under section 10AA or Part C. However, it will not affect computation of adjusted total income as starting point for computing it is Regular total income.
- The additions in respect of the deduction, if any, under section 10AA or Part C are confined or restricted to the amount "claimed in computing Regular total income. In the context of section 115JC(2), claimed would mean actually taken into account in computation of Regular total income to determine regular income-tax payable. Thus, the actual amount of the deduction considered for computing Regular total income needs to be deducted.

  To illustrate,

  Regular total income of LLP is nil. Its gross total income is, say, Rs. 2,00,000 (after setting off losses etc.). It is eligible to the deduction under Part C of Rs. 5,00,000. However, only Rs. 2,00,000 is claimed, as it can be claimed only to the extent of gross total income. In this case, to determine adjusted total income, Regular total income should be increased by Rs. 2,00,000, that is, the amount claimed and not Rs. 5,00,000, being the amount eligible for deduction.

- Further in the course of scrutiny assessment, if the deduction under Part C, as claimed by LLP is reduced, for computing adjusted total income, which amount should be added back to Regular total income: the amount actually considered for allowance in computing Regular total income in the assessment or the amount claimed by LLP? As discussed earlier, for determination of adjusted total income, the amount which is actually considered for the purposes of allowance to determine Regular total income should be considered. Hence, the amount actually allowed in computing regular total income in the assessment order and not the amount claimed in the return should be considered.

5.3-6b DEDUCTIONS UNDER PART C –
Presently, it appears a deduction may be available to LLP under the following provisions of Part C (either on account of qualifying for it in assessment year 2012-13 or on account of continuity of deductions from earlier assessment years).
Section 80-IA, 80-IB, 80-IC, 80-ID, 80-IE, 80-JJA, 80-LA

5.3-7 Audit report

Section 115JC(3) obliges LLP to obtain a report in the prescribed form from an accountant as defined by Explanation below section 288(2). Such report should certify that adjusted total income has been computed in accordance with section 115JC(2) and AMT has been computed in accordance with section 115JC. Such report has to be furnished on or before the due date of filing of return of income under section 139(1).
The auditor, who may give such report, as per the provisions needs to certify adjusted total income. For the purpose, the auditor may have to interpret and apply the provisions relating to adjusted total income. In view of the earlier similar provisions under the Act, some precedents are available to the auditor for interpretation and application of the provisions. The certificate should bring out all the material facts and make appropriate disclosures for the stand taken in interpreting any application of the provisions relating to computation of adjusted total income.

5.4 AMT Credit
The Chapter seeks to grant credit in respect of AMT paid under section 115JC.
The provision (section 115JD), as applicable for the credit of AMT paid under section 115JC, in brief, is as follows:

- LLP if it has paid AMT would be allowed credit in respect of AMT.
- The amount of credit to be so allowed would be the excess of AMT over Regular income-tax on its Regular total income.
- On such credit no interest is allowable.
- Credit so determined can be carried forward for set-off in ten succeeding assessment years from the year in which tax credit becomes allowable.
- The credit is allowed to be set off in the year in which Regular income tax is payable. In other words, in the year(s) in which LLP continues to pay tax by way of AMT no credit would be allowed.
- The credit allowable as set-off would be to the extent of excess of Regular income tax over AMT, i.e. difference between Regular income tax and AMT, had section 115JC applied for that assessment year, and the balance would be carried forward.
- If there is a variation in the Regular income tax or AMT pursuant to any orders of the assessing authorities, then the tax credit shall also be varied.

5.4–2 Steps

In the scheme of allowance of credit, for the purpose of computation of credit and/or actual allowance or set-off thereof, the following calculations and steps are involved:

- Computation of tax liability under section 115JC in respect of the year in which a claim for credit would be made (hereinafter the year is referred as the 'claim year').
- Computation of Regular total income and Regular income tax thereon in the claim year.
- If AMT is higher than Regular income tax, claim for credit would arise.
- Calculation of Regular income tax in the year in which set-off of the credit is claimed (the year is hereinafter referred to as 'credit year').
- Calculation of AMT in the credit year.
- If Regular income tax is higher than AMT, the credit claimed in an earlier year is available as set-off in the credit year.
- Calculation of balance credit for set off in subsequent assessment years.

5.4-3 Illustration

The steps involved in computing credit, its carry forward and set off could be clearer through the following illustration.

X LLP is liable to pay AMT for the assessment year 2012-13.
Its Regular total income is, say Rs. 100.
Adjusted total income is, say Rs. 500.
Thus, AMT payable is Rs. 92.5 (approx.)
Regular income tax, i.e., Tax payable on Regular total income is Rs. 30 (approx.)
[Tax rate assumed @ 30%].

The credit available under section 115JD(1) is based on AMT paid, that is Rs. 92.5.
The amount of credit as per section 115JD(2) would be Rs. 62.5 (Rs. 92.5 minus Rs. 30).
The credit so available can be carried forward till assessment year 2022-23 [Section 115JD(4)].

X LLP becomes liable to pay Regular income tax, say, in the assessment year 2014-15. In that year, the Regular total income, say, is Rs. 100 and adjusted total income is, say Rs. 110. Tax rate in that year may be, say 30%.

Under section 115JD(5), X LLP would be entitled to claim the credit in assessment year 2014-15. Regular income tax would be Rs. 30 and AMT payable would be Rs. 20.35. X LLP will be allowed credit of Rs. 9.65 (Rs.30 minus Rs. 20.35) and will have to actually pay only Rs. 20.35. Thus, X LLP will be eligible to carry forward the balance credit of Rs. 52.85 (approx.).

5.4-4 Credit determination

As discussed above, the credit determination involves calculations, concerning AMT; Regular income tax; and excess of one over the other. The provision nowhere specifies that for carry forward and set off any other condition has to be complied with, e. g. unlike loss, there is no provision for filing return in time or paying tax in time, etc.

5.4-5 Variation in credit

Section 115JD (6) provides for variation in the credit pursuant to any order. It does not list the provisions under which the order may be passed. Section 115JAA (6) of the Act, while dealing with variation in MAT credit lists the order under various provisions of the Act.

5.4-5a Action pursuant to above Orders : -

Sub-section (6) lays down that, if as a result of an order under the aforesaid provisions, the amount of tax payable being Regular income tax or AMT is reduced or increased, the amount of tax credit allowable under section 115JD shall also be increased or reduced accordingly.
Thus, if as a result of any order referred to in sub-section (6), any of the following computations and as a result tax payable under the Act including the Chapter is varied, the amount of tax credit will have to be varied as per the provisions of sub-section (6):

- ≈ Computation of normal total income and Regular income tax in the claim year;
- ≈ Computation of adjusted total income and AMT in the claim year;
- ≈ Computation of Regular total income and Regular income tax in the credit year; and
- ≈ Computation of adjusted total income and AMT in the credit year.

5.4-5b Tax Credit whether available with reference to all types of taxes:

Under sub-section (4) tax credit is to be set off in the credit year when tax is paid on Regular total income. Under sub-section (5) as said above, the tax credit allowable for set-off is to be quantified with reference to tax on Regular total income, and tax on adjusted total income.
As per the definition of total income, it would include all incomes irrespective of the fact that some items of income may suffer tax at specified rate, whether concessional or otherwise, in the Act or at a general rate specified by the Finance Act, from year to year.

In a given case, total income of LLP could include income by way of capital gains, which may suffer tax at specified rate in the Act or at a concessional rate under section 112 (which prescribes tax rate on long-term capital gains). Thus, the computation of credit will be with reference to Regular income tax including tax on capital gain.

5.4-6 Whether credit can be considered for payment of advance tax?

Yes, as held by Supreme Court in CIT v. Tulsyan NEC Ltd. [2011] 196 Taxman 181 (in the context of sections 234B and 234C).

Sections 234B and 234C were amended by the Finance Act, 2006 to provide that in determining assessed tax, MAT credit under section 115JAA shall be reduced. However, those sections are not amended to provide for reduction of AMT credit under section 115JD. In spite of that, it appears, having regard to the decision referred above, AMT credit can be reduced for determining 'assessed tax'.

5.5 Compliance with provisions of the Act in respect of Regular total income as well as adjusted total income -Section 115JE

The Chapter enacts a complete code, as discussed earlier, for payment of AMT including applicability of the other provisions of the Act. While providing applicability of the other provisions of the Act, section 115JE saves the provisions of the Chapter. Thus, all the provisions of the Act, which are not in conflict with the provisions of the Chapter, would apply in respect of the charge of tax, collection and recovery, procedures, etc.

5.5-1 Advance tax

The Supreme Court has recently settled the controversy about liability to pay advance tax in case of companies where MAT provisions applied and held that a company liable to MAT is obliged to pay advance tax [CIT v. Rolta India Ltd. [2011] 330 ITR 470 (SC)].

CBDT through its Circular No. 13 of 2001, dated 9-11-2001, after analyzing the provisions of section 115JB and other provisions of the Act has taken a view that the companies liable to MAT are obliged to pay advance tax. Section 2(9) of the Finance Act, 2011, inter alia, provides for the rates for payment of advance tax. First proviso thereof provides, inter alia, that the rate for payment of advance tax in case of applicability of section 115JC shall be the rate specified in the section. Having regard to the above, as well as the similarity of language of sections 115JE and 115JB(5) of the Act, LLP liable to AMT would be obliged to pay advance tax.

5.5-2 Surcharge and education or higher secondary education cess

Section 2(11) and (12) of the Finance Act, 2011, respectively, provide that the income tax calculated under sub-sections (1) to (10) shall be increased by the surcharge and by an additional surcharge, namely, Education cess (2%) and Secondary and Higher Education Cess (1%). Accordingly, for discharging the liability of AMT, LLP will have to also consider Education cess and Secondary and Higher Education Cess. Accordingly, the effective rate of AMT would be 19.055%.

5.5-3 Application of the other provisions of the Act, consequences and scope

In the scheme of the Chapter, LLP has to make two computations (of Regular total income and adjusted total income); show total income as per both computations in the return; and finally adopt either as a total income.

Accordingly, while complying with the provisions of the Act, LLP may have to comply with the provisions relating to both. While doing so it will have to comply with the necessary requirement stipulated in that behalf. To illustrate, if an LLP is entitled to a deduction under section 10AA, it will have to file the necessary report of the Accountant as required by that provision. Further, if the net result of Regular total income is a loss, it will have to ensure that the return is filed in time. In the course of scrutiny assessment, LLP will have to provide information and details in connection with both the computations. It will also have to substantiate its claims with reference to both the computations. In the assessment, there could be additions or adjustment in both the computations. In a given case, it may also be possible that LLP may have paid AMT; but, it is finally assessed on an amount as per computation of Regular total income. Accordingly, LLP may have to agitate in the appropriate proceedings, addition and adjustment in respect of both the computations. This is because such a computation may have ultimate effect either in the same assessment year or in respect of carry forward of AMT credit.

6. MINIMUM ALTERNATE TAX

6.1 Revision in rate of Minimum Alternate Tax (MAT) (Section 115JB)

Section 115JB (1) of the Act provides for the levy of MAT in case of companies with effect from 1-4-2011, i.e. assessment year 2011-1 2. It lays down that:

a) Where tax payable on the total income of a company computed as per the normal provisions of the Act is less than 18% of book profit, the book profit shall be deemed as total income of the company; and
b) On the book profit, deemed as total income, tax shall be payable at 18% plus applicable surcharge and education cess.

6.1-1 Amendment

The Finance Act, 2011 amends sub-section (1) of section 115JB, with effect from 1-4-201 2, that is, assessment year 201 2-13, to provide as follows:

a) Where tax payable on the total income of a company, computed as per the normal provisions of the Act is less than 18.5% of book profit, the book profit shall be deemed as total income of the company; and
b) On the book profit deemed as total income of the company, tax shall be payable at 18.5% (plus applicable surcharge and education cess).

On the amount of MAT, domestic companies are liable to pay surcharge at 5% (in case where the taxable income exceeds Rs. 1 crore) and education cess at 2% and higher education cess at 1% thereon. **Accordingly, effective MAT burden of the companies has increased from 19.931% to 20.007%.**

6.2 Withdrawal of exemption from MAT

The Special Economic Zones Act, 2005, with effect from 10-2-2006 inserted sub-section (6) in section 115JB of the Act to provide that the provisions of section 115JB shall not apply to income accrued or arising on or after 1-4-2005 from any business carried on, or services rendered, by an entrepreneur in a unit of SEZ or a developer of SEZ.
Thus, a company carrying on the specified business in a unit in SEZ or as a developer of SEZ was not liable to pay MAT on the profits derived from the said business.

6.2-1 Amendment

The Finance Act, 2011 inserts a proviso below sub-section (6) to provide that, with effect from 1-4-2012, the provisions of sub-section shall cease to have effect. **Accordingly, a developer of SEZ or any entrepreneur carrying on business in a unit in SEZ (being a company) would be liable to pay MA**T on the profits arising from the development of SEZ or the business carried on in a unit in SEZ. The provision would be effective from the previous year to end on 31-3-2012 relevant to assessment year 2012-13. Such a company would be eligible for credit of MAT so paid under section 115JAA of the Act. No doubt, such a company would continue to enjoy exemption in respect of income tax under the applicable provisions.

7. TRANSFER PRICING

7.1 Permitted variation between ALP and actual price to be prescribed

Section 92C provides the procedure for computation of Arms Length Price (ALP). Hitherto, the second proviso to section 92C(2) provided that if the variation between the actual price of the transaction and the ALP did not exceed 5% of the actual price, then the actual price would be treated as the ALP, and no adjustment would be made.

The proviso has been amended with effect from assessment year 2012-13 to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by the Central Government in this behalf.

The rationale for this amendment has been explained in the Memorandum explaining the provisions of the Finance Bill as follows :

A fixed margin of 5% across all segments of business activity and range of international transactions has out-lived its utility. It is, therefore, proposed to amend section 92C of the Act to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

It appears that the Central Government has the power to prescribe, and may accordingly prescribe, different percentages in respect of different international transactions. Hence, it is possible that if an assessee entered into more than one international transaction, they could have different prescribed percentage for permissible variation.

7.1-1 Whether applicable to all pending assessments?

It appears that the amendment applies with effect from assessment year 2012-13 and does not apply to pending assessments. This is explained below:

a) the Memorandum explaining the provisions of the Finance Bill clearly states that the amendment will apply from assessment year 2012-13 onwards.
b) the amendment is a substantive amendment and hence it is applicable prospectively.
c) all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective.
d) it is a cardinal principle that the law to be applied is that in force on the first day of the assessment year unless otherwise provided expressly or by necessary implication.

7.2 Power to Transfer Pricing Officer (TPO) to identify international transactions

Section 92CA(1) provides that the Transfer Pricing Officer (TPO) can determine the ALP only in relation to an international transaction, which has been referred to him by the Assessing Officer.

This was recognized by the CBDT vide its Instruction No. 3 of 28-3-2003 as follows:

> In terms of section 92CA this role is limited to the determination of arms length price in relation to the international transaction(s) referred to him by the Assessing Officer. If during the course of proceedings before him it is found that there are certain other transactions, which have not been referred to him by the Assessing Officer, he will have to take up the matter with the Assessing Officer so that a fresh reference is received with regard to such transactions.

Section 92CA has now been amended with effect from 1-6-2011 so as to specifically provide that the jurisdiction of the TPO shall extend to the determination of the ALP in respect of other international transactions noticed by him subsequently, in the course of proceedings before him. Such international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

It is now well-settled that a procedural amendment is generally retrospective and applies even to pending proceedings [CWT v. Sharvan Kumar Swamp & Sons [1994] 210 ITR 886 (SC); Now, the amendment could be considered as a procedural amendment and hence it could apply to all assessments including pending assessments in respect of years up to assessment year 2010-11, which are pending before the TPO.

7.3 Power to TPO under section 133A

Section 92CA(7) provides that for the purpose of determining the ALP, the TPO can exercise powers available to an Assessing Officer under section 131 (1) and section 133 (6). These are powers of summoning or calling for details for the purpose of inquiry or investigation into the matter. Section 133A provides for the power of an income-tax authority to enter a place of business or profession and inspect books of account and obtain such other information as he may require as to any matter which may be useful for, or relevant to, any proceeding under the Act.

Section 92CA(7) has now been amended with effect from 1-6-2011 to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A.

8. TAXATION OF TRANSACTIONS WITH PERSONS LOCATED IN A NOTIFIED COUNTRY OR TERRITORY

8.1 Introduction

The Finance Act, 2011 has inserted with effect from 1-6-2011 a new section 94A in the Income-tax Act, 1961 to specifically deal with transactions undertaken with, and by, persons located in certain notified countries or territories.

8.1-1 Pre-conditions for applicability

The section is applicable only if the following pre-conditions are fulfilled:

a) There is a country or territory outside India with whom India does not have effective exchange of information on taxation matters.
b) Such country/area is specified by notification in the official Gazette as a **notified jurisdictional area (NJA)**, having regard to the lack of effective exchange of information with such country or territory.
c) An assessee enters into a transaction where one of the parties to the transaction is a person located in an NJA.

For this purpose person located in an **NJA** is defined in section 94A(6)(i) (para 1.6-3).

8.2 Consequences

If the aforesaid pre-conditions are fulfilled,

a) All the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A
b) The transaction as defined in section 94A(2)(ii) shall be deemed to be an international transaction within the meaning of section 92B.
c) The provisions of sections 92, 92A, 92B, 92C [except the second proviso to section 92C(2)], 92CA, 92CB, 92D, 92E and 92F shall apply to such transaction and accordingly, the income or expenditure, as the case may be, shall be computed having regard to the ALP.
d) Deduction : Any payment made to any financial institution located in an NJA shall be allowed as a deduction only if the conditions in section 94A(3)(a) are satisfied.
e) Any payment made to any person located in an NJA shall be allowed as a deduction only if the conditions in section 94A(3)(b) are satisfied.
f) Receipt - If the assessee has received or credited any sum from any person located in an NJA, then such sum shall be deemed to be the income of the assessee for that previous year if the conditions of section 94A(4) are satisfied.
g) TDS- Any payment made to any person located in an NJA shall be subject to deduction of tax at source as specified in section 94A(5).

8.3 Objective

The objective behind introduction of the provisions as stated by the Finance Minister in his budget speech and as explained in the Memorandum explaining the provisions of the Finance Bill, 2011 are reproduced below:

Finance Minister Speech:

In order to strengthen our system of collection of information from foreign tax jurisdictions, I propose to provide a toolbox of counter measures to discourage transactions with entities located in non-cooperative jurisdictions as may be notified by the Government.

Memorandum Explaining the provisions of Finance Bill:
In order to discourage transactions of a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures have been proposed in the Income-tax Act.

8.4 Notification having regarded to lack of effective exchange
The Central Government may notify a country having regard to the lack of effective exchange. On this basis a view could be taken that while effective lack of exchange of information is not lost sight of, there could be other factors relevant to the issue which may also be considered by the Central Government.

8.5 Notification of countries with whom India has a Double Taxation Avoidance Agreement (DTAA)

A question that arises is whether a country with whom India has a DTAA can be notified under section 94A. A comprehensive DTAA would have an 'Exchange of Information' Article obligating the competent authorities of both the countries to exchange information permitted under the said Article under the conditions mentioned in it.
In view of the availability of such a medium, logically, a country with whom India has entered into a DTAA should not be notified. However, the section states that a country may be notified having regard to the lack of effective exchange of information. What is required is actual exchange of information in fact, with a treaty country and not a merely contractual, legal ability to obtain information. In view of this, on a literal reading, a DTAA country could also be notified, if there is lack of effective exchange of information.

8.6 Transfer Pricing :
Note the following :

8.6-1 Associated enterprise
Once a transaction is entered into by an assessee with a person located in an **NJA**, all the parties to the transaction shall be deemed to be associated enterprises, notwithstanding non-satisfaction of any condition in section 92A.

8.6-2 Transaction
Section 94A(6)(iii) provides that the word transaction shall have the same meaning as defined in section 92F(v). The said section defines transaction as
"transaction includes an arrangement, understanding or action in concert
(a)A whether or not such arrangement, understanding or action is formal or in writing; or
(b)A whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

8.6-3 Person located in a notified jurisdictional area
Section 94A(6)(i) provides that person located in a notified jurisdictional area shall include :
a) a person who is resident of the notified jurisdictional area;
b) a person, not being an individual, which is established in the notified jurisdictional area; or
c) a permanent establishment of a person [not falling in (a) or (b) above] in the notified jurisdictional area.

For this purpose "permanent establishment" shall have the same meaning as in section 9 2F (iiia), which defines PE as "*Permanent establishment", referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on"*

On a literal reading, the permanent establishment could be of any person, whether resident or non-resident in India. Thus, if a resident of India has a permanent establishment in an NJA, it could be regarded as a person located in an NJA under clause (c) and if it has transactions with any other assessee in India, such transactions would be covered by the provision. It is not clear whether this is intended.
The definition of a person located in an NJA is inclusive. Hence, apart from the three categories of persons specified in it, it could include any other person who could be regarded as 'located in an NJA' within the ordinary meaning of the expression.

8.6-4 Resident
The term resident has not been defined. The term has been judicially (in a different context) and internationally explained by various courts.

Generally speaking, a person who is regarded as a resident under the domestic tax law of an NJA would be regarded as a resident for the purposes of section 94A.

Practically, a certificate from the Tax Authorities of NJA to the effect that a particular person is not its resident may be helpful in establishing that such a person is not a resident for the purposes of the definition. He will, of course, have to establish that he is not having a permanent establishment and/or is not established in the NJA and he is not otherwise 'located in the NJA'. The definition does not cover subsidiaries or affiliates or holding company of such persons if they do not satisfy the definition.

To illustrate,
a holding company of an entity located in an NJA will not be covered if it is incorporated in some other country or territory and it is not a resident of the NJA or does not have a PE in such area or cannot be otherwise regarded as located in NJA.

8.6-5 Applicability of provisions relating to TP
It has been provided that sections 92, 92A, 92B, 92C [except the second proviso to sections 92C(2), 92CA, 92CB, 92D, 92E and 92F] will become applicable to transactions covered by section 94A. Hence the principles laid down by Courts/Tribunals under the aforesaid provisions and the principles of Transfer Pricing should equally apply to section 94A.

Some of the above referred provisions are briefly summarized below.

8.6-7 No relief for prescribed variation
The second proviso to section 92C(2) provides that, if the variation between the actual price of transaction and the ALP does not exceed such percentage as may be notified by the Central Government in this behalf, then no adjustment will be made and the actual price shall be treated as the ALP. This provision is not applicable in the case of a transaction falling under section 94A. As a consequence, the ALP shall be considered as the expenditure or income, as the case may be.

8.6-8 Recipient
According to one view, on a literal reading, the provisions would also apply to recipients who are persons located in an NJA.
To illustrate,
if such a person receives taxable income in the form of royalty or fees for technical services, then the computation of such income would be under section 94A having regard to its ALP. Further, the recipient

would also be subject to the requirements of maintaining documentation under section 92D and obtaining audit report under section 92E.

On the other hand, section 94A(2) reads as if an assessee enters into a transaction where one of the parties to the transaction is a person located in an NJA. This suggests that the provisions are meant to apply to the assessee and not to the person located in an NJA. Further, the definition of d€-international transaction in section 94A(2)(ii) refers to a transaction having a bearing on the profits, etc of the assessee. This also suggests that the emphasis is on the assessee and not the other person. Finally, the Memorandum states that section 94A has been enacted to discourage transactions of the resident assessee. In view of the above, it could be argued that the provisions should apply to the assessee and not to the person located in an NJA.

8.6-9 Safe harbor rules
Section 92CB provides that the determination of ALP shall be subject to safe harbor rules prescribed by the CBDT. The said section is applicable to a transaction covered under section 94A and hence, the determination of ALP shall be subject to safe harbor rules.

8.6-10 Maintenance of information and documentation
All the parties to a transaction covered under section 94A will be required to maintain information and documentation in accordance with section 92D and the prescribed rules.

8.6-11 Accountants Report
All the parties to a transaction covered under section 94A will have to obtain a report from an accountant in terms of section 92E.

8.6.12 Non-applicability to past transactions
The provision states that it is applicable only if an assessee "enters into a transaction with a person who is located in a notified jurisdictional area. **The use of the present tense in the word "enters and a 'is' suggests that the provision should apply to a transaction after 1-6-2011 and after the jurisdictional area is notified.**

8.6-1 3 Applicability to non-residents
The Memorandum states that the provisions have been enacted to discourage transactions of a resident assessee with persons located in an NJA. However, this is not borne out from the language of the provision and on a literal reading; it would apply to non-resident assessees. Hence, if a PE of a non-resident in India enters into a transaction with a party in notified jurisdictional area, then it could be subject to the transfer pricing provisions.

8.7 Deduction
The section classifies all deductions into the following:
(a) Payments made to financial institution.
(b) Any other expenditure or allowance.

8.7-1 Payment made to financial institution
Section 94A(3)(a) provides that no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the CBD T or any other income-tax authority acting on its behalf, to seek relevant information from the said financial institution.

Thus, on a combined reading of sections 94A(2) and 94A(3)(a) a deduction in respect of any payment made to any financial institution shall be allowed (a) only to the extent of the ALP and (b) only if the assessee has furnished the stipulated authorization. There is no prescribed time limit within which the authorization has to be furnished.

8.7-1a Financial Institution :

The term financial institution has not been defined.

What would happen if the laws of NJA stipulate that the application for such information has to be made by the assessee himself and a general authorization will not do? It appears that so far as the assessee is concerned, he would be complying with the condition in the section once he furnishes the authorization; the deduction cannot be denied to him if the laws of NJA do not allow such information to be given on the basis of an authorization.

8.7-1b Payment :

The section provides for deduction in respect of any "payment" made to any financial institution. It appears that in the context the word 'payment made' would include 'payment to be made' and the deduction will not be allowed in respect of amounts payable to a financial institution, unless the conditions of the section are satisfied.

Further, the payment should result in deductible expenditure before the section could be applied. Finally, the payment should be made to a financial institution for its own benefit.

To illustrate,

if a payment is made to a bank in an NJA on behalf of a party which is not a person located in NJA, such a payment could not be subject to disallowance under this provision.

8.7-2 Deduction for other expenditure or allowance

Section 94A(3)(b) provides that no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in an NJA shall be allowed unless the assessee maintains such other documents and furnishes the information as may be prescribed.

Thus, on a combined reading of sections 94A(2) and 94A(3)(b), a deduction in respect of any expenditure or allowance (other than payment to a financial institution) shall be allowed (a) only to the extent of ALP and (b) only if the assessee maintains the prescribed documentation and furnishes the prescribed information.

The documents required to be maintained and the information required to be furnished could be in addition to information/documentation required to be maintained under section 92E. There is no time limit for maintenance of the documents or within which the information has to be furnished. The provision applies to all expenditure including (a) capital expenditure and (b) salaries. Thus, depreciation will be allowed only if the conditions in the said section are fulfilled.

8.8 Income

Section 94A(4) provides that if an assessee has received or credited any sum from any person located in an NJA, the assessee shall offer explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if that person is not the beneficial person of the owned sum).

If the assessee does not offer any explanation or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then such sum shall be deemed to be the income of the assessee for that previous year.

To illustrate,
if an assessee receives share capital of Rs. 100 million from "Mr. X", a person located in a notified jurisdictional area, then the assessee has to give an explanation about the source of the said sum of Rs. 100 million in the hands of Mr. X Further if Mr. Y and not Mr. X is a beneficial owner, then the assessee has to give an explanation about the source of the said sum of Rs.100 million in the hands of Mr. Y .

8.8-1 Deeming consequences

The deeming consequence is mandatory and once the assessee does not offer an explanation or his explanation is not satisfactory, the Assessing Officer has no discretion but to deem the sum as income. This is unlike section 68/69 where the Assessing Officer has a discretion and even if the assessee does not provide an explanation, or provides unsatisfactory explanation, it is not mandatory for the Assessing Officer to make an addition.

8.8-2 Source of source

The explanation is required about the source of the said sum in the hands of the payer or in the hands of the beneficial owner. Thus, the assessee is required to explain 'source of sources'. This is unlike section 68 where he can be asked to explain source of credit in his own books of account but not 'source of sources'.

8.8-3 Capital receipt

The section applies to any sum including share capital, loans, deposits, distribution by a trust to a beneficiary, etc. **It would apply to sums which are otherwise capital receipts.**

1.8-4 Beneficial Owner

The term beneficial owner has not been defined. Some cases on the expression are summarized below:

- Trustee is not a beneficial owner of shares.
- Shareholder who is under an immediate and unconditional obligation to transfer the shares to someone else as part of a transaction the other parts of which are to be performed at the same time is not the beneficial owner of such shares.
- Company which though the legal owner of the shares, is bereft of the rights of selling or disposing or enjoying the fruits of these shares does not remain the beneficial owner of these shares.
- Beneficial ownership is not merely the legal ownership by the mere fact of being on the register but the right at least to some extent to deal with the property as one.
- Company is not the beneficial owner of the assets of its own subsidiary.
- A person who could not enjoy the fruits of an asset himself or dispose of it for his own benefit, is not its beneficial owner
- Beneficial owner : One who, though not having apparent legal title, is in equity entitled to enjoy the advantage of ownership.
- When a shareholding is held by a nominee such as a stockbroker, the nominees name appears on the register of shareholders. The real owner is known as the beneficial owner.

The term has also been explained in the context of Double Taxation Avoidance Agreements as follows: A person is not a beneficial owners if he

- acts as a conduit for another person who actually receives the benefit of dividends; or
- has very narrow powers practically and which render it, in relation to the income concerned a mere fiduciary or administrator acting on account of the interested persons
- Beneficial owners is one who is free to decide: (i) whether or not the capital or other assets should be used or made available for use by others; or (ii) on how the yields there from should be used. The fetters may be legal

or factual. However, 'beneficial ownership of a company over its assets/income is not affected merely when it distributes (without a pre-commitment) all its profits to its shareholders

≈ An agent or a nominee cannot be regarded as a 'beneficial owners

8.8-5 Opinion of the Assessing Officer

The provision applies if the explanation offered by the assessee is not satisfactory in the opinion of the Assessing Officers. A similar expression is used in different provisions of the Act. The satisfaction must be derived from relevant factors on the basis of proper enquiry. The enquiry envisaged under section 68 is an enquiry which is reasonable. The Assessing Officer has to observe principles of natural justice before making an addition [e.g. copies of material relied upon by him or opportunity to cross examine, etc., to be given to assessee]. If the explanation by the assessee is prima facie reasonable, it cannot be rejected by the Assessing Officer, on capricious or arbitrary grounds.

8.9 TDS

Section 94A (5) provides that any payment made to a person located in the NJA shall be liable to deduction of tax at the higher of

- the rate or rates in force; or
- the rates specified in the relevant provisions of the Act; or
- 30%

Rates in force has been defined in section 2(37A) of the Act. However, it may be noted that the recipient would be entitled to offer such income to tax at a lower rate.

To illustrate,

Although a payment of royalty or fees for technical services to a person located in NJA (with whom India does not have a DTAA) will be subject to TDS at the aforesaid rates, the recipient will be liable to tax at the rates specified in section 115A.

9. MISCELLANEOUS PROVISIONS

9.1 Taxation of interest income received from infrastructure debt fund

Section 115A has been amended with effect from 1-6-2011 to provide that any interest received by a non-resident from a notified infrastructure debt fund shall be taxable @ 5 % on the gross amount of such interest income.

Interest has been defined in section 2(28A) as "interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized. Hence, this definition shall be applicable to section 115A, unless the context requires otherwise.

Non-residents means a person who is not a resident in India within the meaning of section 6 [section 2(30) read with section 2(42)]. Thus, the benefit of this section would apply to all non-residents including Non Resident Indians.

The section covers only interest income and any other income from a fund by the recipient would be governed by the other provisions of the Act or the relevant DTAA, if applicable. Section 115A(5) provides that a person is not required to file his return of income if

- ≈ the total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in section 115A(1)(a) and
- ≈ the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Accordingly, the recipient of such interest will not be liable to file return of income if the aforesaid conditions are satisfied.

9.1-1 DTAA

It is now well settled that a non-resident is entitled to be governed by the provisions of the Act or the relevant Double Taxation Avoidance Agreement with the country of which he is a resident, whichever is more beneficial [UOI v. Azadi Bachao Andolan [2003] 263 ITR 706(SC) read with section 90(2)]. Hence, if the aforesaid interest income is exempt under the provisions of the relevant DTAA then the income will be exempt in the hands of such non-resident.

To illustrate,
Article 11(3)(a) of India-US DTAA provides that interest arising in a Contracting State and derived and beneficially owned by the Government of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State. Hence, if the recipient of interest from a infrastructure debt fund is covered by the said article, then the interest income would be exempt.

9.1-2 No deduction

No deduction in respect of any expenditure or allowance shall be allowed to the recipient of such interest [section 115A(3)].

9.2 Taxation of foreign dividends

A new section 115BBD has been inserted with effect from assessment year 2012-13 to provide that where the total income of an Indian Company for assessment year 2012-13 includes any income by way of dividends from a specified foreign company, the income tax payable by such company shall be the aggregate of the following :

On the dividend income : 15%
On the total income as reduced by : The amount of income tax with which the assessee the dividend income would have been chargeable

For this purpose
"**dividend**" shall have the same meaning as is given in section 2(22) except that a dividend under section 2(22)(e) is not to be considered.
"specified foreign company" means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.

(2) No deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to above.

9.2-1 Illustration

Sl. No.	Particulars		Rs. (in millions)
a)	Dividend income		100
b)	Total income		500
c)	Other income	(b -a)	400
d)	Rate of tax applicable to the Indian Company		30%
e)	Rate of tax applicable to dividend income		15%
f)	Income tax on dividend income	(a * e)	15
g)	Income tax on other income	(c * d)	120
h)	Total income tax (excluding surcharge)	(f + g)	135

9.2-2 Applicability
The section applies only

a) in respect of previous year relevant to assessment year 2012-13. Hence, it would not apply to subsequent years;
b) to an Indian Company which has been defined in section 2(26). Hence, it would not apply to other shareholders.
c) if the Indian Company directly holds 26% or more in nominal value of the equity share capital of the company. It does not cover any other Indian Company holding shares in the foreign company.

9.2-3 No deduction
The section does not apply if the total income does not include any dividend and in such a case, the Indian Company would continue to get the deductions in respect of expenditure incurred for making or earning such dividend income. At the same time, once the total income includes some dividend income, in view of the use of the expression 'income tax payable shall , the section would be mandatory in application and deduction for expenditure will not be available even if such expenditure is much in excess of the income.

Thus, deduction will not be allowed in respect of interest expenditure on borrowings made for the purpose of earning dividend income. In case of shares held as capital asset, it is a moot point whether the such interest can be added to the cost of acquisition.

Section 115BBD(2) provides that deduction will not be allowed in computing 'income by way of dividends. Now, it has been held that where investment is made by a company in other company for the purpose of its business or to safeguard its business, then the interest on borrowings for the purpose of making such investment could be deducted under section 36(1)(iii) in computation of profits and gains of business.

In such circumstances, it could be argued that the interest is allowed in computing profits and gains of business and not income by way of dividends within the meaning of section 115BBD (2) and hence such interest is not subject to the disallowance contemplated by the said section.

9.2-4 Set off of losses/deductions under Chapter VIA

There is no bar in section 115BBD on set off losses against dividend income under section 70/71 or availability of deduction under Chapter VIA (section 80G).

9.2-5 Applicability of MAT

The concession under section 115BBD is subject to the minimum alternate tax under section 115JB.

9.2-6 Utilization

There is no restriction on utilization of the dividend by the Indian company including introduction of the dividend as additional capital in the specified foreign company.

9.2-7 Dividend

The following principles under section 2(22) could be relevant in interpreting the term dividend:

- The definition is inclusive and not exhaustive.
- Dividend does not lose its taxable character as dividend merely because it is paid out of capital and in paying it, the company violated a provision in company law.
- Dividend need not be paid in money alone; it may be paid by delivery of property or right having monetary value worth.
- Dividend includes a distribution of accumulated profits among shareholders where the amounts are not paid in cash but credited to the shareholders individual loan accounts with the company.

9.2-8 Credit for foreign tax

The Indian Company would continue to get the benefit of foreign tax credit under section 90 or 91 of the Act, as the case may be, subject to fulfillment of the conditions under these sections and the relevant DTAA, wherever applicable.

9.3 Dividend Distribution Tax (DDT) on SEZ developers: Section 115O

Hitherto, section 115-0(6) allowed an exemption from payment of DDT in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends out of its current income.

A proviso has been inserted to the aforesaid section with effect from 1-6-2011 to provide that the aforesaid **exemption from DDT** will not be available in respect of dividends declared, distributed or paid on or after 1-6-2011.

The exemption is available in respect of dividend declared, distributed or paid up to 31-5-2011. It appears that in respect of final dividend, no DDT will be payable on dividend declared before 1-6-2011 even if its payment is made on or after 1-6-2011. So far as interim dividends are concerned, DDT will not be payable only if they are paid before 1-6-2011.

9.4 Rationalization of tax on income distributed to unit holders : Section 115R

Under section 115R(2), a mutual fund is liable to pay additional income tax on the amount of income distributed to its holders.
Section 11 5R(2) has been amended with effect from 1-6-2011 to provide that in respect of income distributed by a fund other than equity oriented fund to a person other than an individual or HUF, the mutual fund will be liable to pay tax @ 30%. There is no change in the rate of income tax in case of distribution to any individual or HUF. Distribution of income by an equity oriented fund continues to be exempt from tax.

The rates as a result of the amendment and prior to the amendment are tabulated below:

Sl. No.	Distributed by	Recipient	Post Amendment Rate **	Pre Amendment Rate **
1.	Money Market Mutual Fund or a Liquid Fund	Individual or HUF	**25**	25
2.	-- DO --	Person other than individual or HUF	**30**	25
3.	Debt Fund other than fund referred to in 1 above	Individual or HUF	**12.5**	12.5
4.	-- DO --	Person other than individual or HUF	**30**	20

**excluding surcharge.

9.5 Collection of information on requests received from tax authorities outside India

9.5-1 Power regarding discovery, production of evidence, etc.

Section 131(1) of the Act confers the same powers as available to a Civil Court while trying a suit, on certain income tax authorities, in respect of:

- discovery and inspection;
- enforcing the attendance of any person including an officer of a banking company and examining him on oath;
- compelling production of books of account and other documents; and
- issuing commissions.

Section 131(3) of the Act empowers the said authorities to impound and retain in its custody books of account and other documents produced for such period as it thinks fit.

9.5-2 Amendment

The Memorandum explains the object of amendments in section 131 and section 133 of the Act as deceit is proposed to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A of the Income-tax Act.

To facilitate the collection of information, the Finance Act, 2011, with effect from 1-6-2011 inserts subsection (2) in section 131 and amends sub-section (3) to include reference to sub-section (2).

9.5-2a Sub section (2) of section 131 :–

It provides that for making an enquiry or investigation, in respect of person or class of persons, in relation to an agreement referred in sections 90 and 90A, it shall be competent for an income tax authority (not below the rank of Assistant Commissioner of Income-tax) as may be notified by the Board, to exercise the powers conferred by sub-section (1), notwithstanding that no proceedings with respect to such person or class of persons are pending.

In terms of the provisions, in respect of the powers conferred, the position could be as follows:

a) An income tax authority (not below the rank of Assistant Commissioner of Income-tax) as notified by the Board has the powers.
b) The powers conferred are as stated in sub-section (1) (i.e. discovery and inspection; enforcing the attendance of any person including an officer of a banking company and examining him on oath; compelling production of books of account and other documents; and issuing commissions.)
c) The powers can be exercised in case of any person or class of persons, in relation to an agreement under section 90 or under section 90A.
d) The power can be exercised even when no proceedings are pending before any authority against such person or class of persons.

Having regard to the provisions as well as explanation given in the Memorandum, it appears, there are inherent limitations in relation to the powers and they are as follows:

a) The powers can be exercised only in relation to an agreement referred in section 90 or section 90A. In other words, the powers under the sub-section cannot be exercised for any other purpose.
b) The powers must be exercised basically to collect the information as explained in the Memorandum by way of making an enquiry or investigation. It cannot be exercised for any other purpose.
c) The power can be exercised only by the notified authority. It implies that the power cannot be exercised by any person other than the notified authority. To put it differently, it appears, the power cannot be delegated.
d) The powers which can be exercised are those contained in section 131(1)(a) to (d).

9.5-2b Sub section (3) of Section 131 :–

The amendment in sub-section (3) empowers the notified authority to impound and retain in its custody, for such period as it thinks fit, any books of account or other document produced by the person or class of persons (from whom the information is collected). However, it does not put any limitation on the period for which the books or documents can be retained.

The proviso below the sub-section, prima facie, would not apply to the notified authority inasmuch as such authority would be above the rank of an Assessing Officer or Assistant Director or Deputy Director, to whom the proviso applies.

9.5-3 Power to call for information - Section 133

Section 133 entitles an Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner or Commissioner (Appeals) to call for the specified information as contained in clauses (1) to (6).

Finance Act, 2011, with effect from 1-6-2011, inserts third proviso in the section to provide that to collect information (as explained in the Memorandum) for the purpose of agreement under section 90 and 90A, the

notified authority [under section 131(2)] may exercise the powers to call for information, notwithstanding that no proceedings are pending before any income tax authorities.
Thus, in exercise of powers conferred by section 133, the notified authority can collect the information stated in section 133 (as detailed below in the foot note). Similar to section 131(2), the limitations are:

- The powers can be exercised only by the notified authority.
- The powers must be exercised in relation to agreement referred to in section 90 or 90A, to collect the information.

9.6 Return of income : Section 139

Section 139 of the Act primarily obliges a person to file return of income on or before the due date.

9.6-1 Amendments

The Finance Act, 2011 carries out the following amendments in the section:

a) Extends the due date of filing return of income in case of corporate assessees, obliged to file transfer pricing report in Form 3CEB, to 30th November, against the present due date of 30th September, with effect from 1-4-2011, i.e. assessment year 2011-12.

b) Sub-section (1C) is inserted with effect from 1-6-2011 to empower the Central Government to exempt any class or classes of persons from the obligation of furnishing return of income, subject to conditions as may be specified in the notification.

c) Sub-section (4C) is amended, with effect from 1-6-2011 obliging the specified body referred in section 10(46) and infrastructure debt fund referred in section 10(47) to file return of income.

9.6-2 Extension of Due Date

Explanation 2(a) [below section 139(1)] is amended to provide as follows:

- In clause (i) thereof, at the end, the words "other than a company referred to in clause (aa)" are added; and
- In the Explanation 2, clause (aa) is inserted to provide that in case of a company obliged to furnish a report as per section 92E, in Form 3CEB, the due date of filing would be 30th November of the assessment year.

Thus, in case of companies, the due date of filing return of income would be as follows:

a) The company obliged to file, as said above, Form 3CEB - 30th November of the assessment year;
b) In case of other companies, 30th day of September of the assessment year.

9.6-2a Other Effects : –

As a consequence of the extension of due date, in the case of a company obliged to file Form 3CEB, the date for complying with other obligations under the Act, linked to the due date for filing return as defined in section 139 of the Act, is also extended to 30th November of the assessment year.

To illustrate,

≈ Date by which the payment should be made for the purposes of section 43B or section 40(a)(ia) would be 30th November (of the assessment year) and not 30th September (as applicable in case of other companies);
≈ date for filing audit reports under incentive provisions (like, section 10AA or section 80-IB) would be 30th November (of the assessment year) and not 30th September (as applicable in case of other companies), etc.

However, where a provision does not link the compliance with due date of filing return of income as defined in section 139 of the Act but requires compliance with reference to that by a specific mention of the date in the provision, in such a case, the date of compliance would remain the same and would not be extended.

To illustrate,
Section 44AB of the Act provides for obtaining and furnishing audit report before 30th September of the assessment year; in this case, the amendment does not affect the date of compliance.

9.6-2b Object of the amendment and non corporate assessee:–
In the Memorandum it is explained " *Corporate assessees face practical difficulties in accessing contemporary comparable data before 30th September in order to furnish a report in respect of their international transactions. It is, therefore, proposed to amend section 139 to extend the due date for filing of return of income.*

The amendment considers the practical difficulty of corporate and therefore extends the due dates. Similar difficulties are also experienced by the non-corporate assessees obliged to file Form 3CEB as required by section 92E. However, in their cases the due date of filing the return continues to be 30th September of the assessment year. NO EXTENSION OF DUE DATE FOR NON CORPORATE ASSESSEE

9.6-3 Power to confer exemption - New sub-section (1C)
Presently, the Act has not delegated any power to provide for exemption from the obligation to file a return of income. The Memorandum explains the reasons of need for such powers as follows:

> *In the case of salaried tax payer, entire tax liability is discharged by the employer through deduction of tax at source. Complete details of such tax payers are also reported by the employer through Tax Deduction at Source (TDS) statements. Therefore, in cases where there is no other source of income, filing of a return is a duplication of existing information.*
>
> *In order to reduce the compliance burden on small tax payer, it is proposed to insert sub-section (1C) in section 139. This provision empowers the Central Government to exempt, by notification in the Official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in that notification.*

9.6-3a Exemption Power: –
The provisions are:
a) The exemption would apply irrespective of the provisions of sub-section (1) obliging filing return before the due date.
b) For the purpose, the Central Government is empowered to issue a notification in the Official Gazette.
c) The notification can confer exemption to any class or classes of persons from furnishing a return of income.
d) The exemption shall be subject to such conditions as may be specified in the notification.

Having regard to the language of the new sub-section, it appears, the power can be exercised even in other deserving cases. The only condition is that it should be in respect of any class or classes of persons.

9.6-3b Consequential Amendment in section 296 :–
Pursuant to the power conferred under section 139 (1C), a consequential amendment is carried out in section 296 of the Act (w.e.f. 1 -6 -2011) dealing with Rules and Notifications to be placed before Parliament to provide that a notification issued under section 139(1C) shall also be laid as soon as may be after the notification is issued before

each house of Parliament, while in session for a total period of 30 days. Such Notification may be subject to modification, if any, suggested by both the houses and the notification shall have effect in the modified form. In case of modification or annulment, it would be without prejudice to the validity of action taken under the notification.

9.6-4 Obligation to file return in case of persons referred in section 10(46)/(47)

Section 139(4C) of the Act obliges certain associations, agencies, institutions, etc., eligible for exemption under various sub-sections of section 10 of the Act to file their return of income.

Broadly stated, it obliges the specified institutions to file the return, if the total income, without giving effect to the applicable provisions of section 10 exceeds the maximum amount not chargeable to tax. Such returns need to be: furnished in the prescribed form; verified in prescribed manner; to set forth prescribed particulars; in compliance with applicable provisions of the Act, like, deadlines for filing return, penalty, etc.

The Finance Act, 2011, with effect from 1 -6 -2011, amends sub-section (4C) to include the specified body eligible for exemption under section 10(46) and infrastructure debt fund referred to in section 10(47). Accordingly, the specified body and infrastructure debt fund would be obliged to file their return of income under section 139(4C).

9.7 Extension of time limit for issue of directions for processing of returns in Central Processing Centres:

Section 139(1A) provides that for the purpose of processing of returns under section 143(1), the CBDT may make a Scheme for centralized processing of returns with a view to expeditiously determine the tax payable by, or refund due to, the assessee as required under that sub-section.

Section 143(1B) provides that for the purpose of giving effect to the Scheme made under section 143(1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Hitherto, the said section provided that no such direction could be issued after 31-3-2011. Finance Act, 2011 has amended section 143 (1B) to extend the deadline for issue of directions from 31-3-2011 to 31-3-2012.

9.8 Extension of time limits or limitation period for assessment in case of exchange of information

Finance Act, 2011, makes an amendment in sections 153 and 153B of the Act, with effect from 1-6-2011, to provide for exclusion of actual time taken for exchange of information or 6 months, whichever is less, for computation of limitation period. The amendments are explained hereafter.

9.8-1 Section 153

Section 153 of the Act provides for the time limits for completion of assessment or reassessments. Explanation 1 provides that in computing the period of limitation, the time taken, in the specified circumstances shall be excluded. In Explanation 1, clause (viii) is inserted, with effect from 1-6-2011 to provide that period commencing from the date of reference for exchange of information under the agreement under section 90 or section 90A and ending with date on which information requested is received by the Commissioner or a period of six months, whichever is less, shall be excluded in computation of limitation period.

Thus, practically:

- If the period for obtaining the requisite information is less than 6 months, the actual period taken for obtaining the information can be excluded, in computing the period of limitation; and

- Where the period taken for obtaining the information is more than 6 months, the period of 6 months can be excluded in computing the period of limitation.

9.8-2 Section 153B

Section 153B of the Act provides for time limit for completion of assessment in case of search/requisition. Explanation below sub-section (1) thereof, like Explanation 1 below section 153, provides for the circumstances in which in computing limitation period, certain period shall be excluded.

Finance Act, 2011 has inserted clause (viii) in Explanation providing for the exclusion of the period taken for obtaining the information or a period of 6 months, whichever is less, in the identical language and in the same manner as in case of amendment of section 153 explained above.

9.9 TDS on interest payable to a non-resident by infrastructure debt fund

Section 115A provides that any interest received by a non-resident from a notified infrastructure debt fund shall be taxable @ 5% on the gross amount of such interest income. Corresponding to this amendment, section 194LB has been inserted with effect from 1-6-2011 that tax shall be deducted @ 5% by such notified infrastructure debt fund on any interest paid by it to a non-resident. Such deduction shall be made at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Sections 193, 194A, 194C, 194G, 194-I, 194J, 194K, 195 and 196A provide that where any sum referred to in that section is credited to any account, whether called suspense account or by any other name in the books of account of the payer, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of that section shall apply accordingly. However, no such provision is made in section 194LB.

9.10 Settlement Commission

Chapter XIX-A of the Act provides for the process and procedure to be followed by an assessee for determination of its tax liability, particularly, in respect of undisclosed income by the Settlement Commission.

The Chapter, inter alia, provides for who can make an application for the settlement of case. Hitherto, under proviso to section 245C (1), an applicant allowed to make an application before the Commission is where:

- proceedings have been initiated against the applicant under section 153A or under section 153C, as a result of search or requisition of books of account and the **additional amount of income-tax payable** on the income **disclosed exceeds Rs. 50 lacs**; and
- in other cases, if the additional amount of income-tax payable on the income disclosed **exceeds Rs. 10 Lacs.**

9.10-1 Amendments

Finance Act, 2011 has widened the scope of applicants and extend the process or procedure for settlement of cases to a 'related person' of an applicant to whom section 153A or section 153C applies (Existing Applicant), with effect from 1-6-2011.

For the purpose, section 245C (1) is amended as follows:

- In the proviso, clause (ia) is inserted to include the applicant (referred as specified persons in the clause), who is related to the Existing Applicant; and
- Explanation is inserted below the sub-section (1) to define specified persons.

9.10-1a THE CLAUSE –

Specified person can be an applicant, for settlement of case, if fulfils the following conditions:

- The specified person is related to the Existing Applicant, who has filed an application for settlement; and
- The additional amount of income-tax payable on the income disclosed in the application is in excess of **Rs. 10 Lacs**.

Thus, the specified person can also be an applicant, although, in his case the proceedings of search or requisition were not initiated.

9.10-1b Explanation defining specified person :–
As stated above, the specified person must be related to the Existing Applicant. The nature of relationship prescribed or described in the Explanation is identical with the relationship prescribed or described for the purposes of section 40A(2) (b) of the Act (providing for disallowance of payments to related parties in certain circumstances).

9.10-2 Power to rectify order
The Delhi High Court, in Capital Cables (India) (P.) Ltd. v. Income-tax Settlement Commission [2004] 139 Taxman 332 has held that the order made by the Settlement Commission is conclusive and final, and, therefore, it cannot be rectified under section 154. Similar view was taken by the Calcutta High Court in Income-tax Settlement Commission v. Netai Chandra Rarhi & Co. [2004] 271 ITR 514.

The Memorandum explaining finance bill states that:
> *"It is proposed to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D (4)".*

9.10-2a Amendment : –
Sub-section (6B) is inserted in section 245D, with effect from 1-6-2011 so as to confer the power to rectify and provides as follows:

- The Commission may, at its discretion, rectify any mistake apparent from the record any order passed by it under section 245D (4);
- The Commission can pass the order at any time within a period of six months from the date of order under section 245D (4);
- If the order has the effect of modifying the liability of the applicant, the Commission has to give an opportunity of being heard to the Commissioner as well as the applicant.

Thus, the amendment confers a power to rectify on the Commission as is available to any income-tax authority. However, the period within which the rectification can be carried out is substantially larger (four years from the date of the order passed) in case of any other income-tax authority.

Similar amendment, conferring the power to rectify on the Commission, is carried out in the Wealth-tax Act, 1957 by inserting sub-section (6B) in section 22D thereof, with effect from 1-6-2011.

9.11 Reporting of activities of liaison office

Section 285 has been inserted with effect from 1-6-2011 to provide that a liaison office in India set up by a non-resident under the Foreign Exchange Management Act, 1999 shall in respect of its activities in financial year file with the Assessing Officer a statement in the prescribed form and containing prescribed particulars. Such statement is required to be delivered within 60 days from the end of the financial year.
The Memorandum explaining the provisions of Finance Bill states as follows:

" Foreign companies or firms or associations of individuals operate in India through a branch or a liaison office after approval by Reserve Bank of India. The branch constitutes a permanent establishment of the foreign entity and is, therefore, required to file a return of income along with requisite details. A non-resident does not file a return of income with regard to its liaison office on the ground that no business activity is allowed to be carried out in India. It is proposed to seek regular information from non-residents regarding the activities of their liaison offices in India. A new section 285 is, therefore, proposed in the Income-tax Act mandating the filing of annual information, within sixty days from the end of the financial year, in the prescribed form and providing prescribed details by non-residents as regards their liaison offices."

Section 139 (1) provides that every company shall file its return of income and on a plain reading, the section is applicable to all companies irrespective of whether they have earned income or not. The Memorandum, however, suggests that a liaison office not having any business activity is not required to file a return of income.

The statement is required to be filed within sixty days from the end of the financial year. Section 2 (21) of the General Clauses Act, 1897 provides that in all Central Acts, unless there is anything repayment in the subject or context, a financial year shall mean the year commencing on the first day of April. Thus, on a literal interpretation, the statement will have to be filed within 60 days of 31st March, that is, 30th May and not within 30th May.

9.12 Recognition to Provident Funds- Extension of time limit for obtaining exemption from Provident Fund

Authorities Rule 3 of Part A of the Fourth Schedule to the Act provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf.

Rule 4 of Part A of the Fourth Schedule provides for conditions which are required to be satisfied by a Provident Fund for receiving or retaining recognition under the Act. One of the requirements of rule 4(ea) is that the establishment shall obtain exemption under section 17 of the Employee Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP ACT).

The proviso to rule 3(1), inter alia, specifies that in a case where recognition has been accorded to any provident fund on or before 31-3-2006, and such provident fund does not satisfy the conditions set out in rule 4(ea), the recognition to such fund shall be withdrawn. The time-limit for satisfying tax conditions was 31-12-2010. The said proviso has been amended with effect from 1-1-2011 so as to extend the time-limit from 31-12-2010 to 31-3-2012.

Friends, In case of any query , please feel free to mail your query to " bikashbogi@yahoo.co.in". or contact me at +91-9930934403 .

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Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.
