CA. Bikash Bogi
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Understanding

Direct Tax

AMENDMENTS

CA FINAL – MAY 2014

FOREWORD

Dear Friends

Keeping the fiscal deficit in mind, on 28th Feb 2013, Mr. P. Chidambaram, Hon'ble Finance Minister, had presented 82nd Budget proposals of Independent India & 8th Budget proposal by him as Finance Minister. Presenting the budget proposals in the election year is always a challenging task for finance ministers and a populist budget is always expected from them. However, Mr. Chidambaram has completely ignored this expectation by presenting a realistic budget.

In Finance Bill 2013, total 11 amendments have been proposed to overrule the principles given by various courts. Principles given in 3 Supreme Court judgements are also likely to be overruled. In this write–up, I tried to cover up these decisions to find out the intention of the statute for bringing Amendments.

For CA Final May Term, Amendments normally constitute a substantial part of question paper. You can expect direct questions related to Amendments made in the Finance Act 2013. A thorough reading of entire amendments will help to score good marks in Direct Taxes.

Note:
Please go through the "Memorandum Explaining Finance Bill Direct Taxes 2013" and respective sections carefully for clear understanding of Amendments. I had incorporated relevant extracts of memorandum in this write up. You can download the full text of the memorandum in **www.sbrca.in – publications - direct taxes - case studies** or paste the given link in your browser **http://sbrca.in/publications.aspx?CatID=1&SCatID=2**

Regards
Bikash Bogi

Mumbai
14th January, 2014

Tax Rates

There are no changes in tax rates for FY 2013-14 except levy of surcharge at various levels. Tax rates for different assessee's for FY 2013-14 is as under:

Individuals, HUF, AOP and BOI

Total Income	FY 2013-14
Upto INR 200,000	NIL
INR 200,001 to INR 500,000	10%
INR 500,001 to INR 10,00,000	20%
INR 10,00,001 & Above	30%

- For resident individual aged between 60 – 80 years, the basic exemption limit is INR 250,000
- For resident individual of the age of 80 years or above, the basic exemption limit is INR 500,000
- Surcharge @10% if Total income exceeds INR 1 crore.
- Education cess is applicable @ 3% on Income Tax

Firm & LLP

- ✓ Taxable @ 30%
- ✓ Surcharge @ 10% taxable income exceeds INR 1 crore.
- ✓ Education cess @ 3% on income tax.

Corporate

Domestic Companies

- ✓ Taxable @ 30%
- ✓ Surcharge @5% if total income exceeds INR 1 crore but does not exceed INR 10 crore.
- ✓ Surcharge @10% if total income exceeds INR 10 crore.
- ✓ Education cess @ 3% on income tax

Foreign Companies

- ✓ Taxable @ 40%
- ✓ Surcharge @2% if total income exceeds INR 1 crore but does not exceed INR 10 crore.
- ✓ Surcharge @5% if total income exceeds INR 10 crore.
- ✓ Education cess @3% on income tax

Book Profit Based Taxations

Minimum Alternative Tax (MAT) (For Companies)

- ✓ @ 18.5% of the adjusted book profit (if normal tax is less than 18.5% of book profit)
- ✓ Surcharge @5% if total income exceeds INR 1 crore but does not exceed INR 10 crore.
- ✓ Surcharge @10% if total income exceeds INR 10 crore.
- ✓ Education cess is applicable @ 3%.

Alternative Minimum Tax (AMT) (Other than companies)

- ✓ Tax @ 18.5% of the adjusted book profit (if normal tax is less than 18.5% of book profit)
- ✓ Surcharge @5% if total income exceeds INR 1 crore but does not exceed INR 10 crore.
- ✓ Surcharge @10% if total income exceeds INR 10 crore.
- ✓ Education cess is applicable @ 3%.
- ✓ AMT will not be applicable for Individual, HUF, AOP, BOI if adjusted total income of such person does not exceeds INR 20 Lakh.

Securities Transaction Tax

Total Income	Present (FY 2012-13)	Amended*** (FY 2013-14)	Payable by
Purchase / Sale of equity shares (Delivery based)	0.100%	0.100%	Purchaser / Seller
Purchase of Units of equity oriented fund (Delivery based)	0.100%	NIL	Purchaser
Sale of Units of equity oriented fund (Delivery based)	0.100%	.001	Seller
Sale of equity shares, units of equity oriented mutual fund (non-delivery based)	0.025%	.025%	Seller
Sale of an option in securities	0.017%	0.017%	Seller
Sale of an option in securities, where option is exercised	0.125%	0.125%	Purchaser
Sale of a futures in securities	0.017%	.010%	Seller

*** w.e.f. 1st day of July, 2013

Commodity Transaction Tax (CTT)

- CTT is proposed to be payable by seller
- @ .01%
- for sale of commodity derivative other than agricultural commodities.
- Date for CTT shall be notified by the board.

** Assessee shall be allowed a deduction of CTT paid if income from such commodities is taxed under Business head.

Wealth Tax

Wealth tax shall be payable @ 1 % on the eligible net wealth held by assessee on the valuation date (31 March) in excess of the basic exemption of INR 30 Lakh.

1. Surcharge on Indian company increased to 10% from 5% and for foreign companies increased to 5% from 2%, if their total income exceeds INR 10 crore. Though the tax rates remain unchanged but due to increase in surcharge effective tax rate gets increased by more than 3%. The increase in surcharge will be applicable for only 1 year.

3. Effective tax rate for companies having a taxable income of INR 10 crore or more will be 33.99%. In case of MAT, companies having book profit of INR 10 crore or more, the tax rate will be 20.9605%.

Exemptions & Deductions

Life Insurance policy for persons with disability or disease

Section	Existing Provision	Amendment
10 (10D)	Any Sum received under Life Insurance policy is exempt subject to condition that • Premium does not exceed 10% of actual capital sum assured. **Actual capital sum assured** shall be minimum amount assured under the policy at any time during the term of policy not taking into amount - Value of any premiums agreed to be returned - Any benefit by way of bonus or otherwise over and above actual sum assured.	**Proviso inserted:** Where the policy, issued on or after the 1st day of April 2013, is for insurance on life of any person, • With disability as per section 80U • Suffering with disease as specified in 80DDB Exemption allowed if premium is not in excess of **15% of actual capital sum assured.**
80C	• A deduction is available • in respect of any premium or other payment made • on an insurance policy of • up to **10%** of the 'actual capital sum assured'.	-- Same proviso as above --

Deduction under Chapter VI-A

Existing Scenarios	Amendment
Section 80D :-	
• Amount paid by assessee, being individual, out of his taxable income, • for taking an insurance on his health or the health of the family or • any contribution made towards the **Central Government Health Scheme (CGHS)** or • any payment made on account of preventive health check-up of the assessee or his family, • is allowed ad deduction (maximum Limit INR 15,000)	• any contribution made towards the **Central Government Health Scheme (CGHS)** or such other scheme as may be notified by the Central government in this behalf.
Section 80CCG :- Rajiv Gandhi Equity saving scheme (RGESS)	
• A resident individual • who has acquired **Listed Equity shares** in accordance with the scheme • shall be allowed	• A resident individual • who has acquired **Listed Equity shares** or **listed units of an equity oriented Mutual funds** in accordance with the scheme

• a deduction of 50% of the amount invested (maximum deduction INR 25,000) • The deduction is a **one-time deduction** and is available only in **one assessment year** in respect of the amount so invested. • The deduction is available to a new retail investor whose GTI does not exceed INR 10 lakh. • Lock in period of the investment will be three years.	• shall be allowed • a deduction of 50% of the amount invested (maximum deduction INR 25,000) • The deduction shall be allowed for **three consecutive assessment years** related to previous year in which the listed Equity shares or listed units of equity oriented Mutual funds was first acquired. • The deduction is available to a new retail investor whose GTI does not exceed INR 12 lakh. • Lock in period of the investment will be three years.
Section :- 80G	
• Assessee is allowed a deduction of **50%** • of amount contributed in • National Children's Fund.	• Deduction increased to **100%.**
Section :- 80GGB	
• **Any Sum** • contributed by an Indian company • to any political party or an electoral trust in the previous year, • is allowed as deduction.	Proviso Inserted: No deduction shall be allowed for Donation in **Cash.**
Section :- 80 GGC	
• **Any Sum** • contributed by any person other than local authority or artificial judicial person • to any political party or an electoral trust in the previous year, • is allowed as deduction.	Proviso Inserted: No deduction shall be allowed for Donation in **Cash.**
Section :- 87 (New Section)	
• An assessee, being an individual resident in India, • whose total income does not exceed INR 5 lakh • shall be entitled to a deduction of , • **INR 2,000** or the tax payable, whichever is less.	

1. Cash Donation to political parties will not be eligible for deduction, which will curb the circulation of unaccounted money. However, a donation through bearer cheque is continued to be considered as valid mode for getting deduction.

Extract of Memorandum:

U/s 10(10D).......Some insurance policies for persons with disability or suffering from specified diseases provide for an annual premium of more than ten per cent of the actual capital sum assured. Due to the limit of ten per cent, these policies are ineligible for exemption under clause (10D) of section 10. Moreover, the deduction under section 80C is eligible only to an extent of the premium paid up to 10 % of the 'actual capital sum assured'

" With a view to liberalize the incentive available for investment in capital markets by the new retail investors, it is proposed to amend the provisions of section 80CCG so as to provide that investment in listed units of an equity oriented fund shall also be eligible for deduction in accordance with the provisions of section 80CCG."

" u/s 80GGB / 80GGC....... There is no specific mode provided for making such contribution. ..With a view to discourage cash payments by the contributors, it is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under section 80GGB and 80GGC in respect of any sum contributed by way of cash."

Additional Tax Benefit to Home Buyers :-

Section 80EE : (new Section)

- ✓ An assessee, being an individual,
- ✓ shall be allowed a deduction of **INR 1 lakh** for
- ✓ Interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

Conditions :

- ☞ Loan should be sanctioned at any time in FY 2013-14.
- ☞ Maximum loan sanctioned should not exceed INR 25 lakh
- ☞ The value of the residential house property should not exceed INR 40 lakh
- ☞ Assessee does not own any residential house property on the date of sanction of the loan.

** The deduction of INR 1 lakh is over and above the deduction of INR 1.5 lakh provided in section 24.
** If entire deduction has not been utilised in AY 2014-15, remaining can be utilised in AY 2015-06.

Comment:

1. The benefit is only available to first time home buyers who are planning to buy a residential house of INR 40 lakh or less. The loan amount should not exceed INR 25 lakh.

2. The word 'Payable' can be interpreted in a different way. If we take a literal interpretation, payment of actual interest is not necessary for claiming the deduction.

Vizag ITAT (SB) in case of **Marilyn Shipping & Transport (136 ITD 23),** by interpreting the language of section 40(a)(ia) had held that TDS disallowance applies only to amounts payable as on 31st March and not to amounts already paid during the year.

Considering the principle given by Vizag ITAT (supra), one can claim deduction of interest payable.

3. Can assessee, who had sold his residential house earlier, be also eligible for benefit, is a matter of interpretation as the wordings is *the assessee does now own any residential house property on the date of the sanction of the loan*. The same needs to be clarified, though as per memorandum explaining finance bill, the benefit is available to first home buyers.

4. Loan from financial institutions has been covered in this section but loan from housing financial institutions has not been covered.

5. Loan for construction of residential house is seems to be not covered, which should be look into.

Extract of Memorandum:

" Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property."

Exemption to income of Investor Protection fund of depositories:- Section 10(23EA)

Existing Act	New Section
Section 10(23EA) • Any Income by way of • contributions from a recognised stock exchange • received by a Investor Protection Fund • set up by the recognised stock exchange • shall be exempt from taxation .	**Similar New section 10(23ED):** • Any income, by way of contributions received from **a depository**, of such Investor Protection Fund set up in accordance with the regulations by a depository, shall be exempt. • Where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the entire amount so shared shall be treated as income and will taxed accordingly.

Tax Avoidance measures

Additional Tax on buy back of shares by unlisted companies:

Sec.	Existing Law	Amendment (w.e.f. 01-06-2013)
115-O	• Any amount declared, distributed or paid by domestic company • out of current profits or accumulated profits • to its shareholders • shall be charged to additional tax (Dividend distribution tax) @ 15%.	**New Section 115QA** ✓ Notwithstanding anything contained in any other provision of this Act, ✓ in addition to the existing tax liability of a domestic **Unlisted** company, ✓ any amount of distributed income by the company **in excess of** sum received by the company at the time of issue of shares ✓ on buy-back of shares ✓ from a shareholder shall be ✓ Charged to additional tax @20% on the said distributed income. ** The additional tax will be similar in the lines of DDT. **Gain on sell of shares will be exempt u/s 10(34A) in the hands of shareholders and will out of the purview of section 46A.
10 (34)	• Any income by way of • Dividend as per section 115-O • is exempt in hands of shareholders	
46A	• The consideration received by a shareholder • in excess of cost • on buy-back of shares by company is • is taxable as Capital Gains.	

Comment:

1. Buy-back of shares by the domestic unlisted company will be subject to 'Dividend Distribution Tax' in the excess of initial purchase price. Buy-back means purchase by a company of its own shares in accordance with the provisions of Sec. 77A of the Companies Act. Distributed income means the consideration paid by the company on buyback of shares as reduced by the amount received by the company for issue of shares.

2. Tax havens like Mauritius, Cyprus, Switzerland etc. allow easy parking of money either through investments or deposits. They may offer a range of incentives including a nominal capital gains tax for companies to complete financial secrecy of accounts held by individuals and corporate. Due to this practise 'Organisation for Economic Co-operation and Development (OECD) had blacklisted 25 nations for tax relaxations they offer for parking funds

India is having DTAA with 84 countries and out of which DTAA with few countries like Mauritius, Cyprus etc having a clause that capital gains on transfer of shares will be taxed only in the place of residence. i.e. in Mauritius or Cyprus etc. Further there is no capital gain tax in those countries. Accordingly Indian Companies are distributing the accumulated profit to its shareholders by opting Buy back route and that too without paying single rupees as taxes.

3. A recent Advance Ruling in case of **Armstrong World Industries Mauritius Multi-consult Limited 252 CTR 260** (Now overruled) will explain how this section is going to curb the tax avoidance scheme (when the beneficiary is a non resident):

In this case the applicant, a tax resident of Mauritius, is a wholly-owned subsidiary of a UK Company. Indian Company's 99.97% share is held by the applicant and .03% shares held by UK Co. Ind. Co proposes to buyback a part of its shares from the applicant under Section 77A of the Companies Act,

1956. The applicant filed an application before AAR for seeking taxability of capital gains arises in their hands by considering the provisions of Income Tax Act as well as DTAA. Revenue contended that the applicant is a shell company with no business purpose and that the transactions were undertaken with the motive of tax avoidance. AAR held that capital gains in the hands of Applicant Company are exempt by virtue of article 13 of DTAA between India and Mauritius.

4. The proposed amendment is supposed to affirmed the Advance Ruling in **XYZ India, In re (343 ITR 455) AAR.**

In this case the applicant, an Indian company, 48.87 %, of whose shares were held by a group holding company in the U.S.A, 25.06 % by a group holding in Mauritius, 27.37% by a group holding company in Singapore and 1.76 % by the general public. The board of directors of the applicant passed a resolution proposing a scheme of buy back of its shares from its existing share holders in accordance with section 77A of the Companies Act 1956. Mauritius Company which acquired the shares sought advance ruling on whether the capital gains that may arise were chargeable to tax in India in terms of DTAA.

AAR held that, the proposal of buy-back in the instant case is a scheme devised for avoidance of tax. Capital gains exemption under India-Mauritius DTAA is not available. Remittance being in the nature of dividend payment, withholding of tax at source u/s 195 is required.

5. The companies, opting for buy back route, is required to pay additional tax @ 20% (plus surcharge 10% & education cess @3%) even if there is no liability to pay tax. The Tax is required to be paid to the government within 14 days from the date of payment of any consideration to the shareholders.

6. There will be no tax credit in any manner either to the company or any other person and the taxes paid on this account shall be treated as final tax payment in respect of said income. In case of failure to deposit the taxes in time, the principal officer or the company shall be deemed to be assessee in default and the company will be liable to paid interest @1% for every month or part of the month for the period starting after the expiry of 14^{th} Day from the payment to shareholder.

7. To remove the cascading effect, law has been amended that income arising in the hands of shareholder will be exempt by virtue of newly induced section 10(34A).

8. In case of resident shareholders the amendment will make an adverse impact in certain cases. In case of buy back for a price less than the cost price, the shareholder will not get the benefit of resultant loss. In case of long term capital gains, benefit of indexation will be lost to them.

9. The provision will enable the taxing authorities to collect the taxes on single point and also at the earliest point of time. The proposed new section will override the entire Income Tax Act and when become law, will curb the tax avoidance scheme, particularly planned through the "Mauritius Route" as explained above.

Extract of Memorandum:

" A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains.

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

Transfer of immovable properties held as Stock in Trade :

Existing Law	New section 43CA
Section 50C: • When a **Capital asset,** • being immovable property (**except stock in trade**), • is transferred for a consideration • which is **less than** • the value for the purpose of payment of stamp duty in respect of such transfer, • then such value (stamp duty value) will be taken as full value of consideration.	New Section 43CA: • Where the consideration for the transfer of • an asset (**Other than capital asset)**, • being land or building or both, • is less than the stamp duty value, then • the value for stamp duty calculation • shall be deemed to be the full value of the consideration • for calculating Business Income. ✓ Where the date of sale agreement (for fixing final consideration) and the date of registration of such transfer of asset are not the same, ✓ then the value may be taken as value for payment of stamp duty in respect of such transfer ✓ on the date of the agreement. ✓ provided the seller has received on or before the agreement date full or partial consideration from the buyer (other than cash). ** Stock in Trade will now be taxed as per stamp duty valuations. ** Provisions of section 50C (2) & 50C (3) will apply for determination of stamp duty value.

Comment:

1. Presently when a capital assets (other than stock in trade) is sold for a consideration, which is lower than the stamp duty value, then the stamp duty value is considered as deemed sale consideration for the purpose of computing capital gains. From the definition of capital assets as given in section 2(14) 'Stock in Trade' is specifically excluded. After introduction of this section, concept of deemed sales consideration being stamp duty value will be applied on 'stock in trade' transferred by builders / real estate developers.

2. The amendment will lead to double taxation in certain cases. For e.g. If a property sold by real estate developer (say for INR 40 lakh) is less than the stamp duty value (say INR 50 lakh), then INR 10 lakh will be taxed as business income in the hands of developers.
Consequently, buyer is getting property for INR 40 lakh, which is less than by INR 10 lakh from stamp duty value and accordingly INR 10 lakh will be taxed in the hands of buyer u/s 56(2)(vii) as income from other sources.

3. The word "other than Cash" may be interpreted in a different manner. Any payment by way of book entry can be considered as valid payment under this section. Further payment through bearer cheque can be a sufficient compliance.

4. No Corresponding amendment has been proposed in section 50C where there is a time gap between the agreement date and the registration date.

5. In principle following case decision are overruled by the amendment:
a) Indralok Hotels (p) Ltd. (122 TTJ 145) Mumbai, wherein it has been held by ITAT that stamp duty valuation as prescribed in section 50C will applied in case of sale consideration for computing capital gains only. Further ITAT held that Section 50C will not be applicable on Stock in Trade.

b) Excellent Land Developers (p) Ltd. (1 ITR 563) Delhi: wherein ITAT held that section 50C cannot be applied for calculating business profit. ITAT further held that section 50C does not apply to stock in trade.

c) Kan Construction & colonizers (p) Ltd. (70 DTR 169) Allahabad HC: High court in this case held that provision of section 50C will not apply to land and building held as stock in Trade.

Extract of Memorandum:

" Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such value (stamp duty value) is taken as full value of consideration under section 50C of the Income-tax Act. These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade.

It is proposed to provide by inserting a new section 43CA that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business of profession"."

TDS on transfer of Immovable properties:

New Section 194-IA (w.e.f. 01-06-2013)

- ✓ Any person, being a buyer,
- ✓ responsible for paying (other than the person referred to in section 194LA **)
- ✓ to a resident seller / transferor
- ✓ any sum by way of consideration (**INR 50 lakh or more**) for transfer of any immovable property (other than agricultural land),
- ✓ shall,
- ✓ at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier,
- ✓ Deduct an amount equal to 1% of such sum as income-tax thereon.

** Section 194LA covers the situation for payment of compensation of certain immovable properties on account of compulsory acquisition under any law.

Comment:

1. This section is similar to section 194LAA proposed in Finance bill 2012, which was subsequently withdrawn for the reasons best known to the finance ministry. In comparison to amendment proposed by Finance bill 2012, the impact of earlier proposal has been diluted to a certain extent. The thrash hold exemption of INR 20 lakh for property situated in other than urban areas has not been incorporated, rather an exemption of INR 50 lakh for property situated in all areas, has been made. Due to this proposal, properties located in areas other than urban areas may be out of purview of this section. Further, Proof of deposit of TDS which was mandatory for registration of property, as proposed in Finance bill 2012, has been ignored in the Finance Act 2013.

2. The section will be applicable for transfer of property (other land agricultural land), on or after 1st June 2013, having a value of INR 50 lakh or more. Tax will be deducted on actual consideration and not on the deeming consideration as prescribed by section 50C of the IT Act.

3. The amendment has an adverse impact on assessee who is likely to reinvest the sale consideration in the residential house for claiming exemption u/s 54, as the 1% of the consideration gets blocked till the time assessee gets refund from Income Tax department.

4. In case the seller is not having PAN then the buyer is required to deduct tax @20% as per section 206AA of the Income Tax Act.

Extract of Memorandum:

" On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties. In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1% of such sum."

In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakh rupees."

Immovable properties received for Inadequate consideration :

Present Law Section 56(2)(vii)(b)	Amendments
• Where any immovable property is • received by an individual or HUF • **without consideration,** • the stamp duty value of which exceeds INR 50,000 • shall be charged to tax in the hands of the individual or HUF as income from other sources.	**New Sub clause (b)(ii) inserted** Where any immovable property received by an individual or HUF • **for a consideration** • which is less than the stamp duty value of the property • by an amount exceeding INR 50,000 • the stamp duty value of such property as exceeds such consideration. • shall be charged to tax in the hands of the individual or HUF as income from other sources.

	✓ Where the date of sale agreement (for fixing final consideration) and the date of registration of such transfer of asset are not the same, ✓ Then the value may be taken as the value for the purpose of payment of stamp duty in respect of such transfer ✓ On the date of the agreement. ✓ Provided the seller has received on or before the agreement date full or partial consideration from the buyer (other than cash).

Comment:

1. In case any immovable property received for a consideration, by an Individual or HUF, which is less than the stamp duty value by INR 50,000; then the difference between the stamp duty value and such consideration, be taxed as income from other sources in the hands of recipient individual or HUF.

2. The word "other than Cash" may be interpreted in a different manner. Any payment by way of book entry can be considered as valid payment under this section. Further payment through bearer cheque can be a sufficient compliance.

3. The said provision will lead to double taxation. In case property sold by the seller (say for INR 40 lakh) is less than the stamp duty value (say INR 50 lakh), then INR 10 lakh will be taxed in the hands of seller by virtue of section 50C.

Consequently, buyer is getting property for INR 40 lakh, which is less than by INR 10 lakh from stamp duty value and accordingly INR 10 lakh will be taxed in the hands of buyer u/s 56(2)(vii) as income from other sources.

4. Similar provision was first introduced by Finance Act 2009 w.e.f 1st October 2009, which was subsequently withdrawn by Finance Act 2010 with retrospective effect. The same is once again introduced in Finance Act 2013.

Extract of Memorandum:

"The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. It is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

Considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property."

Keyman Insurance Policy:

<table>
<tr><th>Present Law</th><th>Amendments</th></tr>
<tr><td>
<u>Section 10(10D)</u>

Any sum received under
a life insurance policy
other than a <u>"Keyman insurance policy"</u>
is <u>exempt</u> in the hands of recipient.

<u>Explanation 1 to Section 10(10D)</u>

"Keyman insurance policy means
life insurance policy taken by a person on the life of another person
who is or was the employee of the first-mentioned person or
is or was connected in any manner whatsoever
with the business of the first-mentioned person.

<u>Section 28:</u>

Any sum received under a Keyman Insurance Policy including any bonus thereof
is taxable as Business income.

</td><td>
<u>Revised Explanation 1 to Section 10(10D)</u>

"Keyman insurance policy means
life insurance policy taken by a person on the life of another person
who is or was the employee of the first-mentioned person
or is or was connected in any manner whatsoever
with the business of the first-mentioned person.
<u>AND INCLUDES</u>
<u>such policy</u>
<u>which has been assigned to a person,</u>
<u>at any time during the term of the policy,</u>
<u>with or without any consideration.</u>

</td></tr>
</table>

Comment:

1. Any Keyman Insurance policy assigned to Keyman will not change its character i.e. will continue to be Keyman insurance policy and amount received on maturity will now be taxable as business income in the hands of Keyman. This is a very good amendment to plug the loophole in tax law.

2. Following case decisions are overruled from this amendment:

a) <u>Rajan Nanda (249 CTR 141) Delhi</u>, wherein HC had held that Amount received by employee director on maturity of insurance policy, which was taken earlier by company and which was assigned to him by the company is not taxable in the hands of director.

b) <u>Naresh Kumar Treben (249 CTR 141) Delhi,</u> wherein HC held that once there is an assignment of Keyman insurance policy by employer company to employee, insurance policy gets converted into an ordinary policy and hence, in that case, maturity value received by employee would not be subjected to tax in view of section 10(10D).

<u>Extract of Memorandum</u>:

" It has been noticed that the policies taken as keyman insurance policy are being assigned to the keyman before its maturity. The keyman pays the remaining premium on the policy and claims the sum received under the policy as exempt on the ground that the policy is no longer a keyman insurance policy. Thus, the exemption under section 10(10D) is being claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person. The Courts have also noticed this loophole in law.

With a view to plug the loophole and check such practices to avoid payment of taxes, it is proposed to amend the provisions of clause (10D) of section 10 to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a Keyman insurance policy.."

Corporate Tax Proposals

Dividends from Foreign Company & Removal of cascading effect of DDT :

Present Law	Amendment
Section 115 BBD	
✓ Gross dividends received by an Indian Company from a specified foreign company ✓ in which it has shareholding of 26% or more ✓ shall be taxed @ 15% ✓ If dividend is **included in total income of FY 2012-13** i.e. AY 2013-14.	✓ **Benefit extended to one more year i.e. for FY 2013-14.**
Section 115-O	
• Any amount declared, distributed or paid by domestic company • out of current profits or accumulated profits • to its shareholders • shall be charged to additional tax (Dividend distribution tax i.e. DDT) @ 15%. **Sub section 1A (i)** ✓ The tax base for DDT (i.e. the dividend payable in case of a company) ✓ is to be reduced by an amount of dividend ✓ received from **its domestic subsidiary** ✓ if such subsidiary has paid the DDT which is payable on such dividend.	**Revised Sub section 1A (i) (w.e.f. 01.06.2013)** Dividend for section 115-O shall be reduced by the amount of dividend, if any, received by the domestic company during the FY, if such dividend is received from **its subsidiary** and,— (a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or (b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend.

Comment:

1. Indian company will require to pay lower rate of tax i.e. @ 15% on the dividend received from foreign company till 31.03.2014. This provision was introduced as an incentive for attracting repatriation of income earned by resident companies from investments made abroad with certain conditions to check the misuse of the incentive. Extension of the scheme for one more year is a welcome move.

2. To remove the cascading effect, consequential amendment made that Indian company will not required to pay DDT on distribution of dividends to the extent of dividends received from foreign subsidiary (having 50% or more stake) which is taxed u/s 115BBD in the same financial year.

Extract of Memorandum:

"Section 115-O provides that the tax base for DDT (i.e. the dividend payable in case of a company) is to be reduced by an amount of dividend received from its subsidiary if such subsidiary has paid the DDT which is payable on such dividend. This ensured removal of cascading effect of DDT in a multi-tier structure where dividend received by a domestic company from its subsidiary (which is also a domestic company) is distributed to its shareholders.

It is proposed to amend section 115-O in order to remove the cascading effect in respect of dividends received by a domestic company from a similarly placed foreign subsidiary (i.e. the foreign company in which domestic company holds more than fifty percent of equity share capital). It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act."

Investment Linked Incentives [New Section 32AC]

New Section - 32AC

Where an assessee, being a company,—

(a) is engaged in the business of manufacture of an article or thing; and

(b) invests a sum of more than INR 100 crore in new assets (plant or machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015,

then, the assessee shall be allowed—

(i) for AY 2014-15, a deduction of 15% of aggregate amount of actual cost of new assets **acquired and installed** during the F.Y. 2013-14, if the cost of such assets exceeds INR 100 crore;

(ii) for AY 2015-16, a deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1st April, 2013 and ending on 31st March, 2015, as reduced by the deduction allowed, if any, for A.Y. 2014-15.

The phrase "new asset" has been defined as new plant or machinery but does not include—

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle;

(v) ship or aircraft; or

(vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

Above mentioned Plant or machinery cannot be transferred for a period of 5 years (except transfer by way of amalgamation or demerger route).

Comment:

1. This is a very good amendment keeping in view of the Overall economy of the country. The said incentive will give a much needed boost to corporate to invest more in new projects.

2. The wording of the provision is similar in the lines of section 32(1)(iia) related to additional depreciation.

3. There may be some interpretation issue for the wording "Acquired and installed". If we go by strict interpretation, the new plant and machinery much be acquired and installed on or before the prescribed time.

Hon'ble **Delhi ITAT** in **Escorts Employees Ancillaries Ltd. (52 TTJ 325)** had held that for getting the benefit of additional deprecation machinery must be purchased on or before the specified date.

Extract of Amendment:

" In order to encourage substantial investment in plant or machinery, it is proposed to insert a new section 32AC...........

It is further proposed to provide suitable safeguards so as to restrict the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply in a case of amalgamation or demerger but shall continue to apply to the amalgamated company or resulting company, as the case may be...."

Deduction for Additional Wages -: Section 80JJAA

Present Law	Amendments
✓ A deduction of 30% of additional wages ✓ paid to the new regular workman ✓ employed in any previous year by an Indian company ✓ **<u>in its Industrial undertaking</u>** ✓ engaged in manufacture or production of any article or thing ✓ is allowed. The deduction is allowed for three assessment years.	**<u>Revised Section 80JJAA:</u>** • Where the GTI of an Indian company includes any profits and gains derived from the manufacture of goods • in a **<u>factory,</u>** • there shall, subject to conditions, be allowed 30% • of additional wages paid to the new regular workmen employed by the assessee **<u>in such</u>** • **<u>factory,</u>** • in the previous year, for three AY including the AY in which such employment is provided. No Deduction shall be allowed if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

<u>Comment:</u>

1. Section 80JJAA was introduced by Finance Act 1998 to encourage the employers to generate more and more employment. It provides a deduction of 30% of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its **<u>industrial undertaking</u>** engaged in manufacture or production of article or thing. It is proposed by finance bill 2013 that incentive shall be available to only those Indian companies who derives profit from manufacturing of goods in its **<u>factory.</u>**

2. The amendment is prospective and will apply from AY 2014-15 onwards which means that it will not make any adverse impact on existing assessee, who will not be entitled for the deduction from AY 2014-15 onwards.

3. <u>Bangalore ITAT</u> decision in case of <u>Texas Instrument (India) pvt Ltd. (115 TTJ 976), seems to be</u> **<u>overruled</u>**<u>,</u> wherein ITAT had held that assessee is eligible for relief in respect of new software engineers employed, not in supervisory capacity, taking note of the notification of Karnataka Government under which the assessee engaged in development of software was covered by the Industrial Disputes Act, 1947.

<u>Extract of Memorandum</u>:

"The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also. It is, therefore, proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to an Indian Company deriving profits from manufacture of goods in its factory.

The deduction shall be of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

It is also proposed to provide that the deduction under this section shall not be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company."

Incentive to Power Sector

Present Law	Amendment
Extension of Sunset Clause [u/s 80-IA(4)]	
✓ Deduction should be allowed to an undertaking which – • is set up for the generation and distribution of power. • Starts transmission or distribution by laying a network of new transmission or distribution lines. • Undertakes substantial renovation and modernization of existing network of transmission or distribution lines..... ✓ **AND** ✓ Completes the **above projects till 31st March 2013**	✓ **Sunset Clause Extended to 31st March 2014**

Extract of Memorandum

" With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014"

Treatment of Bad debts (for Banking Companies):- Section 36(viia)

Present Law	Amendment
Section 36 (viia) • In computing the business income of certain banks and financial institutions, • deduction is allowable in respect of • any provision for bad and doubtful debts made by such entities subject to certain limits.. **Section 36 (vii)** • The amount of Bad debt, which is • Written off as irrecoverable in the accounts of the assessee • Shall be allowed as deduction. Proviso • For Bank & Financial institutions (as per section 36(viia), • the amount of deduction for any such debt or part shall be limited to the amount • By which the bed debt written off exceeds the credit balance in the provision for bad and doubtful debts.	**Explanation 2 inserted after Section 36 (vii)** • For the purposes of the proviso to section 36 (vii) and section 36(2) (v), • the account referred to therein shall be • **Only one account** in respect of provision for bad and doubtful debts under clause (viia) and • such account **shall relate to all types of advances**, including advances made by rural branches.

Comment:

1. After the proposed amendment, for banks and financial institution as referred in clause (viia), the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) **shall be limited to** the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

2. Supreme Court decision in case of **Catholic Syrian Bank Ltd. 343 ITR 270 (SC)** is seems to be overruled. In this case Apex Court held *"The proviso to s. 36(1)(vii) and ss. 36(1)(viia) and 36(2)(v) have to be read and construed together. They form a complete scheme for deductions and prescribe the extent to which such deductions are available to a scheduled bank in relation to rural loans etc., whereas s. 36(1)(vii) deals with general deductions available to a bank and even non-banking businesses upon their showing that an account had become bad and written off as irrecoverable in the accounts of the assessee for the previous year, satisfying the requirements contemplated in that behalf under s. 36(2). The provisions of s. 36(1)(vii) operate in their own field and are not restricted by the limitations of s. 36(1)(viia).*

Apex Court finally concluded that "*Provisions of ss. 36(1)(vii) and 36(1)(viia) are distinct and independent items of deduction and operate in their respective fields; proviso to s. 36(1)(vii) operates only in cases falling under cl. (viia) to limit the deduction to the extent of difference between the debt or part thereof written off in the previous year and the credit balance in the provision for bad and doubtful debts made under cl. (viia) and, therefore, scheduled and non-scheduled commercial banks are entitled to full benefit of write off of irrecoverable debts under s. 36(1)(vii) in addition to the benefit of deduction of provision for bad and doubtful debts under s. 36(1)(viia)*. "

Extract of Memorandum:

" Certain judicial pronouncements have created doubts about the scope and applicability of proviso to section 36(1)(vii) and held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances.

Section 36(1)(viia) of the Act contains three sub-clauses, i.e. sub-clause (a), sub-clause (b) and sub-clause (c) and only one of the sub-clauses i.e. sub-clause (a) refers to rural advances whereas other sub-clauses do not refer to the rural advances. In fact, foreign banks generally do not have rural branches. Therefore, the provision for bad and doubtful debts account made under clause (viia) of section 36(1) and referred to in proviso to clause (vii) of section 36(1) and section 36(2)(v) applies to all types of advances, whether rural or other advances.

It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances. There is no such distinction made in clause (viia) of section 36(1)."

International Taxations

Tax Residency certificate :- Section 90 (4) /90A(4)

Existing Act	Amendment (w.r.e.f AY 2013-14)
• Assessee, not being a resident • to whom DTAA applies • Shall not be entitled to claim any relief under DTAA, • Unless a **Certificate,** containing particulars of his being a resident in any country outside India or specified territory. • Is obtained from the government of that country or territory.	**New Sub section (5) inserted:** • The certificate of being a resident in a country outside India or specified territory outside India, • as the case may be, • referred to in sub-section (*4*), • shall be **"necessary but not a sufficient condition"** • for claiming any relief under the agreement referred to there.

Comment:

1. Finance Act 2012 brings an amendment in section 90 according to which submission of "Tax Residency Certificate" is mandatory and only condition to claim treaty benefit. Interestingly it has been mentioned in 'Memorandum explaining Finance Bill 2012' that TRC would be necessary but not a sufficient condition for getting the treaty benefit. Though the said wordings was not part of Finance Act 2012, it is now proposed in finance bill 2013 to reintroduce the same with retrospective effect from AY 2013-14.

2. As per proposed amendment "Tax Residency Certificate" produced by a Non- Resident shall not be sufficient to take treaty benefit. What else the taxing authority is expecting from them is best known to them only.

3. Mauritius is a popular source of foreign investments into India, accounting for around 40% of portfolio inflows according to some estimates. As per Memorandum explaining Finance Bill 2012 " *It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits.*"
Proposed amendment will give tax authorities to identify the actual beneficiary instead of FIIs operative in front end activities. These FIIs buy Indian assets on behalf of their clients through subsidiaries with double tax treaties with India, meaning under Indian law, only the banks and brokerages are registered as the foreign investor, while the end investor remains outside the purview of Indian tax authorities.

4. In Circular No. 789 dated 13.04.2000, CBDT had clarified that with respect to DTAA with Mauritius, wherever the certificate of residence is issued by Mauritian Authorities, such certificate will constitute sufficient evidence for accepting the status of residence of a taxpayer.

Hon'ble Supreme Court in **Azadi Bachao Andolan (132 Taxman 373)** had held circulars in no case curtail the powers of assessing officer. Accordingly Apex Court had upheld the validity of circular no. 789.
Advance Ruling in case of **E Trade Mauritius Ltd (190 Taxman 232)** has accepted the above principle. In this case Investment had brought in India thorough a company of Mauritius, the parent of which was a USA based company. AAR held that treaty benefit cannot be denied as the assessee is a tax resident of Mauritius holding TRC certificate issued by the government.

5. Amid pressure from foreign investors, Finance ministry had issued a press release dated 01.03.2013 clarifying that sub section (5) of section 90 does not mean that the tax residency certificate produced by a resident of a contracting state could be questioned by the taxing authorities.

It has been clarified that Tax Residency Certificate produced by a resident of a contracting state will be accepted as evidence that he is a resident of that contracting state and the Tax Authorities in India will not go behind the TRC and question his resident status.

It is also clarified that for Mauritius, circular no. 789 dated 13.4.2000 continues to be in force, pending ongoing discussions between India and Mauritius.

Even Finance Minister after the budget speech said "It has not become law yet. It's a bill. When I read that clause again, I said it is clumsily worded,"

6. The said clarification is clearly in contradiction of scheme of the amendment as clear from the memorandum explaining finance bill given below. The said clarification seems to calm down the anxiety of foreign investors.

Extract of Memorandum:

"The scheme of interplay between DTAA and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the DTAA, is entitled to claim applicability of beneficial provisions either of DTAA or of the domestic law. Sub-section (4) of sections 90 and 90A of the Income-tax Act inserted by Finance Act, 2012 makes submission of Tax Residency Certificate containing prescribed particulars, as a condition for availing benefits of the agreements referred to in these sections.

It is proposed to amend sections 90 and 90A in order to provide that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A. This position was earlier mentioned in the memorandum explaining the provisions in Finance Bill, 2012, in the context of insertion of sub-section (4) in sections 90 & 90A."

General Anti Avoidance Rules (GAAR) :-

Applicable w.e.f. 01.04.2016

GAAR was originally introduced by Finance Act 2012 to 'COUNTER AGGRESIVE TAX PLANNING.' However the applicability of the same was differed till 31.03.2014. A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government and based on the report of the committee, following amendments are proposed in original GAAR:

(A) GAAR provisions will come into force with effect from April 1, 2016 and shall apply from the assessment year 2016-17.

(B) An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement.

(C) The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement

(D) An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A.

Taxation of Royalty / Fees for technical services :- Section 115A

Existing Act	Amendment
• Where the total income of a non-resident taxpayer includes any income by way of • Royalty and Fees for technical services (FTS) received under an agreement entered after 31.03.1976 <u>and</u> • which are not effectively connected with permanent establishment, if any, of the non-resident in India. • then tax is payable on the gross amount of income at the rate of - 30%, (if the agreement is on or before 31.05.1997) / - 20% (if the agreement is after 31.05.1997 but before 01.06.2005) - and **<u>10% if the agreement is after 01.06.2005.</u>**	Tax will be payable on the gross amount of income at the rate of **<u>25%</u>** if the agreement is on or after 31.03.1976.

<u>Comment:</u>
1. India has tax treaties with 84 countries, majority of tax treaties allows India to levy tax on gross amount of royalty at rates ranging from 10% to 25% (like for tax residents of UK- USA @15%, for tax residents of Denmark-Italy.. @20%, for tax residents of Poland – Romania.. @ 22.5% & for tax residents of magnolia @25%) whereas the tax rate as per section 115A is 10%.

As per section 90 of IT Act, DTAA provisions will apply to a taxpayer in a beneficial manner and accordingly by applying section 115A payment to resident of above mentioned country is get taxed @ 10% though DTAA prescribes a higher rate.

<u>Extract of Memorandum</u>:
" In order to correct this anomaly, the tax rate in case of non-resident taxpayer, in respect of income by way of royalty and fees for technical services as provided under section 115A, is proposed to be increased from 10% to 25%. This rate of 25% shall be applicable to any income by way of royalty and fees for technical services received by a non-resident, under an agreement entered after 31.03.1976, which is taxable under section 115A."

Tax incentive for Foreign funding in Infra Sector :- Section 194LC

Existing Act	Amendments (w.e.f. 01.06.2013)
✓ Specified company ✓ borrows money in Foreign currency ✓ from a source outside India ✓ Under loan agreements or by way of issue of long term infra bonds. ✓ As approved by CG, then ✓ Interest income paid shall be subjected to ✓ TDS @ 5% (plus applicable surcharge and cess). The **specified company** shall be an Indian company engaged in the **business of** - ✓ construction of dam, operation of Aircraft, ✓ manufacture or production of fertilizers, ✓ construction of port including inland port, ✓ construction of road, toll road or bridge; ✓ generation, distribution of transmission of power ✓ construction of ships in a shipyard; or ✓ Developing and building an affordable housing project.	**A new proviso inserted :** • where a non-resident (not being a company) or a foreign company has deposited • any sum of money in foreign currency in a **designated account** through which • such sum, as converted in rupees, • is utilised by the non-resident or the foreign company, • to subscribe to any long-term infrastructure bonds issued by the specified company in India, • then, such borrowing, • shall be deemed to have been made by the Specified company in foreign currency. Designated account" means an account of a person in a bank which has been opened solely for the purpose of deposit of money in foreign currency and utilisation of such money for payment to the specified company for subscription in the long-term infrastructure bonds issued by it;

Comment:

1. The amendment is proposed to provide tax incentive for making investment in Infra sector to make it more attractive for foreign investor.

Extract of Memorandum:

" In order to facilitate subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), it is proposed to amend section 194LC of the Income-tax Act so as to provide that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilised for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of this section, the borrowing by the company shall be deemed to be in foreign currency. The benefit of reduced rate of tax would, therefore, be available to such non-resident in respect of the interest income arising on such subscription subject to other conditions provided in the section."

Procedural Compliances:

Defective Return :- Section 139(9)

Present Law	Amendments (w.e.f. 01.06.2013)
• Where the AO considers that the Return of Income (ROI) furnished by the assessee is defective, • he may intimate the defect to the assessee • and give him an opportunity to rectify the defect • Within a period of fifteen days.	New Sub clause (aa) inserted: • ROI will also be treated as defective • If taxes due i.e. Advance Tax & self assessment tax • has not been paid • on or before the date of filing of return. **This defect is non-curable.

Comment:

1. As per existing section 139(9), if the ROI has been found to be defective, then as per the direction of the AO, assessee can rectified the defect within a period of 15 days and after such rectification, the return can be treated as valid return. However, as per amendment, ROI without payment of 'taxes due as per return' shall be treated as defective.

2. The amendment seems to be too harsh for the reason that merely because of non payment of returned taxes, ROI of the assessee will be treated as defective 'which cannot be rectified', except by filing a fresh ROI.

Suppose an assessee is claiming the deduction u/s 80-IA and filing the ROI on 30th Sept i.e. on the last day without paying due taxes. As per proposed amendment the ROI filed by the assessee will be treated as defective and other provisions of the act will apply as if the no ROI has been filed by the assessee.

Assessee, after paying the taxes, is filing the ROI once again on 30th October. Now the assessee will not be eligible for deduction u/s 80-IA, because as per section 80AC, for claiming deduction u/s 80-IA, the ROI should be filed on or before the due date i.e. on or before 30th Sept.

3. The proposed amendment is seems to be a tax collection measure at the earliest point of time. From the taxpayers point of view, the said provision is seems to be quite harsh as merely non payment of returned tax liability will lead to a conclusion that assessee had not filed the tax return.

Extract of Memorandum:

" It has been noticed that a large number of assessees are filing their returns of income without payment of self-assessment tax.

It is, therefore, proposed to amend the aforesaid Explanation so as to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return. ."

Special Audit: - Section 142[2A]:

Present Law	Amendments (w.e.f. 01.06.2013)
• If at any stage of the proceeding, the AO having regard to the • **nature and complexity** of the accounts • of the assessee and • the interests of the revenue, • is of the opinion that it is necessary so to do, • he may, with the approval of the Chief Commissioner or Commissioner, • Direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.	• If at any stage of the proceeding, the AO having regard to the ○ **nature and complexity** of the accounts or ○ volume of the accounts, or ○ doubts about the correctness of the accounts, or ○ multiplicity of transactions in the accounts or ○ specialized nature of business activity, • of the assessee and • the interests of the revenue, is of the opinion that it is necessary so to do, • he may, with the approval of the Chief Commissioner or Commissioner, • Direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

Comment:

1. AO, with the previous approval of CIT or CCIT, can direct the assessee to get his accounts audited, if he feels necessary by taking into consideration one of the various factors as above.

2. Following case decisions seems to have been overruled by the proposition of this amendment:

a) Peerless General Finance (236 ITR 671) Kolkata, wherein HC held an opinion has to be formed having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue and both the factors are necessary ingredients for exercise of power. In the absence of the same direction u/s 142(2A) is void.

b) Heera lal (106 TTJ 114) Jaipur, wherein ITAT had held that as there is no evidence in the assessment record that the AO had considered the nature and complexity of the accounts and hence proceedings u/s 142(2A) is invalid.

c) Rajendra Singh (117 TTJ 885) Mumbai, wherein ITAT held that there was no application of mind at all by AO to form an opinion that having regard to the nature and complexity of accounts and the interests of Revenue**,** and accordingly direction of special audit is invalid.

3. A larger accountability is now cast on the CIT or CCIT to check the basis on which the permission of special audit had been sought.

Extract of Memorandum:

" The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts. It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit."

Application of seized assets u/s 132B:

Existing Act	Amendment (w.e.f. 01.06.2013)
• Seized assets may be adjusted against • **any** existing liability • under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and • the amount of liability determined on completion of assessments pursuant to search, • including penalty levied or interest payable and • in respect of which such person is in default or deemed to be in default..	**Explanation inserted:** Existing liability does not include **advance tax payable.**

Comment:

1. Following decisions are likely to be overruled by this amendment:

a) Jyotindra B Mody (ITA/3741/2010) Bombay, wherein Hon'ble HC had held that seized cash can be adjusted against advance Tax liability when assessee had made specific request to treat the seized cash as advance tax.

b) Kesr Kiman Karyalaya (278 ITR 596) Delhi: HC in this held when offer for adjustment of seized cash was made by the assessees before the advance tax liability became due then the same could be adjusted against advance tax liability.

c) Vishwanath Khanna (335 ITR 548) Delhi: HC had held that Department would not be justified in levying interest under ss. 234B and 234C, as the amount of advance tax payable by the petitioner assessee for relevant assessment years could be adjusted from the amount lying with the Department in the petitioner's own account consequent to search and seizure operation.

d) Ram S Sarda 13 ITR 457 (Rajkot), wherein ITAT held that cash seized at the time of search should be treated as Advance Tax and accordingly should be adjusted accordingly.

2. Cash seized during the course of search proceedings will not be adjusted against the advance tax liability. It means the assessee has to make an extra effort to make arrangements for payment of Advance Taxes.

Extract of Memorandum:

"Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search."

Online filing of wealth tax return: Section 14A / Section 14B

Present Law	New Section (w.e.f.01-06-2013)
Section 14 of Wealth Tax • Every assessee, whose net wealth exceeds INR 30 Lakh,	**Section 14A / Section 14B** Eligible assessee may file a return of net wealth in electronic mode (e-filing) similar to Income tax

• is required to file wealth tax return (in paper form) • along with relevant supporting documents.	returns. CBDT will prescribe the relevant rules accordingly.

Comment:

1. Paper returns will become history soon as proposed amendment will enable the assessee to file their wealth return online. Hope assessee will prefer the same.
2. For governments point of view now they can get the data in a systematic manner and administrative burden will be reduced to a certain extent as the online return is supposed to be processed in centralised processing centre.

Extract of Memorandum:

" Sections 139C and 139D of the Income-tax Act contain provisions for facilitating filing of annexure-less return of income in electronic form by certain class of income-tax assessees. In order to facilitate electronic filing of annexure-less return of net wealth, it is proposed to insert new sections 14A and 14B in the Wealth-tax Act on similar lines."

"Taxes Due" Re- Defined:- Section 179

Existing Act	Amendments (w.e.f. 01.06.2013)
• Where the **"Tax Due"** • from a private company cannot be recovered from such company, • then the director/s • shall be jointly and severally liable for • payment of **such tax** • Unless they proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on their part.	**"Tax Due"** includes **penalty, interest** or any other sum payable under the Act.

Comment:

1. Earlier in case of non payment of Income tax by the company, same can be recovered from the directors. However recovery of interest and penalty from the directors had been litigated. Definition of Tax due is proposed to be amended to include interest and penalty and according the same can be recovered from the directors.

2. Following case decisions are likely to be overruled by the amendment:

a) **Dinesh T tailor (326 ITR 85) Bombay,** wherein Hon'ble HC held that taxes for the purpose of section 179 does not include penalty.

b) **H Ebrahim (332 ITR 122) Karnataka:** High Court had held that as per section 179 director of the company is liable to pay tax component only and not the penalty & interest.

c) **Sanjay Ghai (WP 5175/2012) Delhi**: In this case, AO computed outstanding dues of the assessee company including tax, interest and penalty, to be payable by the lone director. HC held that assessee in this case cannot be made liable for anything more than the tax.

Extract of Memorandum:

" Some courts have interpreted the phrase 'tax due' used in section 179 to hold that it does not include penalty, interest and other sum payable under the Act. In view of the above, it is proposed to clarify that for the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act. Amendments on the similar lines for clarifying the expression 'tax due' is proposed to be made to the provisions of section 167C"

Extended time for completion of assessments:

Present Law	Amendments
Section 153 - Explanation 1 (iii)	**Section 153 - Explanation 1 (iii) : Revised**
• The period commencing from the date on which	• The period ....
• AO directs the assessee to get his accounts audited u/s 142 (2A) and	• AO ...
• ending with the last date on which the assessee is required to furnish a report of such audit,	• ending ...., **or**
	• where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner
• is excluded in computing the period of limitation for the purposes of assessment or reassessment.	• is excluded ..
Section 153 - Explanation 1 (viii)	**Section 153 - Explanation 1 (viii) : Revised**
• The period commencing from the date on which	• The period commencing from the date
• a reference for exchange of information is made	• on which a reference **or first of the references** for exchange of information is made
• by an competent authority u/s 90 or 90A and	• by an competent authority u/s 90 or 90A and.
• ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less,	• and ending with the date on which the information requested is **last received by the Commissioner** or a period of one year, whichever is less,
• in computing the period of limitation for the purposes of section 153.	• shall be excluded in computing the period of limitation for the purposes of section 153..

Comment:

1. AO will get additional time if the special Audit has been set aside by any court. Further AO will also get additional time for completion of assessment when any information has been sought from foreign authorities.

2. Supreme Court decision in case of **Sahara India 300 ITR 403** is seems to be overruled by the proposed amendment. In this case Apex Court had given a direction not to challenge the time limit prescribed u/s 142(2A).

Extract of Memorandum:

"....Under the existing provisions of clause (iii) of Explanation 1 to section 153, the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit, is excluded in computing the period of limitation for the purposes of assessment or reassessment.

However, the existing provision does not provide for exclusion of time in case the direction of the Assessing Officer is set aside by the court."

Penalty for non-filing of Annual Information return :- Section 271FA

Present Law	Amendments
• If a person who is required to furnish an annual information return (AIR), as per section 285BA, and • fails to furnish such return within the time limit, then • the income-tax authority may direct that • such person shall pay, a penalty of • **INR 100 for every** day during which the failure continues.	**Proviso Inserted** • In case person fails to furnish the return within the period specified in the notice, • he shall pay, by way of penalty, • **INR 500 per day** for every day during which the failure continues, • Beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

Definition of Capital Assets:- Section 2(14)

Existing Act	Amendments
Capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include.... (iii) Agricultural land in India, not being land situated a) in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand according to last preceding census, or b) land situated in any area within such **distance** not exceeding eight kilometres from the local limits of any municipality or cantonment board, as notified by the Central Government having regard to the extent and scope of urbanization and other relevant factors, forms part of capital asset.	Section 2(14)(iii)(b) redefined: Land situated in any area within the distance, **measured aerially (shortest aerial distance)**, (I) not being more than 2 kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 10,000 but not exceeding 1 lakh; or (II) not being more than 6 kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 1 lakh but not exceeding 10 lakh; or (III) not being more than 8 kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than 10 lakh, forms part of capital asset.

Other Amendments:

Pass through status of certain Alternative Investment funds:- Section 10(23FB)

Existing Act	Amendments (w.r.e.f AY 2013-14)
Section 10(23FB) Any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall be exempt from taxation. Section 115U Income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner as if the person had made direct investment in the VCU. Both sections provides a tax pass through status (i.e. income is taxable in the hands of investors instead of VCF/VCC).	The SEBI (Alternative Investment Funds) Regulations, 2012 (AIF regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF regulations) from 21st May, 2012. In order to provide benefit of pass through to similar venture capital funds it is proposed that : (i) The existing VCFs and VCCs would continue to avail pass through status as currently available. (ii) In the context of AIF regulations, the VCC shall be defined as a company and VCF shall be defined as a fund set up as a trust, which has been granted a certificate of registration as VCF being a sub-category of Category I Alternative Investment Fund and satisfies the following conditions:- a) That at least two-thirds of its investible funds are invested in unlisted equity shares or equity linked instruments of venture capital undertaking. b) No investment has been made by such AIFs in a VCU which is an associate company. c) Units of a trust set up as AIF or shares of a company set up as AIF, are not listed on a recognised stock exchange. (iii) In the context of AIF regulations, the Venture Capital Undertaking shall be defined as it is defined in the Alternative Investment Funds Regulations.

Tax on distributed income by the Mutual Funds :- Section 115R

Existing Act	Amendments (w.e.f 01.06.2013)
Any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to additional income-tax as under: • In case of any distribution made by a fund other than equity oriented fund to person other than individual and HUF, @ 30%. • in case of distribution to an individual or an HUF it is **@12.5% or @25%** depending on the nature of the fund.	In case of distribution to an individual or an HUF the tax rate will be **25%**. Tax @ 5% on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

Taxation of Securitisation Trust:- New Chapter XII-EA (Section 115TA -115TC)

New Sections (w.e.f. 01.06.2013)

Section 161 of the Income-tax Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust. The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act

A special tax regime for Securitisation Trust is proposed, the salient features of the same are :-

(i) In case of securitisation vehicles which are set up as a trust and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

(ii) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the line of distribution tax levied in the case of mutual funds. The additional income-tax shall be levied @ 25% in case of distribution being made to investors who are individual and HUF and @ 30% in other cases. No additional income-tax shall be payable if the income distributed by the securitisation trust is received by a person who is exempt from tax under the Act.

(iii) Consequent to the levy of distribution tax, the distributed income received by the investor will be exempt from tax.

(iv) The securitisation trust will be liable to pay interest at the rate of 1% for every month or part of the month on the amount of additional income-tax not paid within the specified time.

(v) The person responsible for payment of income or the securitisation trust will be deemed to be an assessee in default in respect of amount of tax payable by him or it in case the additional income-tax is not paid to the credit of Central Government.

GLOSSRY

AMT - Alternate Minimum Tax
AO –Assessing Officer
AOP – Association of Person
APA – Advance Pricing Agreements
AS – Accounting Standards
AY – Assessment Year
BOI – Body of Individuals
CBDT – Central Board of Direct Taxes
CIT - Commissioner of Income tax
CIT(A) – Commissioner of Income-tax (Appeals)
DDT – Dividend Distribution Tax
DRP – Dispute Resolution Panel
DTC – Direct Taxes Code, 2010
ECB - External Commercial Borrowings
FCCB- Foreign Currency Convertible Bonds
FCEB- Foreign Currency Exchangeable Bonds
FCNR – Foreign Currency Non-Resident
FDI – Foreign Direct Investment
FII-Foreign Institutional Investors
FMV-Fair Market Value
GAAR – General Anti-avoidance Rules
GST - Goods and Service tax
HUF – Hindu Undivided Family
IPO-Initial Public Offer
JV – Joint Venture
KYC – Know Your Customer
LLP – Limited Liability Partnership
LNG – Liquefied Natural Gas
MAT – Minimum Alternate Tax
NRE - Non Resident External
ODI - Overseas Direct Investment
PAN - Permanent Account Number
PE – Permanent Establishment
PSU- Public Service Undertakings
QFIs - Qualified Foreign Investors
RBI – Reserve Bank of India
SEBI – Securities and Exchange Board of India
SEZ – Special Economic Zone
SIDBI-Small Industries Development Bank of India
SFMS - Special Focus Market Scheme
SME – Small and Medium Enterprises
STT-Securities Transaction Tax
TAS - Tax Accounting Standards
TCS – Tax Collected at Source
TDS – Tax Deducted at Source
TIN – Tax Information Network
The Act – Income-tax Act, 1961
TPO – Transfer Pricing Officer
TRC- Tax Residency Certificate
ULIP- Unit Liked Insurance Plan
UTI- Unit Trust of India
VCC – Venture Capital Company
VCF – Venture Capital Fund
VCU – Venture Capital Undertaking
WOS - Wholly-owned subsidiary
W.r.e.f – With Retrospective Effect from

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