DIRECT TAX LAWS

AMENDMENTS AT A GLANCE – FINANCE ACT, 2013

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DIRECT TAX LAWS

AMENDMENTS BY THE FINANCE ACT, 2013

I INCOME TAX

1. RATES OF TAX

Section 2 of the Finance Act, 2013 read with Part I of the First Schedule to the Finance Act, 2013, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2013-14. Part II lays down the rate at which tax is to be deducted at source during the financial year 2013-14 from income subject to such deduction under the Income-tax Act, 1961; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2013-14 i.e. A.Y.2014-15. Part III of the First Schedule to the Finance Act, 2013 will become Part I of the First Schedule to the Finance Act, 2014 and so on.

Rates for deduction of tax at source for the F.Y.2013-14 from income other than salaries

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source during the financial year 2013-14 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the F.Y.2012-13. However, the rate of tax deduction at source has been increased to 25% in respect of royalties and fees for technical services payable by the Government or an Indian concern in pursuance of an agreement made on or after 1.4.1976, to a non-corporate non-resident or a foreign company.

Surcharge would be levied on income-tax deducted at source in case of non-corporate non-residents and foreign companies. If the recipient is a non-corporate non-resident, surcharge@10% would be levied on such income-tax if the income or aggregate of income paid or likely to be paid and subject to deduction exceeds ₹ 1 crore. If the recipient is a foreign company, surcharge@ –

(i) 2% would be levied on such income-tax, where the income or aggregate of such incomes paid or likely to be paid and subject to deduction exceeds ₹ 1 crore but does not exceed ₹ 10 crore; and

(ii) 5% would be levied on such income-tax, where the income or aggregate of such incomes paid or likely to be paid and subject to deduction exceeds ₹ 10 crore.

Surcharge would not be levied on deductions in all other cases. Also, education cess and secondary and higher education cess would not be added to tax deducted or collected at source in the case of a domestic company or a resident non-corporate assessee. However, education cess @2% and secondary and higher education cess @ 1% on income-tax plus surcharge, wherever applicable, would be added to tax deducted or collected at source in cases of non-corporate non-residents and foreign companies.

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Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2013-14

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be computed and income-tax is to be calculated or charged in certain cases for the financial year 2013-14 i.e. A.Y. 2014-15.

It may be noted that education cess @2% and secondary and higher education cess @1% would continue to apply on tax deducted at source in respect of salary payments.

The general basic exemption limit for individuals (men and women)/HUFs/AOPs/BOIs and artificial juridical persons has been retained at ₹ 2,00,000. There is also no change in the basic exemption limit of ₹ 2,50,000 for senior citizens, being resident individuals of the age of 60 years or more but less than 80 years. Further, resident individuals of the age of 80 years or more at any time during the previous year would continue to be eligible for a higher basic exemption limit of ₹ 5,00,000. The tax slabs are shown hereunder -

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 2,00,000	Nil
Where the total income exceeds ₹ 2,00,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,00,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 30,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,30,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 2,50,000	Nil
Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,50,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 25,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000

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Where the total income exceeds ₹ 10,00,000	₹ 1,25,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(c) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 5,00,000	Nil
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2013-14.

	Level of total income	Rate of income-tax
(1)	Where the total income does not exceed ₹ 10,000	10% of the total income
(2)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000
(3)	Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm for A.Y.2014-15 is the same as that for A.Y.2013-14 i.e. 30% on the whole of the total income of the firm. This rate would apply to an LLP also.

(iv) Local authority

The rate of tax for a local authority for A.Y.2014-15 is the same as that for A.Y.2013-14 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2014-15 are the same as that for A.Y.2013-14.

(1)	In the case of a domestic company	30% on the total income

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(2)	In the case of a company other than a domestic company	40% on the total income However, specified royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an approved agreement made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS) would be chargeable to tax @50%.

Surcharge

The rates of surcharge applicable for A.Y.2014-15 are as follows -

(i) Individual/HUF/AOP/BOI/Artificial juridical person/Co-operative societies/Local Authorities/Firms/LLPs

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 10% of income-tax computed in accordance with the provisions of para (i)/(ii)/(iii)/(iv) above or section 111A or section 112.

Marginal relief is available in case of such persons having a total income exceeding ₹ 1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

(ii) Domestic company

(a) <u>In case of a domestic company, whose total income > **₹1 crore but is ≤ ₹10 crore**</u>

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112. Marginal relief is available in case of such companies i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

Example 1

Compute the tax liability of X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 1,01,00,000 and the total income does not include any income in the nature of capital gains.

Answer

The tax payable on total income of ₹ 1,01,00,000 of X Ltd. computed@ 31.5% (including surcharge@5%) is ₹ 31,81,500. However, the tax cannot exceed the tax of ₹ 30,00,000 payable on total income of ₹ 1 crore by more than ₹ 1,00,000, being the amount of total income exceeding ₹ 1 crore. Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 31,00,000 (₹ 30,00,000 + ₹ 1,00,000). The marginal relief is ₹ 81,500 (i.e., ₹ 31,81,500 - ₹ 31,00,000).

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(b) <u>In case of a domestic company, whose total income is > ₹10 crore</u>

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 10% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112.

Marginal relief is available in case of such companies i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 10 crore should not be more than the amount of income exceeding ₹ 10 crore.

Example 2

Compute the tax liability of X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 10,01,00,000 and the total income does not include any income in the nature of capital gains.

Answer

The tax payable on total income of ₹ 10,01,00,000 of X Ltd. computed@ 33% (including surcharge@10%) is ₹ 3,30,33,000. However, the tax cannot exceed the tax of ₹ 3,15,00,000 (31.5% of ₹ 10 crore) payable on total income of ₹ 10 crore by more than ₹ 1,00,000, being the amount of total income exceeding ₹ 10 crore. Therefore, the tax payable on ₹ 10,01,00,000 would be ₹ 3,16,00,000 (₹ 3,15,00,000 + ₹ 1,00,000). The marginal relief is ₹ 14,33,000 (i.e., ₹ 3,30,33,000 - ₹ 3,16,00,000).

(iii) Foreign company

(a) <u>In case of a foreign company, whose total income > ₹ **1 crore but is ≤** ₹10 crore</u>

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 2% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such companies i.e., the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

(b) <u>In case of a foreign company, whose total income is > ₹10 crore</u>

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the provisions of para (v)(2) above or section 111A or section 112.

Marginal relief is available in case of such companies i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹10 crore should not be more than the amount of income exceeding ₹ 10 crore.

Note – Marginal relief would also be available to those companies which are subject to minimum alternate tax under section 115JB, in cases where the book profit (i.e. deemed total income) exceeds ₹ 1 crore and ₹ 10 crore, respectively.

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Education cess / Secondary and higher education cess on income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an “Education cess on income-tax”, calculated at the rate of 2% of such income-tax and surcharge, wherever applicable. Education cess is leviable in the case of all assessees i.e., individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. Further, “Secondary and higher education cess on income-tax” @1% of income-tax and surcharge, wherever applicable, is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. No marginal relief would be available in respect of such cess.

Applicability of surcharge and cess on distribution tax

Surcharge@10% would be leviable on distribution tax levied under sections 115-O, 115-QA, 115R and 115TA. Further, education cess@2% and secondary and higher education cess@1% would be leviable on the distribution tax inclusive of surcharge.

Section	Particulars	Rate of tax	Effective rate of tax
115-O	Tax on distributed income of domestic companies by way of dividend	15%	16.995%
115QA	Tax on distributed income of domestic company for buyback of shares	20%	22.66%
115R	Tax on distributed income of mutual funds		
	- Distribution by debt funds to individuals and HUFs	25%	28.325%
	- Distribution by debt funds to other persons	30%	33.99%
	- Distribution by infrastructure debt funds to non-corporate non-residents and foreign companies	5%	5.665%
115TA	Tax on income distributed by securitization trusts		
	- Distribution to persons exempt from tax	Nil	Nil
	- Distribution to individuals and HUFs	25%	28.325%
	- Distribution to other persons	30%	33.99%

2. BASIC CONCEPTS

Rebate of up to ₹ 2,000 for resident individuals having total income of up to ₹ 5 lakh [New Section 87A]

Related amendment in section: 87

(i) In order to provide tax relief to the individual tax payers who are in the 10% tax slab, section 87A has been inserted to provide a rebate from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed ₹ 5,00,000.

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(ii) The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of ₹ 2,000, whichever is less.

(iii) Consequently, any individual having total income up to ₹ 2,20,000 will not be required to pay any tax. Further, every individual having total income above ₹ 2,20,000 but not exceeding ₹ 5,00,000 shall get a tax relief of ₹ 2,000. In effect, the rebate would be the tax payable or ₹ 2,000, whichever is less.

(iv) Consequential amendment has been made in section 87 providing that in computing the amount of income-tax on the total income of an assessee with which he is chargeable for any assessment year, rebate as computed under section 87A shall be allowed.

(v) Further, the aggregate amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee with which he is chargeable for any assessment year.

(Effective from A.Y.2014-15)

Example 3

The gross total income of Mr. X, a resident aged 30 years, for the P.Y.2013-14 comprises of salary (₹ 5,05,000) and interest on savings bank (₹ 8,000). Compute his tax liability for the A.Y.2014-15, assuming that he has deposited ₹ 50,000 in public provident fund.

Answer

Computation of total income of Mr. X for the A.Y.2014-15

Particulars	₹	₹
Salary		5,05,000
Interest on savings bank account		8,000
Gross Total Income		5,13,000
Less: Deductions under Chapter VIA		
Section 80C (deposit in PPF)	50,000	
Section 80TTA (interest on savings bank account)	8,000	
		58,000
Total Income		4,55,000

Computation of tax liability of Mr. X for the A.Y.2014-15

Particulars	₹
Tax on total income@10% of ₹ 2,55,000 (₹ 4,55,000 – ₹ 2,00,000)	25,500
Less: Rebate under section 87A	2,000
	23,500
Add: Education cess@2%	470
Secondary and higher education cess@1%	235
Total tax liability	24,205

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3. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Exemption under section 10(10D) not available in respect of any sum received by any person under "keyman insurance policy" assigned to keyman before maturity

(i) Under section 10(10D), any sum received under a life insurance policy is exempt, except, *inter alia,* any sum received under a keyman insurance policy.

(ii) "Keyman insurance policy" has been defined in *Explanation 1* to section 10(10D) to mean a 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.

(iii) Sometimes, the policies which were originally taken as keyman insurance policy were subsequently assigned during the term of the policy to the keyman, who paid the remaining premium on such policies. The sum received by the keyman in respect of such policies which were assigned to the keyman before maturity were being claimed as exempt under section 10(10D) on the ground that the policy is no longer a keyman insurance policy.

(iv) However, this is not the real intent of the law. Therefore, in order to plug the loophole and prevent tax avoidance in this manner, *Explanation 1* to section 10(10D) has been amended to amplify the scope of the term "keyman insurance policy" defined thereunder to include a keyman insurance policy which has been assigned to any person during its term, with or without consideration. Therefore, such policies shall continue to be treated as a keyman insurance policy even after the same is assigned to the keyman.

(v) Consequently, the sum received by the keyman on such policies, being "keyman insurance policies", would not be exempt under section 10(10D).

(Effective from A.Y.2014-15)

(b) Exemption of income of Investor Protection Fund set up by depositories [Section 10(23ED)]

(i) Consequent to amendment in the SEBI (Depositories and Participants) Regulations, 1996, in the year 2012, there is a compulsory requirement for depositories to set up an Investor Protection Fund.

(ii) "Depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under section 12(1A) of the SEBI Act, 1992

(iii) Under section 10(23EA), income by way of contributions from a recognised stock exchange received by a Investor Protection Fund set up by the recognised stock exchange is exempt from taxation.

(iv) In line with section 10(23EA), the Finance Act, 2013 has inserted section

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10(23ED) to provide that any income, by way of contribution from a depository, of such Investor Protection Fund set up by a depository in accordance with the regulations made under the SEBI Act, 1992 and the Depositories Act, 1996, will not be included while computing the total income of such investor protection fund. The Central Government, would, by way of notification in the Official Gazette, specify such investor protection funds set up by depositories in accordance with the SEBI and depositories regulations.

(v) However, where any amount standing to the credit of the fund and not charged to income-tax during any previous year is shared wholly or partly with a depository, the amount so shared shall be deemed to be the income of the previous year in which such amount is shared. Accordingly, such amount would be chargeable to income-tax.

(Effective from A.Y.2014-15)

(c) Certain Alternative Investment Funds (AIFs) recognized by SEBI to enjoy "pass-through" status, subject to satisfying certain conditions [Section 10(23FB)]

(i) Section 10(23FB) exempts any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU). Further, as per 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 like manner as if the person had made direct investment in the VCU.

(ii) In effect, under sections 10(23FB) and 115U, a tax pass through status (i.e. income is taxable in the hands of investors instead of VCF/VCC) is available to such funds which satisfy the investment and other conditions as are provided in SEBI (Venture Capital Funds) Regulations, 1996. Further, these sections provide a "pass through status" only in respect of income which arises to the fund from investment in VCU, being a company which satisfies the conditions provided in SEBI (Venture Capital Fund) Regulations, 1996.

(iii) The SEBI (Alternative Investment Funds) Regulations, 2012 (AIF regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF regulations) from 21st May, 2012. The AIF Regulations now regulate all privately pooled investment vehicles which collect funds from investors for investments in accordance with a predefined investment policy for the benefit of its investors AIF can be a fund established or incorporated in the form of a trust, company, LLP or body corporate. The AIF Regulations cover a much wider ambit of funds and categorize them into broadly three categories:

Category I AIF comprises of funds which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable.

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Category I AIF presently has 4 sub-categories, namely, venture capital funds, SME Funds, social venture funds and infrastructure funds. Investment norms have been prescribed for each of the sub-categories to ensure that the fund allocates substantial majority of its capital to the target focus. The stated intent of Category I AIF is to cover AIFs that are generally perceived to have positive spillover effects on economy and for which the SEBI/ Government/ other regulators might consider providing incentives or concessions. The *Explanation* to Regulation 3(4)(a) of AIF Regulations which clarified this aspect also clarified that such funds which are formed as trusts or companies shall be construed as VCF/VCC as specified under section 10(23FB) of the Income-tax Act, 1961.

Category II AIF is a residual category and covers AIFs for which no specific incentives or concessions are given by the Government/other regulators Category II AIF will cover classic private equity funds and debt funds. Such funds do not undertake leverage or borrowing other than to meet day-to-day operational requirements.

Category III AIFs are AIFs which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. Category III AIF will cover hedge funds or funds which trade with a view to make short term returns or such other funds which are open ended. As in the case of Category II AIFs, no specific incentives or concessions are given by the Government/other regulators.

(iv) The Finance Act, 2013 has granted "pass through status" to only the Venture Capital Fund, being a sub-category of Category I AIFs, with a corresponding direct tax charge on the investors. The benefit is available to only such AIFs which are established as a trust or a company. Further, the Income-tax Act, 1961 requires compliance of three conditions by such AIFs, in order to be covered within the ambit of exemption under section 10(23FB), namely:

(1) The units of a trust set up as AIF and shares of a company set up as AIF should not be listed on a recognised stock exchange.

(2) The AIF (established as a company) should not have invested in a VCU, in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding 10% of its equity share capital) holds, either individually or collectively, equity shares in excess of 15% of the paid-up equity share capital of such venture capital undertaking.

The AIF (established as a trust) should not have invested in any VCU in which its trustee or the settlor holds, either individually or collectively, equity shares in excess of 15% of the paid-up equity share capital of such VCU.

(3) The AIF should have invested not less than two-thirds of its investible funds in unlisted equity shares/ equity linked instruments of VCU.

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(v) The tax implications on account of the amendment by the Finance Act, 2013 are as follows –

(1) VCCs/VCFs registered prior to 21st May 2012 under SEBI (VCF) Regulations, 1996 (VCF regulations), will not be affected by the amendment and will continue to be eligible for "pass through status" under section 10(23FB) read with section 115U.

(2) The impact on AIFs registered on or after 21st May, 2012 under AIF Regulations are summarized as follows :-

Cate-gory	Sub-categories	Tax status in the event AIF is registered on or after 21 May 2012
I	VCF, being trust & VCC	Would qualify as VCC/VCF under section 10(23FB) but, subject to compliance of three conditions viz., 1. Shares of company/units of trust set up as an AIF are not listed on a recognized stock exchange. 2. Has invested not less than 2/3rd of its investible funds in unlisted equity shares/equity linked instruments of VCUs 3. Has not invested in associate VCUs.
I	SME Fund Social Venture Fund Infrastructure Fund	Will not qualify as VCC/VCF under section 10(23FB) and consequently will not be eligible for "pass through status" despite being identified as socially desirable having positive spillover effects on the economy and eligible for other concessions from Government/SEBI. Will be governed by normal provisions of taxation as applicable to relevant nature of entity.
II	Generally includes private equity and debt funds	Will not qualify as VCC/VCF under section 10(23FB)
III	Generally includes hedge funds	

Note - Venture Capital Undertaking (VCU), for the purpose of this section, would include –

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VCU as defined in clause (n) of Regulation 2 of VCF Regulations	VCU as defined in clause (aa) of Regulation 2(1) of the AIF Regulations
A domestic company— (i) whose shares are not listed on a recognized stock exchange in India; (ii) which is engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by the Board with the approval of the Central Government by notification in the Official Gazette in this behalf.	A domestic company - (i) which is not listed on a recognised stock exchange in India at the time of making investment; and (ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors: (1) NBFCs i.e., non-banking financial companies; (2) gold financing; (3) activities not permitted under industrial policy of Government of India; (4) any other activity which may be specified by the Board in consultation with Government of India from time to time;

(Effective from A.Y.2013-14)

(d) Scope of exemption of income received in India in Indian currency by a foreign company expanded [Section 10(48)]

(i) Clause (48) was inserted in section 10 by the Finance Act, 2012 w.e.f. A.Y.2012-13 to exempt any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India.

(ii) The scope of exemption under section 10(48) has now been expanded so as to include within its ambit, income received in India in Indian currency by a foreign company on account of sale of any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person.

(Effective from A.Y.2014-15)

(e) Exemption in respect of income of National Financial Holdings Company Ltd. [Section 10(49)]

(i) The Specified Undertaking of Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as the successor of Unit Trust of India (UTI). It was eligible for exemption from income-tax in respect of its income up to 31st March, 2014.

(ii) Consequent to winding up of SUUTI and its succession by a new company

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wholly owned by the Central Government i.e., National Financial Holdings Company Limited (NFHCL), which has been incorporated on 7th June, 2012, a new clause (49) has been inserted in section 10 to exempt the income accruing or arising to NFHCL on or before 31.03.2014 or the income received by NFHCL on or before the said date.

Such exemption would be available for A.Y.2013-14 and A.Y.2014-15.

(Effective retrospectively from A.Y.2013-14)

4. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) **Manufacturing companies investing more than ₹ 100 crore in new plant and machinery during the period from 1.4.2013 to 31.3.2015 entitled to investment allowance@15% [Section 32AC]**

(i) A new section 32AC has been inserted by the Finance Act, 2013 to provide a tax incentive by way of investment allowance to encourage huge investment in plant or machinery.

(ii) Under new section 32AC, a manufacturing company is entitled to an investment allowance@15% of the aggregate amount of actual cost of new plant and machinery acquired and installed during the financial years 2013-14 & 2014-15, if the same exceeds ₹ 100 crore.

(iii) As per section 32AC, a company assessee would be entitled to deduction@15% of aggregate investment in new plant and machinery if it is -

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

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

(iv) For A.Y. 2014-15, a manufacturing company would be entitled to deduction of 15% of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14, if the aggregate cost of such assets exceeds ₹ 100 crore.

For A.Y.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.

(v) The investment allowance@15% under this section is in addition to the depreciation and additional depreciation allowable under section 32(1). Further, the investment allowance would not be reduced to arrive at the written down value of plant and machinery.

(vi) “New plant or machinery” does not include—

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

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

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

(4) any vehicle;

(5) ship or aircraft; or

(6) 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.

(vii) The new plant and machinery in respect of which investment allowance has been claimed under section 32AC cannot be sold or otherwise transferred for a period of 5 years from the date of installation. If it is sold or transferred within this period, the deduction allowed earlier would be deemed as income chargeable to tax under the head "Profits and gains of business or profession" of the previous year in which such new plant and machinery is sold or otherwise transferred. This would be in addition to the taxability of gains on transfer of such plant and machinery.

In case of amalgamation or demerger, this restriction would continue to apply to the amalgamated company or resulting company, as the case may be, as it would have applied to the amalgamating or demerged company.

(Effective from A.Y.2014-15)

Example 4

Compute the admissible investment allowance under section 32AC for A.Y.2014-15 and A.Y.2015-16 in each of the following cases -

Company	Investment in new plant and machinery (₹ in crores)	
	P.Y.2013-14	P.Y.2014-15
A Ltd.	80	10
B Ltd.	75	35
C Ltd.	110	40
D Ltd.	0	98
E Ltd.	105	0
F Ltd.	0	110

Answer

Company	Investment in new plant and machinery (₹ in crores)		Investment allowance under section 32AC (₹ in crores)	
	P.Y.2013-14	P.Y.2014-15	A.Y.2014-15	A.Y.2015-16
A Ltd.	80	10	Nil	Nil
B Ltd.	75	35	Nil	16.50
C Ltd.	110	40	16.50	6.00

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D Ltd.	0	98	Nil	Nil
E Ltd.	105	0	15.75	Nil
F Ltd.	0	110	Nil	16.50

Example 5

B Ltd., a company engaged in the business of manufacture of sports equipments, furnishes the following particulars pertaining to P.Y. 2013-14 and P.Y.2014-15. Compute the depreciation allowable under section 32 as well as the investment allowance allowable under section 32AC for A.Y.2014-15 and A.Y.2015-16, while computing its income under the head "Profits and gains of business or profession". Also, compute the written down value of plant and machinery as on 1.4.2014 and 1.4.2015.

	Particulars	*₹ in crores*
1.	*Written down value of plant and machinery (15% block) as on 01.04.2013*	*25.00*
2.	*Sold plant and machinery on 20.5.2013 (15% block)*	*4.00*
3.	*Purchase of second hand machinery (15% block) on 29.5.2013 for business purpose (the machinery was put to use immediately)*	*12.00*
4.	*Purchased new computers (60% block) on 8.11.2013 for office*	*0.40*
5.	*Acquired and installed new plant and machinery (15% block) on 31.7.2013 (₹ 50 crore) and on 31.10.2013 (₹ 40 crore)*	*90.00*
6.	*New air conditioners purchased and installed in office premises on 30.6.2013*	*0.15*
7.	*Acquired and installed new plant and machinery (15% block) on 2.4.2014*	*15.00*

Answer

Computation of depreciation allowance under section 32 for the A.Y. 2014-15

Particulars		Plant and Machinery (15%)	Plant and Machinery (60%)
		(₹ in crores)	
WDV as on 01.04.2013		25.00	-
Add: Plant and Machinery acquired during the year			
- Second hand machinery	12.00		
- New plant and machinery	90.00		
- Air conditioner installed in office	0.15		
		102.15	
Computers acquired during the year		-	0.40
		127.15	0.40

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Less: Asset sold during the year	4.00	Nil
Written down value before charging depreciation	123.15	0.40
Less: Depreciation for the P.Y.2013-14 (*See Note 1 below*)	29.47	0.12
WDV as on 1.4.2014	93.68	0.28
Note 1 : Computation of depreciation for the P.Y.2013-14		
Normal depreciation		
Depreciation@30% on computers put to use for less than 180 days (50% of 60% × 0.40 crore)	-	0.12
Depreciation on plant and machinery (15% block) (40 × 7.5%) + [(123.15-40) × 15%]	15.47	
Additional depreciation		
- New plant and machinery installed on 31.7.2013 (₹ 50 crore × 20%) — 10		
- on 31.10.2013 (₹ 40 crore × 10%) — 4	14.00	Nil
Total depreciation	29.47	0.12

Note – For the A.Y.2014-15, the company would not be entitled for investment allowance under section 32AC since the investment in new plant and machinery acquired and installed during the year is only ₹ 90 crores (i.e., less than ₹ 100 crores). Investment in second hand plant and machinery and air-conditioners and computers installed in office would not be eligible for investment allowance under section 32AC or additional depreciation under section 32(1)(iia).

Computation of depreciation allowance under section 32 for the A.Y. 2015-16

Particulars	Plant and Machinery (15%)	Plant and Machinery (60%)
	(₹ in crores)	
WDV as on 1.4.2014	93.68	0.28
Add: Plant and Machinery acquired during the year	15.00	-
	108.68	0.28
Less: Asset sold during the year	Nil	Nil
Written down value (before charging depreciation)	108.68	0.28
Less: Depreciation for the P.Y.2014-15 @15% and 60%, respectively	16.30	0.17
Additional depreciation@20% on 15 crore	3.00	
WDV as on 1.4.2015	89.38	0.11

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Computation of investment allowance under section 32AC for the A.Y.2015-16

Particulars	(₹ in crore)
New plant and machinery acquired and installed during the P.Y.2013-14	90
New plant and machinery acquired and installed during the P.Y.2014-15	15
Aggregate investment in new plant and machinery during the period from 1.4.2013 to 31.3.2015	105
Investment allowance@15% of ₹ 105 crore	15.75
Less: Deduction allowed in respect investment allowance during the A.Y.2014-15	Nil
Deduction under section 32AC for the A.Y.2015-16	15.75

Note - The company would be eligible for investment allowance under section 32AC in the P.Y.2014-15, since the aggregate investment in new plant and machinery from 1.4.2013 to 31.3.2015 has exceeded ₹ 100 crore.

(b) Deduction under section 36(1)(vii) in respect of bad debts written off to be allowed to the extent the same is in excess of the credit balance in the provision for bad and doubtful debts made under section 36(1)(viia), irrespective of whether the same relates to rural advances or urban advances

(i) Section 36(1)(viia) provides deduction in respect of any provision for bad and doubtful debts made by certain banks and financial institutions, subject to certain limits specified therein, in computing the business income of such entities.

(ii) Sub-clause (a) of section 36(1)(viia) restricts the claim of deduction for provision for bad and doubtful debts for scheduled banks (not incorporated outside India), non-scheduled banks and certain co-operative banks to 7.5% of gross total income (before deduction under this clause) of such banks and 10% of the aggregate average advances made by the rural branches of such banks.

In respect of foreign banks, public financial institutions, State financial corporations or State Industrial Investment Corporations, sub-clauses (b) and (c) of section 36(1)(viia) restrict the limit to 5% of gross total income (before deduction under this clause).

(iii) Under section 36(1)(vii), bad debt actually written off as irrecoverable in the books of account of the assessee is deductible. However, in the case of entities for which provision for bad and doubtful debts is allowable under section 36(1)(viia), deduction for bad debts written off under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia). This is provided in the proviso to section 36(1)(vii).

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(iv) Further, the provisions of section 36(1)(vii) are subject to the provisions of section 36(2). Section 36(2)(v) provides that where the debt or part thereof relates to advances made by an assessee, to which section 36(1)(viia) applies, no deduction shall be allowed unless the assessee has debited the amount of such debt or part of such debt in that previous year to the provision for bad and doubtful debts account made under section 36(1) (viia).

Therefore, the deduction for bad debt actually written off under section 36(1)(vii) can be claimed by banks and financial institutions only to the extent it is in excess of the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia).

(v) The Supreme Court, in *Catholic Syrian Bank Ltd. v. CIT (2012) 343 ITR 270,* observed that where the provision under section 36(1)(viia) is in respect of rural advances and the bad debts write off under section 36(1)(vii) is in respect of urban advances, the restriction contained in the proviso to section 36(1)(vii) would not apply. The Supreme Court held that in such a case, the benefit of deduction under section 36(1)(vii) in respect of urban advances would be available to the bank, subject to provisions of section 36(2), without adjusting the provision made under section 36(1)(viia).

It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debts under section 36(1)(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 under section 36(1)(viia) for rural advances.

(vi) However, since there is no such distinction made in clause (viia) of section 36(1), the above decision does not reflect the correct intent of law.

(vii) In order to clarify the real intent of law, *Explanation* 2 has been inserted in section 36(1)(vii) stating that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein shall be made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account shall relate to all types of advances, including advances made by rural branches.

(viii) Therefore, in the case of an assessee to which section 36(1)(viia) applies, 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.

(Effective from A.Y.2014-15)

Example 6

The following are the particulars in respect of a scheduled bank incorporated in India -

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	Particulars	*₹ in lakhs*
(i)	*Provision for bad and doubtful debts under section 36(1)(viia) upto A.Y.2013-14*	*100*
(ii)	*Gross Total Income of A.Y.2014-15 [before deduction under section 36(1)(viia)]*	*800*
(iii)	*Aggregate average advances made by rural branches of the bank*	*300*
(iv)	*Bad debts written off (for the first time) in the books of account (in respect of urban advances only) during the previous year 2013-14*	*210*

Compute the deduction allowable under section 36(1)(vii) for the A.Y.2014-15.

Answer

Particulars	₹ in lakhs	
Bad debts written off (for the first time) in the books of account		210
Less: Credit balance in the "Provision for bad and doubtful debts" under section 36(1)(viia) as on 31.3.2014		
(i) Provision for bad and doubtful debts under section 36(1)(viia) upto A.Y.2013-14	100	
(ii) Current year provision for bad and doubtful debts under section 36(1)(viia) [7.5% of ₹ 800 lakhs + 10% of ₹ 300 lakhs]	90	190
Deduction under section 36(1)(vii) in respect of bad debts written off for A.Y.2014-15		20

(Effective from A.Y. 2014-15)

(c) Deduction for commodities transaction tax paid in respect of taxable commodities transactions [Section 36(1)(xvi)]

(i) The Finance Act, 2013 has introduced a new tax called Commodities Transaction Tax (CTT) to be levied on taxable commodities transactions entered into in a recognised association, vide Chapter VII of the Finance Act, 2013.

(ii) For this purpose, a 'taxable commodities transaction' means a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.

(iii) CTT is to be levied at 0.01% on sale of commodity derivative from the date on which Chapter VII of the Finance Bill, 2013 comes into force by way of notification in the Official Gazette by the Central Government. CTT is to be paid by the seller.

(iv) A "commodity derivative" means –

(1) A contract for delivery of goods which is not a ready delivery contract

(2) A contract for differences which derives its value from prices or indices of prices -

(i) of such underlying goods; or

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(ii) of related services and rights, such as warehousing and freight; or

(iii) with reference to weather and similar events and activities

having a bearing on the commodity sector.

(v) Consequently, new clause (xvi) has been inserted in section 36(1) to provide that an amount equal to the CTT paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

(Effective from A.Y.2014-15)

(d) Trading in commodity derivatives not a speculative transaction [Section 43(5)]

(i) Section 43(5) defines a "speculative transaction" to mean a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.

(ii) The proviso to section 43(5) specifies the contracts and transactions which shall not be deemed to be a speculative transaction.

(iii) The Finance Minister, in his budget speech, had clarified that trading in commodity derivatives will not be considered as a speculative transaction.

(iv) Accordingly, to give effect to the clarification, clause (e) has been inserted in the proviso to section 43(5) to exclude an eligible transaction in respect of trading in commodity derivatives carried out in a recognized association from the definition of "speculative transaction".

(v) An "eligible transaction" in relation to commodity derivatives has been defined as a transaction -

(1) carried out electronically on screen based systems;

(2) carried out through member or an intermediary, registered under the bye-laws, rules and regulations of the recognized association for trading in commodity derivative in accordance with the provisions of Forward Contracts (Regulation) Act, 1952 and the related rules, regulations etc.;

(3) supported by a time stamped contract note issued by such member or intermediary to every client.

The contract note should indicate the –

(a) unique client identity number allotted under FCRA, 1952 and related rules, regulations etc.,

(b) unique trade number; and

(c) permanent account number (PAN) allotted under the Income-tax Act, 1961.

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(vi) "Recognised association" means an association to which recognition for the time being has been granted by the Central Government under section 6 of Forward Contracts (Regulation) Act, 1952 in respect of goods or classes of goods specified in such recognition.

(Effective from A.Y.2014-15)

(e) **Disallowance of royalty, licence fee, service fee etc. levied exclusively on State Government Undertakings by the State Government [Section 40(a)(iib)]**

(i) Under section 40(a), certain expenditure are disallowed while computing the income chargeable under the head "Profits and gains of business or profession". The amounts not allowed under the said section include statutory dues like income-tax, wealth-tax etc.

(ii) State Governments levy privilege fee, license fee, royalty, etc. exclusively on its undertakings. State Government undertakings are separate legal entities than the State and are liable to income-tax. The issue is whether such fees, royalty etc. are deductible while computing the business income of such undertakings.

(iii) In order to protect the tax base of State Government undertakings *vis-à-vis* exclusive levy of fee, charge, etc. or appropriation of amount by the State Governments from its undertakings, new clause (iib) has been inserted in section 40(a) to provide that –

(1) any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge, etc., which is levied exclusively on, or

(2) any amount appropriated, directly or indirectly, from

a State Government undertaking, by the State Government (SG), shall not be allowed as deduction while computing the income of such undertakings under the head "Profits and gains of business or profession".

(iv) A State Government undertaking includes –

(a) A corporation established by or under any Act of the SG

(b) A company in which more than 50% of the paid up equity share capital is held by the SG

(c) A company in which more than 50% of the paid up equity share capital is held singly or jointly by (a) or (b)

(d) A company or corporation in which the SG has the right to appoint the majority of directors or to control the management or policy decisions

(e) An authority, a board or an institution or a body established or constituted by or under any Act of the SG or owned or controlled by the SG

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(f) Stamp duty value of land and building to be taken as the full value of consideration in respect of transfer, even if the same are held by the transferor as stock-in-trade [New Section 43CA]

(i) At present, the provisions of section 50C require adoption of stamp duty value of land or building or both, which are held as a capital asset, if the same are 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.

(ii) However, such provisions are not applicable in case of transfer of immovable property, held by the transferor as stock-in-trade.

(iii) Therefore, as an anti-avoidance measure, new section 43CA has been inserted to provide 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 (i.e., the stamp duty value) 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".

(iv) Further, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer instead of on the date of registration for such transfer, provided at least a part of the consideration has been received by any mode other than cash on or before the date of the agreement.

(v) The Assessing Officer may refer the valuation of the asset to a valuation officer as defined in section 2(r) of the Wealth-tax Act, 1957 in the following cases -

(1) Where the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the authority for payment of stamp duty exceeds the fair market value of the property as on the date of transfer and

(2) the value so adopted or assessed or assessable by such authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court.

(vi) Where the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp Valuation Authority, the value adopted or assessed or assessable shall be taken as the full value of the consideration received or accruing as a result of the transfer.

The term "assessable" covers transfers executed through power of attorney. The term 'assessable' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary

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contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(Effective from A.Y.2014-15)

Example 7

Case	Date of transfer of land / building held as stock-in-trade	Actual consider-ation	Stamp duty value on the date of agreement	Stamp duty value on the date of registration	Full value of consid-eration	Remark
		₹ in lakhs				
1	31/1/2013	100	120 (31/7/2012)	210 (31/1/2013)	100	Section 43CA is not applicable since the date of transfer is before 1/4/2013
2	1/5/2013	100 (₹10 lakhs received by cheque on 31/8/2012)	120 (1/9/2012)	210 (1/5/2013)	120	Stamp duty value on the date of agreement to be adopted as full value of consideration.
3	1/5/2013	100 (₹10 lakhs received by cash on 31/8/2012)	120 (1/9/2012)	210 (1/5/2013)	210	Stamp duty value on the date of registration to be adopted as full value of consideration.
4	31/3/2014	100 (Full amount received on the date of registration)	120 (1/5/2013)	210 (31/3/2014)	210	Stamp duty value of the date of registration would be the full value of consideration.

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5. CAPITAL GAINS

Modification in parameters defining scope of land falling outside the ambit of "Agricultural land" and consequently, within the definition of "Capital Asset" under section 2(14)

Related amendment in section 2(1A), defining agricultural income

(i) Section 2(14) defines the term "capital asset" as property of any kind held by an assessee, whether or not connected with his business or profession. The definition specifically excludes certain categories of properties, including agricultural land in India specified in sub-clause (iii) of section 2(14).

(ii) The definition of agricultural land in sub-clause (iii) excludes land falling within specified urban limits, i.e.

(a) agricultural land situated 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) agricultural land situated in any area within such distance not exceeding eight kilometers 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.

Accordingly, the agricultural land described in (a) and (b) above, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax.

(iii) The Finance Act, 2013 has amended item (b) of sub-clause (iii) of section 2(14) so as to provide that "Capital asset" would include the agricultural land situated in any area within such distance, measured aerially, in relation to the range of population according to the last preceding census as shown hereunder -

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
(i)	≤ 2 kilometers	> 10,000 ≤ 1,00,000
(ii)	≤ 6 kilometers	> 1,00,000 ≤ 10,00,000
(iii)	≤ 8 kilometers	> 10,00,000

(iv) Similar amendment has been made in section 2(1A) defining "agricultural income".

As per clause (c) of section 2(1A), income derived from any building which is on or in the immediate vicinity of land in India, used for agricultural purposes, and is occupied as a dwelling house, store house or other outbuilding by -

(1) the receiver of rent or revenue of any such land or

(2) the cultivator or receiver of rent-in-kind

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would be treated as agricultural income provided,

(1) the land on which such building is situated is assessed to land revenue in India or subject to a local rate, or

(2) if not so assessed or subject to local rate, the land is not situated within specified urban limits as stated in item (A) and (B) of section 2(1A)(c)(ii).

These limits are in line with the limits specified in item (a) and (b) of section 2(14)(iii). Therefore, in line with the amendment in item (b) of section 2(14)(iii), item (B) of section 2(1A)(c)(ii) has also been amended.

Accordingly, if the land is situated within the new limits specified thereunder, the income from building which is situated on such land would not be treated as agricultural income.

(Effective from A.Y. 2014-15)

Note – *A parallel amendment has been made in the definition of "Urban land" under clause (b) of Explanation 1 to section 2(ea) of the Wealth-tax Act, 1957 defining an "Asset" for levy of wealth-tax. Further, section 2(ea) has also been amended to clarify that land classified as agricultural land in the records of the Government and used for agricultural purposes shall not be considered as urban land even if it falls within the specified urban limits. Consequently, such land would not be chargeable to wealth-tax.*

Consequent to the above amendments, the definition of "urban land" as per clause (b) of Explanation 1 of section 2(ea) of the Wealth-tax Act, 1957 would read as follows:

Inclusions within the definition of "urban land"

(i)	*Land situated in any area which is comprised within the jurisdiction of a municipality or a cantonment board and which has a population of not less than 10,000.*
(ii)	*Land situated in any area, within the distance,* measured aerially*, in relation to the range of population according to the last preceding census as shown hereunder –*

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	*Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.*
(1)	*≤ 2 kilometers*	*> 10,000 ≤ 1,00,000*
(2)	*≤ 6 kilometers*	*> 1,00,000 ≤ 10,00,000*
(3)	*≤ 8 kilometers*	*> 10,00,000*

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Exclusions from the definition of "urban land"

(i)	*Land classified as agricultural land in the records of the Government and used for agricultural purposes;*
(ii)	*Land on which construction of building is not permissible under any law for the time being in force in the area in which such land is situated;*
(iii)	*Land occupied by a building which has been constructed with the approval of the appropriate authority;*
(iv)	*Any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him;*
(v)	*Any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him.*

6. INCOME FROM OTHER SOURCES

Immovable property received by an individual or HUF for inadequate consideration to attract the taxability provisions under section 56(2)(vii), if the difference between the stamp duty value and actual consideration exceeds ₹ 50,000

(i) Section 56(2)(vii) brings to tax –

(1) any sum of money (if the aggregate sum received exceeds ₹ 50,000); or

(2) the value of any property received by an individual or HUF without consideration, where the stamp duty value (in case of immovable property) or aggregate fair market value (in case of other property) exceeds ₹ 50,000; or

(3) the value of any property, other than immovable property, received by an individual or HUF for inadequate consideration, if the difference between the aggregate fair market value and actual consideration exceeds ₹ 50,000.

(ii) Therefore, immovable property received for inadequate consideration was kept outside the scope of section 56(2)(vii).

(iii) In order to prevent tax avoidance by transferring immovable property at prices significantly lower than the circle rates, section 56(2)(vii) has been amended with effect from A.Y.2014-15 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 ₹ 50,000, the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the individual or HUF as "Income from other sources".

(iv) The taxability provisions under section 56(2)(vii), w.e.f. A.Y.2014-15, are summarised hereunder –

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	Nature of asset	Particulars	Taxable value
1	Money	Without consideration	The whole amount if the same exceeds ₹ 50,000 in aggregate.
2	Movable property	Without consideration	The aggregate fair market value of the property, if it exceeds ₹ 50,000.
3	Movable property	Inadequate consideration	The difference between the aggregate fair market value and the consideration, if such difference exceeds ₹ 50,000.
4	Immovable property	Without consideration	The stamp value of the property, if it exceeds ₹ 50,000.
5	Immovable property	Inadequate consideration	The difference between the stamp duty value and the consideration, if such difference exceeds ₹ 50,000.

(v) Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration, if 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, provided at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.

(Effective from A.Y.2014-15)

Example 8

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2014, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.7.2013 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down payment of ₹ 15 lakh by cheque from Rajesh on the date of agreement. Discuss the tax implications in the hands of Hari and Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2012.

Would your answer be different if Hari was a share broker instead of a property dealer?

Answer

Case 1: Tax implications if Mr. Hari is a property dealer

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value on the date of agreement. Therefore, ₹ 65 lakh, being the difference between the stamp duty value on	Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(vii) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital

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the date of agreement (i.e., ₹ 140 lakh) and the purchase price (i.e., ₹ 75 lakh), would be chargeable as business income in the hands of Mr. Hari.	asset, for inadequate consideration. Therefore, ₹ 50 lakh, being the difference between the stamp duty value of the property (i.e., ₹ 140 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(vii) in the hands of Mr. Rajesh.

Case 2: Tax implications if Mr. Hari is a stock broker

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In case Mr. Hari is a stock broker and not a property dealer, the building would represent his capital asset and not stock-in-trade. In such a case, the provisions of section 50C would be attracted in the hands of Mr. Hari and ₹ 75 lakh, being the difference between the stamp duty value on the date of registration (i.e., ₹ 150 lakh) and the purchase price (i.e., ₹ 75 lakh) would be chargeable as short-term capital gains. It may be noted that under section 50C, there is no option to adopt the stamp duty value on the date of agreement, even if the date of agreement is different from the date of registration and part of the consideration has been received on or before the date of agreement otherwise than by way of cash.	There would be no difference in the taxability in the hands of Mr. Rajesh, whether Mr. Hari is a property dealer or a stock broker. Therefore, the provisions of section 56(2)(vii) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration. Therefore, ₹ 50 lakh, being the difference between the stamp duty value of the property (i.e., ₹ 140 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(vii) in the hands of Mr. Rajesh.

7. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Life insurance premium up to 15% of "minimum capital sum" assured to qualify for deduction under section 80C, in respect of policies issued on or after 1.4.2013, where the insurance is on the life of a person with disability or severe disability or a person suffering from disease or ailment

Related amendment in section: 10(10D)

(i) Under section 80C, deduction in respect of premium or any sum paid for life insurance policy issued on or after 1.4.2012, other than contract for a deferred annuity, is allowed to an individual or a HUF only to the extent of such premium or other payment made not in excess of 10% of actual capital sum assured.

(ii) According to section 10(10D), any sum received under a life insurance policy including the sum allocated by way of bonus on such policy is exempt, provided the premium payable for any of the years does not exceed 10% of

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actual capital sum assured, in respect of life insurance policy issued on or after 1.4.2012. Consequently, no exemption under section 10(10D) shall be granted to the assessee, in case the premium payable for any of the years during the term of the policy exceeds 10% of the capital sum assured in case the life insurance policy is issued on or after 1st April, 2012.

(iii) The *Explanation* to section 80C(3A) provides that, in respect of the life insurance policies to be issued on or after 1st April, 2012, the actual capital sum assured shall mean **the minimum amount** assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account -

(1) the value of any premium agreed to be returned; or

(2) any benefit by way of bonus or otherwise over and above the sum actually assured which is to be or may be received under the policy by any person.

(iv) Section 10(10D) also makes reference to the above mentioned *Explanation* to section 80C(3A) for the meaning to be assigned to "actual capital sum assured" for the life insurance policies to be issued on or after 1st April, 2012.

(v) The annual premium on insurance policies for persons with disability or suffering from specified diseases is sometimes more than 10% of the actual capital sum assured. On account of the 10% ceiling for claiming the exemption benefit under section 10(10D), the sum received under these policies would become taxable. Further, deduction would also be restricted to 10% of minimum sum assured.

(vi) In order to address this concern, the Finance Act, 2013 has amended section 10(10D) to provide that any sum received under a life insurance policy including the sum allocated by way of bonus on such policy would be exempt, where the policy is issued on or after 1st April, 2013 and is for insurance on life of any person, who is –

(1) a person with disability or person with severe disability as referred to in section 80U; or

(2) suffering from disease or ailment as specified in the rules made under section 80DDB,

and the premium payable for any of the years does not exceed 15% of minimum capital sum assured.

(vii) Consequential amendment has been made in section 80C to provide for deduction of premium paid in respect of such policies to the extent of 15% of minimum capital sum assured. In respect of other policies, the deduction of premium paid would continue to be restricted to 10% of minimum capital sum assured.

(viii) The following is a tabular summary of the exemption available under section 10(10D) and deduction allowable under section 80C vis-à-vis the date of issue of such policies -

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	Exemption u/s 10(10D)	Deduction u/s 80C
In respect of policies issued between 1.4.2003 and 31.3.2012	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of "actual capital sum assured".	Premium paid to the extent of 20% of "actual capital sum assured" qualifies for deduction u/s 80C.
In respect of policies issued on or after 1.4.2012 but before 1.4.2013	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	Only premium paid to the extent of 10% of "minimum capital sum assured" qualifies for deduction u/s 80C.
In respect of policies issued on or after 1.4.2013	(a) Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.	
	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 15% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	Only premium paid to the extent of 15% of "minimum capital sum assured" qualifies for deduction u/s 80C.

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	(b) Where the insurance is on the life of any person, other than mentioned in (a) above	
	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	Only premium paid to the extent of 10% of "minimum capital sum assured" qualifies for deduction u/s 80C.

(Effective from A.Y. 2014-15)

Example 9

Compute the eligible deduction under section 80C for A.Y.2014-15 in respect of life insurance premium paid by Mr. Ganesh during the P.Y.2013-14, the details of which are given hereunder -

	Date of issue of policy	*Person insured*	*Actual capital sum assured (₹)*	*Insurance premium paid during 2013-14 (₹)*
(i)	*1/4/2011*	*Self*	*2,00,000*	*50,000*
(ii)	*1/5/2012*	*Spouse*	*1,50,000*	*20,000*
(iii)	*1/6/2013*	*Handicapped Son (section 80U disability)*	*3,00,000*	*60,000*

Answer

	Date of issue of policy	Person insured	Actual capital sum assured	Insurance premium paid during 2013-14	Deduction u/s 80C for A.Y.2014-15	Remark (restricted to % of sum assured)
(i)	1/4/2011	Self	2,00,000	50,000	40,000	20%
(ii)	1/5/2012	Spouse	1,50,000	20,000	15,000	10%
(iii)	1/6/2013	Handicapped Son (section 80U disability)	3,00,000	60,000	45,000	15%
				Total	1,00,000	

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(b) Deduction under section 80CCG to be available for three consecutive years to a resident individual, being a new retail investor having gross total income upto ₹12 lakh, for investment in listed equity shares as well listed units of equity oriented fund as per notified scheme

(i) Last year, a new scheme was introduced to encourage flow of savings in financial instruments and improve the depth of domestic capital market.

(ii) Accordingly, section 80CCG was inserted by the Finance Act, 2012 to provide for a one-time deduction to a resident individual who acquires listed equity shares in a previous year in accordance with a scheme notified by the Central Government.

(iii) The deduction was 50% of amount invested in such equity shares or ₹ 25,000, whichever is lower. The maximum deduction of ₹ 25,000 was available on investment of ₹ 50,000 in such listed equity shares.

(iv) The following conditions had to be satisfied for claiming the above deduction–

(a) The gross total income of the assessee for the relevant assessment year should be less than or equal to ₹ 10 lakh.

(b) The assessee should be a new retail investor as per the requirement specified under the notified scheme.

(c) The investment should be made in such listed shares as may be specified under the notified scheme.

(d) The minimum lock-in period in respect of such investment is three years from the date of acquisition in accordance with the notified scheme.

In addition to the above, other conditions may also be prescribed, subject to fulfillment of which, deduction under section 80CCG can be claimed. At present, Rajiv Gandhi Equity Savings Scheme has been notified under section 80CCG *[Notification No.51/2012 dated 23.11.2012]*.

(v) This year, the Finance Act, 2013 has amended the provisions of section 80CCG w.e.f. A.Y.2014-15 so that the benefit of deduction under this section is available to a new retail investor, being a resident individual with gross total income of up to ₹ 12 lakh, for investment in listed equity shares or listed units of equity oriented fund, in accordance with a notified scheme.

Further, the deduction shall be allowed for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.[1]

The conditions relating to the quantum of deduction and minimum lock-in period would continue to remain the same.

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[1] It may be noted that the individuals who had made the investment in the F.Y.2012-13 in Rajiv Gandhi Equity Savings Scheme would, however, be entitled to benefit of deduction under section 80CCG for only one assessment year i.e., A.Y.2013-14.

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(vi) Therefore, the conditions under section 80CCG for claiming deduction from A.Y.2014-15 would be –

1. The gross total income of the assessee for the relevant assessment year should be less than or equal to Rs.12 lakh.
2. The assessee should be a new retail investor as per the requirement specified under the notified scheme.
3. The investment should be in such listed equity shares or listed units of equity-oriented fund specified under the notified scheme.
4. The minimum lock-in period in respect of such investment should be three years from the date of acquisition.
5. Any other condition as may be prescribed.

(vii) If the resident individual, after having claimed such deduction, fails to comply with any of the conditions in any previous year, say, he sells the shares or units before three years, then, the deduction earlier allowed shall be deemed to be the income of the previous year in which he fails to comply with the condition. The income shall, accordingly, be liable to tax in the assessment year relevant to such previous year.

(Effective from A.Y. 2014-15)

Example 10

Mr. X and Mr. Y, new retail investors, have made the following investments in equity shares/units of equity oriented fund of Rajiv Gandhi Equity Savings Scheme for the P.Y.2013-14, P.Y.2014-15 & P.Y.2015-16 as below :

Particulars		P.Y.2013-14	P.Y.2014-15	P.Y.2015-16
Mr.X		₹	₹	₹
(i)	*Investment in listed equity shares*	*20,000*	*45,000*	*32,000*
(ii)	*Investment in units of equity-oriented fund*	*40,000*	*-*	*11,000*
(iii)	*Gross Total Income (comprising of salary income and bank interest)*	*11,25,000*	*11,15,000*	*12,50,000*

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Deduction u/s 80CCG	25,000	22,500	Nil
Remark	(Restricted to 50% of ₹ 50,000)	(50% of ₹ 45,000)	(Not eligible since GTI > ₹12,00,000)
Mr. Y	₹	₹	₹
(i) Investment in listed equity shares	*25,000*	*-*	*30,000*
(ii) Investment in units of equity-oriented fund	*15,000*	*40,000*	*25,000*
(iii) Sale of all units of equity oriented fund purchased in P.Y.2013-14 & P.Y.2014-15	*-*	*-*	*70,000*
(iii) Gross Total Income (comprising of Salary income and bank interest)	*10,50,000*	*12,15,000*	*11,50,000*
Deduction u/s 80CCG	20,000	Nil	25,000
Remark	(50% of ₹ 40,000)	(Since GTI > 12,00,000)	(Restricted to 50% of ₹50,000)
Amount liable to tax (on account of violation of condition) *[See Note below]*			7,500

Note – Since the deduction under section 80CCG was not allowed during the P.Y.2014-15 on account of the Gross Total Income exceeding ₹ 12 lakhs, no amount relating to that year can be subject to tax in the P.Y.2015-16, being the year of violation of condition, even though the units were sold within 3 years. However, a deduction of ₹ 7,500 (50% of ₹ 15,000) was allowed under section 80CCG in respect of investment of ₹ 15,000 in units of equity oriented fund in the P.Y.2013-14. Since such units have been sold in the P.Y.2015-16, the condition under section 80CCG has been violated and ₹ 7,500 would be subject to tax in the P.Y.2015-16.

(c) Deduction under section 80D to be available in respect of contribution to CGHS and such other schemes within the overall limit specified thereunder

(i) Section 80D provides for deduction of upto ₹15,000 for mediclaim premium paid by an individual to insure the health of self, spouse and dependent children and contribution to Central Government Health Scheme (CGHS). If any of the persons mentioned above are senior citizens, the maximum deduction would be ₹ 20,000 instead of ₹ 15,000.

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(ii) Section 80D has been amended in order to bring other health schemes of the Central and State Governments (which are similar to the CGHS but for which no deduction is presently available under the Income-tax Act, 1961 to the subscribers of such schemes) at par with CGHS.

(iii) Accordingly, the benefit of deduction under section 80D would be available in respect of any payment or contribution made by the assessee to such other health scheme as may be notified by the Central Government. However, like in the case of contribution to CGHS, the deduction for contribution to such other scheme would be within the overall limit of ₹ 15,000 or ₹ 20,000, as the case may be.

(Effective from A.Y. 2014-15)

(d) Additional deduction in respect of interest on loan taken for acquisition of residential house property [New Section 80EE]

(i) Clause (b) of section 24 provides for deduction of interest payable on capital borrowed for acquisition, construction, repairs, renewal and reconstruction of property while computing income under the head "Income from house property".

(ii) In case of capital borrowed for acquisition or construction of self-occupied property, or a property which cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the amount of deduction under section 24(b) is restricted to ₹ 1,50,000.

(iii) Taking into account the need for affordable housing, a new section 80EE has been inserted to provide an additional benefit for first-home buyers relating to deduction in respect of interest on loan taken for residential house property.

(iv) New section 80EE provides for deduction of interest payable on loan taken by an individual-assessee from any financial institution (i.e., bank or banking institution or housing finance company formed and registered in India) for the purpose of acquisition of a residential house property, while computing his total income.

(v) The deduction under section 80EE shall not exceed ₹1 lakh and shall be allowed in computing the total income of the individual for the A.Y.2014-15 and in a case where the deduction for the previous year relevant to the said assessment year is less than ₹ 1 lakh, the balance amount shall be allowed in the A.Y.2015-16.

(vi) The deduction shall be subject to the following conditions:-

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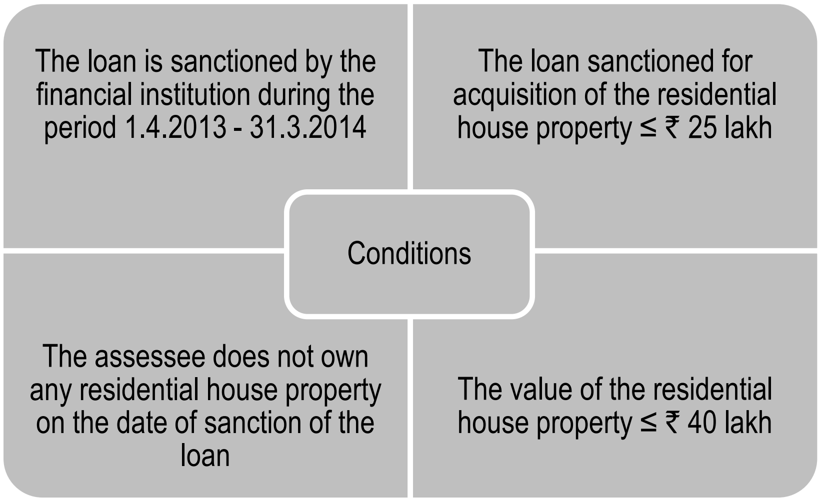

(vii) Further, where a deduction under this section is allowed for any assessment year, in respect of interest on housing loan, deduction shall not be allowed in respect of such interest under any other provision of the Income-tax Act, 1961, for the same or any other assessment year.

(Effective from A.Y.2014-15)

Example 11

Mr. A purchased a residential house property for self-occupation at a cost of ₹ 30 lakh on 1.6.2013, in respect of which he took a housing loan of ₹ 24 lakh from Bank of India@11% p.a. on the same date. Compute the eligible deduction in respect of interest on housing loan for A.Y.2014-15 and A.Y.2015-16 under the provisions of the Income-tax Act, 1961, assuming that the entire loan was outstanding as on 31.3.2015 and he does not own any other house property.

Answer

	Particulars	₹
For A.Y.2014-15		
(i)	Deduction under section 24(b) ₹ 2,20,000 [₹ 24,00,000 × 11% × 10/12] Restricted to	1,50,000
(ii)	Deduction under section 80EE (₹ 2,20,000 – ₹1,50,000)	70,000
For A.Y.2015-16		
(i)	Deduction under section 24(b) ₹ 2,64,000 [₹ 24,00,000 × 11%] Restricted to	1,50,000
(ii)	Deduction under section 80EE (₹ 1,00,000 – ₹ 70,000, allowed as deduction in P.Y.2013-14)	30,000

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Note - Mr. A is entitled to deduction under section 80EE, in addition to deduction under section 24(b) since –

(1) the loan is sanctioned by Bank of India, being a financial institution, during the period between 1.4.2013 and 31.3.2014;

(2) the loan amount sanctioned is less than ₹ 25 lakh;

(3) the value of the house property is less than ₹ 40 lakh;

(4) he does not own any other residential house property.

(e) Donation to National Children's Fund to qualify for 100% deduction under section 80G

(i) Under section 80G, an assessee is allowed a deduction from his total income in respect of donations made by him to certain funds and institutions.

(ii) The deduction is allowed at the rate of 50% of the amount of donations made. However, in the case of donations made to certain funds and institutions specified in section 80G(1)(i), being funds of national importance, deduction is allowed at the rate of 100%.

(iii) Upto A.Y.2013-14, deduction was allowed at the rate of 50% in respect of donations made to the National Children's Fund.

(iv) Since the National Children's Fund is also a fund of national importance, section 80G has been amended to allow a 100% deduction in respect of any sum paid to the fund in computing the total income of an assessee with effect from A.Y.2014-15.

(Effective from A.Y.2014-15)

(f) Cash donations to political parties and electoral trusts not to qualify for deduction under section 80GGB & section 80GGC

(i) As per section 80GGB, deduction is allowable in respect of contributions given by an Indian company to any political party or an electoral trust. Likewise, under section 80GGC, deduction is allowable in respect of contributions made by any person, except local authority and every artificial juridical person wholly or partly funded by the Government, to any political party or electoral trust.

(ii) So far, such contributions could be made by any mode, including cash.

(iii) A proviso has been inserted in both these sections to provide that no deduction shall be allowed thereunder in respect of any sum contributed by way of cash.

(iv) Thus, henceforth, cash donations to political parties and electoral trusts would not qualify for deduction under section 80GGB and section 80GGC.

(Effective from A.Y. 2014-15)

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(g) **Extension of sunset clause for tax holiday under section 80-IA for power sector undertakings [Section 80-IA(4)(iv)]**

(i) As per the provisions of section 80-IA(4)(iv), a deduction of 100% of profits and gains is allowed for 10 consecutive assessment years 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 1st April, 1993 and ending on 31st March, 2013;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2013;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2013.

(ii) This time limit has been extended by one year i.e., from 31st March, 2013 to 31st March, 2014, to enable undertakings which start generation, or transmission or distribution of power during the period between 1st April, 2013 and 31st March, 2014 or which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1st April, 2013 and 31st March, 2014 to avail benefit of deduction under this section.

(Effective from A.Y.2014-15)

(h) **Only Indian companies deriving profits from manufacture of goods in a factory to be eligible for deduction under section 80JJAA in respect of additional wages paid to new regular workmen employed in such factory**

(i) At present, deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing is allowed under section 80JJAA.

(ii) The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(iii) No deduction under this section is allowable if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking.

(iv) The legislative intent of this provision was to allow deduction under section 80JJAA for employment of blue collared employees in the manufacturing sector. However, in practice, the incentive was also being claimed for other employees in other sectors. Consequently, section 80JJAA is amended to provide that, with effect from A.Y.2014-15, the deduction thereunder shall be available to an Indian Company deriving profits from manufacture of goods in its factory.

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(v) "Factory" means any premises including the precincts thereof-

(1) where ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(2) where twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

However, "factory" does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account.

Further, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory, if no manufacturing process is being carried on in such premises or part thereof.

(vi) The deduction shall be of an amount equal to 30% 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.

(vii) However, the deduction 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.

(Effective from A.Y. 2014-15)

8. ASSESSMENT OF VARIOUS ENTITIES

(a) Income-tax@25% in case of royalty and fees for technical services received by a non-corporate non-resident or a foreign company under an agreement entered into after 31.3.1976 [Section 115A]

(i) In case of a non-corporate non-resident or a foreign company, whose total income includes any income by way of Royalty and Fees for technical services (FTS) received under an agreement entered after 31.03.1976 and which are not effectively connected with his/its permanent establishment in India, the manner of determination of tax liability is contained in section 115A.

(ii) At present, the rate of tax on such royalty or FTS depends on the period when the agreement is entered into.

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	Date of agreement, in pursuance of which royalty or FTS is received	Rate of tax on gross amount of income
(i)	On or before 31.5.1997	30%
(ii)	After 31.5.1997 but before 1.6.2005	20%
(iii)	On or after 1.6.2005	10%

(iii) Most of the 84 countries, with whom India has a tax treaty, permit levy of tax on gross amount of royalty at rates ranging between 10% to 25%. However, the tax rate as per section 115A is only 10%, which, in certain cases, result in taxation of royalty at a lower rate of 10% even if the income is taxable at a higher rate as per the DTAA.

(iv) In order to bring the rate under section 115A closer with the general rates specified in DTAAs, so that the rate under section 115A is not lower than the general treaty rates, the tax rate in case of non-corporate non-resident/foreign company, in respect of income by way of royalty and fees for technical services as provided under section 115A, has been 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 such non-corporate non-resident or foreign company, under an agreement entered after 31.03.1976, which is taxable under section 115A.

(Effective from A.Y.2014-15)

Example 12

X Ltd., an Indian company, entered into an agreement with Mr. M, a non-resident, on 1.7.2006 and pursuant to the agreement, fees for technical services (FTS) of ₹ 10 lakh, which is taxable under section 115A, is payable to Mr. M every year. Examine the tax consequence of the said transaction in the hands of Mr. M for the A.Y.2014-15, if –

(i) Mr. M is a resident of a country with which India has no DTAA.

(ii) Mr. M is a resident of a country, with which India has a DTAA, which provides for taxation of such FTS@15%.

(iii) Mr. M is a resident of a country with which India has a DTAA, which provides for taxation of such FTS@28%.

Answer

(i) The FTS would be taxable@25% as per section 115A, since India does not have a DTAA with the other country.

(ii) The FTS would be taxable@15%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since as per section 90, the provisions of the DTAA would apply if they are more beneficial.

(iii) The FTS would be taxable@25% as per section 115A even though the DTAA provides for a higher rate of tax, since as per section 90, the provisions of the Income-tax Act, 1961 (i.e., section 115A, in this case) would apply if they are more beneficial.

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(b) **Dividends received by Indian companies from specified foreign companies to be entitled to concessional rate of tax for one more year [Section 115BBD]**

(i) Dividends received by Indian companies from **specified foreign companies** are subject to a concessional tax rate of 15% on gross dividend as against the normal tax rate of 30% on net dividend. This is provided for under section 115BBD, inserted by the Finance Act, 2011 and applicable for A.Y.2012-13. The benefit of this concessional rate under section 115BBD was extended to the A.Y.2013-14 by the Finance Act, 2012.

(ii) The Finance Act, 2013 has now further extended the benefit of this concessional rate of 15% on gross dividend received by an Indian company from a specified foreign company for the A.Y.2014-15 also.

(iii) Accordingly, the rate of 15% was applied on gross dividend, in the sense, that no expenditure would be allowable in respect of such dividend.

(iv) **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.

(v) Therefore, this concessional rate would not be applicable in respect of dividend received from a foreign company in which the holding of the Indian company is less than 26% of the nominal value of the equity share capital.

(vi) Accordingly, if the total income of an Indian company, includes income by way of dividend declared, distributed or paid by a specified foreign company, the income tax payable would be the aggregate of –

(a) Income-tax @15% on gross dividend from such specified foreign company; and

(b) Income-tax with which the Indian company would have been chargeable had its total income been reduced by such dividend.

(Effective from A.Y.2014-15)

(c) **Dividend received from a foreign subsidiary on which tax is payable under section 115BBD by the domestic holding company to be reduced from the amount declared, distributed or paid by way of dividend by it, for levy of additional income-tax [Section 115-O]**

(i) Dividend Distribution Tax (DDT)@15% is leviable on dividend declared, distributed or paid by a domestic company. Such dividend is exempt in the hands of the shareholder.

(ii) In order to provide a partial relief from double taxation of dividends, sub-section (1A) was inserted in section 115-O by the Finance Act, 2008 to remove the cascading effect of DDT in a two-tier corporate structure. This section was further amended by the Finance Act, 2012 to remove the cascading effect of DDT in a multi-tier corporate structure also.

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(iii) Therefore, in case a holding company, being a domestic company receiving any dividend during the year from any subsidiary company, where such subsidiary company has paid the DDT as payable on such dividend, then, the dividend distributed by the holding company in the same year, to the extent of dividend received from the subsidiary, shall not be subject to DDT under section 115-O. For this purpose, a holding company is one which holds more than 50% of the nominal value of equity shares of the subsidiary. Further, such dividend shall not be taken into account for reduction more than once [*Clause (i) of sub-section (1A) of section 115-O*].

(iv) This benefit of reduction of dividend received has now been extended to dividend received by a domestic company from its foreign subsidiary, on which tax is payable by the domestic company under section 115BBD. The dividend, received from foreign subsidiary, in respect of which tax is payable under section 115BBD by the domestic company, would be reduced from the amount declared, distributed or paid by the domestic company by way of dividend, and dividend distribution tax@15% would be levied on the amount so reduced. However, such dividend shall not be taken into account for reduction more than once.

(Effective from 1.6.2013)

Example 13

A Ltd., an Indian company, receives the following dividend income during the P.Y. 2013-14 -

(1) from shares held in XYZ Inc., a foreign company, in which it holds 25% of nominal value of equity share capital – ₹ 80,000;

(2) from shares held in PQR Inc., a foreign company, in which it holds 30% of nominal value of equity share capital – ₹ 1,85,000.

(3) from shares held in LMN Inc., a foreign company, in which it holds 55% of the nominal value of equity share capital - ₹ 2,15,000

(3) from shares held in Indian subsidiaries, on which dividend distribution tax has been paid by such subsidiaries – ₹ 90,000.

A Ltd. has paid remuneration of ₹ 18,000 for realising dividend, the break up of which is as follows –

(1) ₹ 4,000 (XYZ Inc.)

(2) ₹ 9,000 (PQR Inc.)

(3) ₹ 5,000 (Indian subsidiaries)

The business income of A Ltd. computed under the provisions of the Act is ₹ 40 lakh. Compute the total income and tax liability of A Ltd., ignoring MAT. Assuming that A Ltd. has distributed dividend of ₹ 4,20,000 in February, 2014, compute the additional income-tax payable by it under section 115-O.

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Answer

Computation of total income of A Ltd. for A.Y. 2014-15

Particulars	₹
Profits and gains of business or profession	40,00,000
Income from other sources *(See Note below)*	4,76,000
Total income	44,76,000

Note – Dividend income taxable under "Income from other sources"

Particulars	₹
From XYZ Inc. – net dividend (i.e., ₹ 80,000 – ₹ 4,000) is taxable at normal rates	76,000
From PQR Inc. – gross dividend is taxable@15% under section 115BBD [no deduction is allowable in respect of any expenditure as per section 115BBD(2)]	1,85,000
From LMN Inc – gross dividend is taxable@15% under section 115BBD [no deduction is allowable in respect of any expenditure as per section 115BBD(2)]	2,15,000
From shares in Indian subsidiaries ₹ 90,000 – exempt under section 10(34) since dividend distribution tax has been paid under section 115-O [As per section 14A, no deduction is allowable in respect of expenditure incurred to earn exempt income]	Nil
	4,76,000

Computation of tax liability of A Ltd. for the A.Y.2014-15	
Particulars	₹
Tax@15% under section 115BBD on ₹ 4,00,000 (gross dividend)	60,000
Tax@30% on balance income of ₹ 40,76,000	12,22,800
	12,82,800
Add: Education cess@2% and Secondary and higher education cess@1%	38,484
Tax liability	13,21,284

Computation of additional income-tax payable by A Ltd. under section 115-O		
Particulars		₹
Amount distributed by way of dividend		4,20,000
Less: Dividend received from Indian subsidiaries, on which DDT payable under section 115-O has been paid	90,000	

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Dividend received from foreign subsidiary, on which tax is payable under section 115BBD	2,15,000	
		3,05,000
		1,15,000
Dividend Distribution tax@15%		17,250
Add: Surcharge@10%		1,725
		18,975
Add: Education cess@2% and Secondary and higher education cess@1%		569
Additional income-tax payable under section 115-O		19,544

(d) Levy of additional income-tax on distributed income of a domestic company on account of buy-back of unlisted shares [New Chapter XII-DA]

Related amendment in section: 10(34A)

(i) Under section 115-O, dividend distribution tax (DDT) is levied on a company at the time when it distributes, declares or pays any dividend to its shareholders. Consequently, the amount of dividend received by the shareholders is not included in the total income of the shareholder, by virtue of exemption provided under section 10(34).

(ii) So far, the consideration received by a shareholder on buy-back of shares by a company is not treated as dividend but is taxable as capital gains under section 46A.

(iii) While payment of dividend is one option available to a company to distribute its reserves to its shareholders, another option available is to buy-back its own shares at a consideration determined by it. If the company exercises the former option, the payment of dividend would be subject to DDT under section 115-O and income in the hands of shareholders would be exempt as per section 10(34). However, if the company prefers the second option, the income would be taxed in the hands of shareholder under section 46A as capital gains.

(iv) In order to discourage the practice of domestic companies resorting to buy back of unlisted shares instead of payment of dividends in order to avoid payment of tax by way of DDT, especially if the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate, a new Chapter XII-DA, comprising of sections 115QA, 115QB and 115QC, has been inserted with effect from 1st June, 2013 to levy additional income-tax on buy back of such shares by domestic companies. The income arising to the shareholders in respect of such buy back of unlisted shares by the domestic company would be exempt under section 10(34A) w.e.f. A.Y.2014-15, where the company is liable to pay the additional income-tax on the buy-back of shares. For this purpose, buyback means purchase by a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956.

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(a) Levy of additional income-tax@20% on buyback of unlisted shares [Section 115QA]

(1) Section 115QA provides that the distributed income (i.e., consideration paid by the company for buyback of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares) would be subject to additional income-tax@20% (plus surcharge@10% and education cess@2% and secondary and higher education cess@1%) in the hands of the domestic company.

(2) The company is liable to pay such additional income-tax even though no income-tax may be payable by it in respect of its total income computed under the provisions of the Act.

(3) Such tax should be paid to the credit of the Central Government within 14 days from the date of payment of any consideration for such buyback to the shareholder.

(4) The additional income-tax payable by the company shall be the final payment of tax on such income. No credit or deduction shall be claimed by the company or any other person in respect of such tax paid.

(5) Further, no deduction under any provision of the Income-tax Act, 1961 shall be allowed to the company or the shareholder in respect of income, which has been subject to additional income-tax, or tax thereon.

(b) Interest payable for non-payment of additional income-tax by the company [Section 115QB]

The principal officer of the domestic company and the company will be liable to pay simple interest on the amount of additional income-tax not paid within the specified time. Such interest is leviable at the rate of 1% for every month or part of the month on the amount of such tax not paid or short paid for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

(c) The principal officer of the domestic company and the company 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 within the specified time. In such a case, all the provisions of the Act for the collection and recovery of income-tax would apply [Section 115QC].

(Effective from 1st June, 2013)

Example 14

XYZ Ltd., a domestic company, purchases its own unlisted shares on 4th July, 2013. The consideration for buyback amounted to ₹ 21 lakh, which was paid

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on the same day. The amount received by the company two years back for issue of such shares was ₹ 13 lakh. Compute the additional income-tax payable by XYZ Ltd. Compute the interest, if any, payable if such tax is paid to the credit of the Central Government on 29th September, 2013.

Answer

XYZ Ltd is liable to pay ₹1,81,280 as additional income-tax, which is the amount calculated @22.66% (20% plus surcharge@10% plus cess@3%) on ₹8 lakh, being its distributed income (i.e., ₹ 21 lakh – ₹ 13 lakh).

The additional income-tax was payable on or before 18th July, 2013. However, the same was paid only on 29th September 2013.

Period for which interest@1% per month or part of a month is leviable -

Period	No. of months / part of month
19th July – 18th August, 2013 (whole of first month)	1
19th August – 18th September, 2013 (whole of second month)	1
19th September – 29th September, 2013 (part of third month)	1
Total number of months	3

Interest under section 115QB is payable @1% per month for 3 months on the amount of additional tax payable i.e., ₹ 1,81,280. Therefore, interest payable under section 115QB is ₹ 5,438.

(e) Rationalisation of rates of additional income-tax on income distributed by mutual funds [Section 115R]

(i) Any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to additional income-tax under section 115-R. The rate of additional income-tax depends on the nature of the fund as well as the person to whom income is distributed. For instance, the rate of tax is 30% in case of any distribution made by a fund, other than equity oriented, fund to a person who is not an individual and HUF, whereas it is 12.5% or 25%, depending on the nature of the fund, in case of distribution to an individual or an HUF.

(ii) In order to provide a uniform tax rate for all types of funds, other than equity oriented funds, the rate of tax on distributed income has now been increased from 12.5% to 25%, with effect from 1.6.2013, in all cases where distribution is made to an individual or a HUF. Therefore, there will be no discrimination in the rate of tax in respect of income distributed by funds, other than equity oriented funds, to individuals and HUFs.

(iii) The interest payment by an Infrastructure debt fund set up as a Non-Banking Finance Company (NBFC) to a non-resident investor is taxable at a concessional rate of 5% in the hands of the non-resident under section 115A.

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However, in case of distribution of income by an Infrastructure debt fund set up as a Mutual Fund, the distribution tax is levied at the rates applicable in the case of a Mutual Fund.

(iv) Therefore, in order to ensure uniformity in the rate of tax on income from investment made by a non-resident Investor in an Infrastructure Debt Fund whether set up as a NBFC or as a mutual fund, section 115R has been amended to extend the concessional rate of tax @ 5% to income distributed by a Mutual Fund under an Infrastructure Debt Scheme to a non-resident investor.

(v) A comparison of the rates at which tax is payable under section 115-R, upto 31st May, 2013 and with effect from 1st June, 2013, are given hereunder -

Type of Fund	Person to whom income is distributed	Upto 31.5.2013	On or after 1.6.2013
Equity-oriented fund	Any person	Nil	Nil
Other Funds			
Money market mutual fund or liquid fund	Individual or HUF	25%	25%
	Any other person	30%	30%
Fund other than MMMF or liquid fund	Individual or HUF	12.5%	25%
	Any other person	30%	30%
Infrastructure Debt Fund set up as a Mutual Fund	Non-corporate non-resident or a foreign company	25%, 30% or 12.5%, as the case may be.	5%

(Effective from 1st June, 2013)

(f) Levy of additional income-tax on income distributed by securitization trusts [Insertion of Chapter XII-EA]

Related amendment in:

Section 10(23DA)	*Exemption of any income of a securitization trust from the activity of securitization*
Section 10(35A)	*Exemption of the distributed income referred to in section 115TA received from a securitization trust in the hands of the recipient-investor*

(i) Securitization trusts are special purpose entities set up in the form of trust to undertake securitization activities.

(ii) For the purpose of the exemption and taxability provisions under the Income-tax Act, 1961, a "securitization trust" means a trust which is a special purpose distinct entity or special purpose vehicle, the details of which are tabulated hereunder, which fulfills the prescribed conditions –

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	Form of trust	Regulation/ Guidelines	Definition under the respective Regulation/Guidelines
(1)	Special purpose distinct entity	SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008.	Special purpose distinct entity means a trust which acquires debt or receivables out of funds mobilized by it by issuance of securitised debt instruments through one or more schemes, and includes any trust set up by the National Housing Bank or by the NABARD. For this purpose, "*securitised debt instrument*" means any certificate or instrument, by whatever name called, issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be;
(2)	Special purpose vehicle (SPV)	The guidelines on securitization of standard assets issued by RBI.	SPV means any company, trust, or other entity constituted or established for a specific purpose – (a) activities of which are limited to those for accomplishing the purpose of the company, trust or other entity as the case may be; and (b) which is structured in a manner intended to isolate the corporation, trust or entity as the case may be, from the credit risk of an originator to make it bankruptcy remote.

(iii) Due to the absence of specific provisions governing the taxation of such trusts under the Income-tax Act, 1961, these special purpose entities set up in the form of trusts to undertake securitisation activities experienced genuine hardship. The taxation at the maximum marginal rate under section 161 applicable in the case of a trust having income under the head "Profits and gains of business or profession" was viewed to be restrictive specifically where

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the investors in the trust are persons which are exempt from taxation under the provisions of the Income-tax Act, 1961 (for example, mutual funds).

(iv) Therefore, in order to overcome this restrictive factor and facilitate the securitisation process, a special taxation regime has been introduced in respect of taxation of income of securitisation entities, set up as a trust, from the activity of securitisation.

The significant provisions of the special regime are :-

(1) 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. New clause (23DA) has been inserted in section 10 to exempt any income of a securitization trust from the activity of securitization with effect from A.Y.2014-15.

(2) New Chapter XII-EA, comprising of sections 115TA, 115TB and 115TC, has been inserted in the Income-tax Act, 1961, with effect from 1st June, 2013 to levy additional income-tax on securitization trusts in respect of income distributed to its investors.

(a) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors [Section 115TA].

(i) The rates of additional income-tax and the effective rate of tax (i.e., including surcharge@10% and cess@3%) in respect of each category are shown hereunder –

	Category of investors to whom income is distributed	Rate	Effective rate of tax
(1)	Persons, in whose case, income, irrespective of its nature and source, is exempt from tax under the Income-tax Act, 1961 [for example, mutual funds exempt under section 10(23D)]	Nil	Nil
(2)	Individuals and HUFs	25%	28.325%
(3)	Other Investors [i.e., investors other than mentioned in (1) and (2) above]	30%	33.99%

(ii) Such tax has to be paid within 14 days from the date of distribution or payment of such income, whichever is earlier.

(iii) The person responsible for making payment of the income distributed by the securitization trust is required to furnish to the

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prescribed income-tax authority, on or before 15th September in each year, a statement in the prescribed form and verified in the prescribed manner, giving the following details –

(1) Amount of income distributed to investors during the previous year;

(2) The tax paid thereon; and

(3) Other relevant details which are prescribed.

For example, the details of income distributed by the securitization trust during the P.Y.2013-14 has to be furnished in the prescribed form to the prescribed income-tax authority on or before 15th September, 2014.

(iv) The securitization trust will not be allowed any deduction under any other provision of the Act, in respect of income which has been subject to distribution tax under section 115TA.

(b) The securitisation trust will be liable to pay simple interest on the amount of additional income-tax not paid within the specified time i.e., within 14 days from the date of distribution or payment of such income, whichever is earlier. Such interest is leviable at the rate of 1% for every month or part of the month on the amount of such tax not paid or short paid, as the case may be, for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid [Section 115TB].

(c) The person responsible for payment of income distributed by the securitization trust and the securitization 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. In such a case, all the provisions of the Act for the collection and recovery of income-tax would apply [Section 115TC].

(3) Consequent to the levy of distribution tax, the distributed income referred to in section 115TA received from a securitization trust will be exempt from tax in the hands of the recipient-investor with effect from A.Y.2014-15 [Section 10(35A)].

Example 15

A securitization trust distributes income of ₹ 10 lakh on 6th September, 2013 to its investors comprising of -

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	Category of investor	*Income distributed (₹)*
(i)	*Mutual funds exempt under section 10(23D)*	*3,00,000*
(ii)	*Individuals and HUFs*	*1,50,000*
(iii)	*Persons other than mentioned in (i) & (ii) above*	*5,50,000*

Compute the additional income-tax payable by the trust under section 115TA. Assuming that the additional income-tax payable as per section 115TA is paid to the credit of the Central Government on 25th November, 2013, compute the interest, if any payable, under section 115TB.

Answer

Computation of additional income-tax payable under section 115TA

	Category of investor	Income distributed (₹)	Rate of tax	Amount of tax (₹)
(i)	Mutual funds exempt under section 10(23D)	3,00,000	Nil	Nil
(ii)	Individuals and HUFs	1,50,000	28.325%	42,488
(iii)	Persons other than mentioned in (i) & (ii) above	5,50,000	33.99%	1,86,945
				2,29,433

The additional income-tax is payable on or before 20th September, 2013. However, the same was paid only on 25th November 2013.

Consequently, interest@1% per month or part of month is leviable under section 115TB, as follows –

Period	No. of months/ part of a month
21st September – 20th October, 2013 (whole of first month)	1
21st October – 20th November, 2013 (whole of second month)	1
21st November – 25th November, 2013 (part of third month)	1
No. of months for which interest is leviable u/s 115TB	3

Interest under section 115TB is payable @1% per month for 3 months on the amount of additional tax payable i.e., ₹ 2,29,433. Therefore, interest payable under section 115TB is ₹ 6,883.

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(g) "Tax due", for the purposes of recovery from partners of LLPs and directors of private companies in liquidation, respectively, to include interest, penalty or any other sum payable under the Income-tax Act, 1961 [Sections 167C & 179]

(i) As per section 179, where the tax due from a private company in liquidation cannot be recovered from such company, then every person, who was a director of such company at any time during the relevant previous year to which non-recovery relates, shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(ii) Likewise, section 167C provides that where tax due from a LLP in liquidation, in respect of any income of any previous year, cannot be recovered from such LLP, then every person, who was a partner of such LLP at any time during the relevant previous year to which non-recovery relates, shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.

(iii) The phrase 'tax due' used in section 179 and 167C has been interpreted by courts in a restrictive manner to exclude penalty, interest and other sum payable under the Act. However, this does not reflect the real intent of legislature since these provisions are intended to recover the outstanding demand of a private company and a LLP under the Income-tax Act, 1961 from the persons who were directors and partners, respectively, of such company and LLP during the relevant previous year to which the non-recovery relates.

(iv) In order to spell out the real intention of law, an *Explanation* has been inserted in section 167C and 179(2) to clarify that the expression "tax due", for the purpose of these sections, includes penalty, interest or any other sum payable under the Income-tax Act, 1961.

(Effective from 1st June, 2013)

9. DOUBLE TAXATION RELIEF

Requirement of Tax Residency Certificate (TRC) to contain "prescribed particulars" dispensed with [Section 90 & 90A]

(i) The DTAAs under section 90 and section 90A are intended to provide relief to the taxpayer, who is resident of one of the contracting countries to the agreement. Such tax payer can claim relief by applying the beneficial provisions of either the treaty or the domestic law.

(ii) However, in many cases, taxpayers who were not residents of the contracting country also resorted to claiming the benefits under the agreement entered into by the Indian Government with the Government of the contracting country. In effect, third party residents claimed the unintended treaty benefits.

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(iii) Therefore, sections 90 and 90A were amended by the Finance Act, 2012 by inserting sub-section (4) to provide that the non-resident to whom the agreement referred to in section 90(1) and section 90A(1) applies, shall be allowed to claim the relief under such agreement if a TRC obtained by him from the Government of that country or specified territory is furnished, *containing such particulars as may be prescribed*, declaring his residence of the country outside India or the specified territory outside India, as the case may be.

The Explanatory Memorandum explaining the provisions of the Finance Bill, 2012 clarified that submission of TRC containing the prescribed particulars shall be a necessary but not a sufficient condition for availing benefits of the agreements referred to in these sections.

(iv) Since this proposal was considered to be a restrictive factor which would adversely impact foreign investment in India, the Finance Minister had subsequently clarified, by way of Press Release dated 1st March 2013, that the TRC issued by the Government of a foreign country would be accepted as evidence of tax residency.

(v) In order to incorporate the said clarification in the statute, sub-section (4) of sections 90 and 90A has been amended to substitute the words "*a certificate containing such particulars as may be prescribed of his being a resident*" with the words "*a certificate of his being a resident*".

(vi) Also, sub-section (5) has been inserted in sections 90 and 90A to require the assessee referred to under sub-section (4) of sections 90 and 90A to provide such other documents and information, as may be prescribed.

(vii) Therefore, a certificate issued by the Government of a foreign country would constitute proof of tax residency, without any further conditions regarding furnishing of "prescribed particulars" therein. In addition to such certificate issued by the foreign Government, the assessee would be required to provide such other documents and information, as may be prescribed, for claiming the treaty benefits.

(Effective retrospectively from A.Y. 2013-14)

10. INCOME TAX AUTHORITIES

Application of seized assets for recovery of advance tax payable not allowed [Section 132B]

(i) Section 132B(1), *inter alia*, provides that seized assets may be adjusted against -

(1) any "existing liability" under the Income-tax Act, 1961 Wealth-tax Act, 1957 etc.,; and

(2) the amount of liability determined on completion of assessments pursuant to search, including any penalty levied or interest payable in connection with such assessment and in respect of which such person is in default or deemed to be in default.

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(ii) The term "existing liability" has been interpreted by courts to include advance tax liability of the assessee. However, this interpretation does not reflect the real intent of the legislature, which is to ensure the recovery of tax, interest and penalty due and to further provide for recovery of taxes, interest and penalty which may arise subsequent to the search assessment.

(iii) Therefore, section 132B has been amended by inserting *Explanation 2* to clarify that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Income-tax Act, 1961.

(Effective from 1st June, 2013)

11. ASSESSMENT PROCEDURE

(a) Return of income filed without payment of self-assessment tax (along with interest) under section 140A considered defective [Section 139(9)]

(i) Under section 139(9), if the Assessing Officer considers that the return of income 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 or such further period which the Assessing Officer may allow at his discretion on an application made in this behalf by the assessee. If the defect is not rectified within the time allowed by the Assessing Officer, the return is treated as an invalid return. The provisions of the Income-tax Act, 1961 would apply as if the assessee had failed to furnish the return. The *Explanation* to section 139(9) provides the conditions, the non-fulfilment of which would render the return defective.

(ii) Under section 140A, where any tax is payable on the basis of any return, after taking into account the prepaid taxes, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return.

(iii) However, since quite a few assessees file their returns of income without payment of self-assessment tax, clause (aa) has been inserted in the *Explanation* to section 139(9) 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.

(Effective from 1st June, 2013)

(b) Scope of reasons for directing special audit of accounts amplified [Section 142(2A)]

(i) Under section 142(2A), if at any stage of the proceeding, the Assessing Officer 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.

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(ii) Since the courts have made a very narrow interpretation of the expression "nature and complexity of the accounts", section 142(2A) has been amended to expressly include within its scope, the following reasons, on the basis of which the Assessing Officer may direct special audit of accounts of an assessee –

(1) volume of the accounts,

(2) doubts about the correctness of the accounts,

(3) multiplicity of transactions in the accounts, and

(4) specialized nature of business activity of the assessee.

(iii) Accordingly, section 142(2A) now provides 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.

(Effective from 1st June, 2013)

(c) Exclusion of a certain time period in computing the period of limitation, in a case where the direction under section 142(2A) is challenged before a court [Sections 153 & 153B]

(i) Section 153 provides the time limit for completion of assessment and reassessment of income by the Assessing Officer and section 153B provides the time limit for completion of assessment in case of search or requisition.

(ii) *Explanation 1* to section 153 and *Explanation* to section 153B provide for exclusion of certain periods specified therein in computing the period of limitation for the purposes of the said sections.

(iii) As per clause (iii) of *Explanation* 1 to section 153 and clause (ii) of *Explanation* to section 153B, the following time period is excluded in computing the period of limitation for the purposes of assessment or reassessment, and assessment in case of search or requisition, respectively.

the period commencing from	*the period ending with*
the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A).	the last date on which the assesee is required to furnish a report of such audit under section 142(2A).

(iv) However, the above sections do not provide for exclusion of time in case the direction of the Assessing Officer is set aside by the court.

(v) Therefore, clause (iii) of *Explanation 1* to section 153 and clause (ii) of Explanation to section 153B has been amended to provide for exclusion of the

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following time period in computing the period of limitation for the purposes of section 153 and 153B -

the period commencing from	*the period ending with*	
	In a case where such direction is not challenged before a court	*In a case where such direction is challenged before a court*
the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A).	the last date on which the assessee is required to furnish a report of such audit under section 142(2A).	the date on which the order setting aside such direction is received by the Commissioner.

(Effective from 1st June, 2013)

(d) Exclusion of a certain time period in computing the period of limitation, where more than one reference for exchange of information is made in a particular case [Sections 153 & 153B]

(i) In case an assessee is having income or assets outside India, information is sought from the tax authorities situated outside India, while completing an assessment or reassessment proceeding. Section 90 and section 90A provides for information exchange with the foreign tax authorities for prevention of evasion or avoidance of income tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be.

(ii) Section 153 provides the time limit for completion of assessment or reassessment and section 153B provides the time limit for completion of assessment in case of search or requisition. The time taken in obtaining information (from foreign tax authorities) is excluded from the time prescribed for completion of assessment or reassessment under section 153 and 153B in the case of an assessee.

(iii) Clause (viii) of *Explanation 1* to section 153 and *Explanation* to section 153B provide for exclusion of the following time period in computing the period of limitation for the purposes of section 153 and section 153B -

(a)	*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 *The period ending with* : the date on which the information so requested is received by the Commissioner (or)	whichever is less
(b)	A period of one year.	

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(iv) There are times when more than one reference for exchange of information is made in a particular case, consequent to which there are more than one reply from the foreign Competent Authorities. This leads to a dispute while determining the period of exclusion i.e., whether it should be from the date of first reference for exchange of information made or from the date of last reference. Likewise, dispute may also arise with regard to the dates on which the information so requested is received.

(v) In order to ensure clarity in this regard, clause (viii) of *Explanation 1* to section 153 and *Explanation* to 153B has been amended to provide for exclusion of the following time period in computing the period of limitation for the purposes of section 153 and section 153B -

(a)	*__The period commencing from__* : the date on which a reference or **first of the references** for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A *__The period ending with__* : the date on which the information so requested is **last** received by the Commissioner (or)	whichever is less
(b)	A period of one year.	

(Effective from 1st June, 2013)

(e) **Extended time limits for completion of assessment or reassessment under sections 153 and 153B in cases where reference is made to TPO to apply irrespective of the date of reference to TPO under section 92CA(1) or the date of passing of order under section 92CA(3)**

(i) Section 153 provides for the time limit for completion of assessments and reassessments.

(ii) With respect to income first assessable in the A.Y.2009-10 or any subsequent assessment year, the Finance Act, 2012 has extended the time limit for completion of assessment under section 143 or section 144 from 33 months to 3 years in case where, during the course of the assessment proceeding, reference is made to the Transfer Pricing Officer (TPO) under section 92CA(1).

(iii) Further, where notice under section 148 is served on or after 1.4.2010, and during the course of assessment/reassessment proceedings, a reference is made to the TPO under section 92CA(1), the Finance Act, 2012 had extended the time limit for completion of assessment, reassessment or re-computation

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under section 147 from 21 months to 2 years from the end of the financial year in which notice under section 148 was served.

(iv) Where the original assessment has been set aside, cancelled and referred back to the Assessing Officer by an order under section 254/section 263/section 264 and reference is made to the TPO under section 92CA(1) during the course of fresh assessment proceedings under section 143/section 144/section 147, the Finance Act, 2012 had extended the time limit for completion of such fresh assessment from 21 months to 2 years from the end of the financial year in which the said order under section 254 is received by the Commissioner or the order under section 263 or section 264 is passed by the Commissioner.

(v) However, in all the above cases, the extended time limit was applicable only if the reference under section 92CA(1) is made –

- on or after 1st July, 2012 or
- before 1st July, 2012 but the order of TPO has not been made upto that date.

(vi) The said provisions have now been amended, with effect from 1st July, 2012, to provide that the extended time limits of 3 years and 2 years, respectively, will be applicable irrespective of the time of making reference to TPO or passing of order by the TPO.

(vii) Section 153B provides the following time limit for completion of assessment in case of search or requisition. These time limits were extended by 3 months by the Finance Act, 2012, with effect from 1st July, 2012, in cases where reference under section 92CA(1) is made –

- on or after 1st July, 2012 or
- before 1st July, 2012 but the order of TPO has not been made upto that date.

Proceeding under section	Earlier time limit for completion of assessment or reassessment	New time limit for completion of assessment or reassessment	Applicability of new time limit
153A – for the assessment year relevant to the previous year in which search is conducted and for 6 assessment	33 months from the end of the financial year in which last of the authorizations for search under section 132 or for requisition under section 132A was executed	3 years from the end of the financial year in which last authorizations for search under section 132 or for requisition under section 132A was executed	In case where the last of the authorizations for search under section 132 or for requisition under section 132A was

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years immediately preceding the assessment year relevant to the previous year in which search was conducted and reference made to Transfer Pricing Officer under section 92CA(1) during the course of assessment proceeding.			executed during the financial year 2009-10 or any subsequent financial year
In case of a person assessed under section 153C – for the assessment year relevant to the previous year in which search is conducted and for 6 assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and reference made to Transfer Pricing Officer	33 months from the end of the financial year in which last of the authorizations for search under section 132 or for requisition under section 132A was executed or 21 months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over to the jurisdictional Assessing Officer under section 153C whichever is later	36 months from the end of the financial year in which last of the authorizations for search under section 132 or for requisition under section 132A was executed or 24 months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over to the jurisdictional Assessing Officer under section 153C whichever is later	In case where last of the authorizations for search under section 132 or for requisition under section 132A was executed during the financial year 2009-10 or any subsequent financial year

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under section 92CA(1) during the course of assessment proceeding .			

(viii) These provisions have now been amended to provide that the extended time limits of 3 years and 2 years, respectively, will be applicable irrespective of the time of making reference to TPO or the time of passing of order by the TPO.

(Effective retrospectively from 1st July, 2012)

12. APPEALS AND REVISION

Sitting or Retired Judge of High Court with at least 7 years of such service eligible for appointment as President of Appellate Tribunal [Section 252(3)]

(i) Section 252(3) provides that the Central Government shall appoint the senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.

(ii) Sub-section (3) of section 252 has now been substituted, with effect from 1st June, 2013, to provide that the Central Government shall appoint –

(i) a person who is a sitting or retired Judge of a High Court and who has completed not less than 7 years of service as a Judge in a High Court; or

(ii) the Senior Vice-President or one of the Vice Presidents of the Appellate Tribunal

to be the President thereof.

(Effective from 1st June, 2013)

13. DEDUCTION, COLLECTION & RECOVERY OF TAX

(a) **Tax to be deducted from payment on transfer of certain immovable property other than agricultural land [New Section 194-IA]**

(i) Under section 139A read with Rule 114B, quoting of Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of ₹ 5 lakh or more is mandatory.

(ii) However, the information furnished in Annual Information Returns by the Registrar/Sub-Registrar reveal non-quoting or quoting of invalid PAN in the documents relating to transfer of property by a sizable number of the purchasers or sellers of immovable properties, valued at ₹ 30 lakh or more, during the financial year 2011-12.

(iii) Chapter XVII-B of the Income-tax Act, 1961 requires tax to be deducted at source on certain specified payments made to residents by way of salary, interest, rent, commission, brokerage, fees for professional and technical services, royalty etc.

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In case of transfer of immovable property by a non-resident, the TDS provisions under section 195 are attracted in the hands of the transferee. However, in case of transfer of immovable property by residents, there is no requirement to deduct tax at source, the only exception being a case of compulsory acquisition of immovable property (other than agricultural land) in respect of which tax deduction is required under section 194LA.

(iv) For the twin purposes of having a reporting mechanism of transactions in the real estate sector and also collecting tax at the earliest point of time, new section 194-IA has been inserted to require every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

(v) However, tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ₹50 lakh.

(vi) Further, since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(vii) The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.

(Effective from 1st June, 2013)

Example 16

Mr.X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2013. He has purchased the house property and the land in the year 2011 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2013, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. X and Mr.Y and the TDS implications, if any, in the hands of Mr.Y, assuming that both Mr.X and Mr.Y are resident Indians.

Answer

(i)	<u>Tax implications in the hands of Mr.X</u>
	As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 45 lakh (i.e. ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2014-15. Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.

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(ii)	Tax implications in the hands of Mr.Y
	In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(vii), if such difference exceeds ₹ 50,000. Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr.Y under section 56(2)(vii). Since agricultural land is not a capital asset, the provisions of section 56(2)(vii) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(vii) includes only capital assets specified thereunder.
(iii)	TDS implications in the hands of Mr.Y
	Since the sale consideration of house property exceeds ₹ 50 lakh, Mr.Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 60,000, being 1% of ₹ 60 lakh. TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

(b) Concessional rate of TDS in respect of interest from Government securities or rupee-denominated bonds of an Indian company payable to a Foreign Institutional Investor (FII) or a Qualified Foreign Investor (QFI) [New section 194LD]

Related amendments in sections : 115A, 115AD, 195 & 196D

(i) New section 194LD has been inserted to provide that any income by way of interest payable during the period between 1.6.2013 and 31.5.2015 in respect of investment made by an FII or QFI in a rupee denominated bond of an Indian company or a Government security, shall be subject to tax deduction at source at a concessional rate of 5% (as against the rate of 20% of interest applicable in respect of other interest received by a QFI or FII).

(ii) The interest to the extent the same does not exceed the interest calculated at the rate notified by the Central Government in this behalf will be subject to tax deduction at a concessional rate of 5%.

(iii) Any person who is responsible for paying to a person being a FII or a QFI, any such interest shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon@5%.

(iv) FII refers to Foreign Institutional Investors specified by the Central Government by notification in the Official Gazette.

(v) QFI refers to Qualified Foreign Investors i.e. Foreign Investors, being non-residents, who meet certain KYC requirements under SEBI laws and are

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hence permitted to invest in equity and debt schemes of Mutual Funds, thereby enabling Indian Mutual Funds to have direct access to foreign investors and widen the class of foreign investors in Indian equity and debt market. QFI does not include FIIs.

(vi) Consequential amendment has been made in section 115AD(1) to provide that such interest received by a FII would be taxable@5% (instead of 20% applicable in respect of income from securities). Section 196D, providing for deduction of tax@20% on income from securities referred to in section 115AD(1)(a) in case of a FII, has been amended to specifically exclude interest referred to in section 194LD, which would be subject to TDS@5%.

(vii) Likewise, section 115A, which provides for the special rates of tax on specified interest income of non-corporate non-residents and foreign companies, has been amended to provide that such interest referred to in section 194LD would be taxable@5%. Section 195, providing for deduction of tax at source from payments to non-corporate non-residents and foreign companies at the rates in force, has been amended to specifically exclude interest referred to in section 194LD, which is subject to TDS@5%.

(Effective from 1st June, 2013)

(c) Non-applicability of higher rate of TDS under section 206AA in respect of tax deductible under section 194LC on payment of interest on long-term infrastructure bonds to non-corporate non-residents and foreign companies

(i) With a view to strengthening the PAN mechanism, section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor, failing which the deductor shall deduct tax at source at higher of the following rates –

(1) the rate prescribed in the Act;

(2) the rates in force; or

(3) the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I.

(ii) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

(iii) The provisions of section 206AA are also applicable to non-residents where tax is deductible on payments or credits made to them.

(iv) Section 194LC, inserted by the Finance Act, 2012, provides for a concessional rate of withholding tax @ 5% on interest payment by an Indian company to a non-corporate non-resident or a foreign company. The concessional rate of tax and TDS would be applicable if the borrowing is made in foreign currency between 1.7.2012 and 30.6.2015, from a source outside India, *inter alia,* by

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way of issue of long-term infrastructure bonds, as approved by the Central Government in this behalf.

(v) Though section 194LC provides for a concessional rate of tax @ 5%, in absence of PAN of the non-resident, section 206AA mandates withholding tax at higher rate of 20%. This would have resulted in genuine hardship to the non-corporate non-residents/foreign companies, since they would have had to file a return to claim refund of tax, even though section 115A specifically exempts such assessees from filing return of income where their income comprises solely of specified interest and dividend income [referred to in section 115(1)(a)], on which tax deductible at source has been deducted and paid to the Government. Hence, these non-residents would have had to obtain PAN for the sole purpose of avoiding the adverse impact of section 206AA.

(vi) To address this concern, sub-section (7) has been inserted in section 206AA to provide that the provisions of section 206AA shall not apply in respect of payment of interest on long term infrastructure bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.

(Effective from 1st June, 2013)

(d) TCS provisions under section 206C to also be attracted on cash sale of any coin or any other article weighing 10 gms or less, if the consideration exceeds Rs. 2 lakh [Section 206C(1D)]

(i) The Finance Act, 2012 had inserted sub-section (1D) in section 206C to provide for collection of tax at source@1% by the seller from the buyer, on cash sale of bullion or jewellery, if the sale consideration exceeds Rs.2 lakh and Rs.5 lakh, respectively.

(ii) A coin or any other article weighing 10 gms or less was, however, excluded from the applicability of the provisions of this section.

(iii) Since the exclusion was giving an opportunity for misuse, the exemption has now been withdrawn with effect from 1.6.2013. Consequently, the provisions for tax collection at source under section 206C @1% of sale consideration would be attracted even in respect of cash sale of any coin or any article weighing 10 gms or less, if the sale consideration exceeds Rs. 2 lakh.

(Effective from 1st June, 2013)

14. PENALTIES

Higher penalty for failure to furnish Annual Information Return in response to notice under section 285BA(5) [New section 271FA]

(i) As per section 285BA(1), the persons listed thereunder who are responsible for registering, or, maintaining books of account or other document, containing a record of any specified financial transaction, are required to furnish an annual information return in respect of such transactions within the time prescribed under section 285BA(2) i.e., on or before 31st August, immediately following the financial year in which the transaction is registered or recorded.

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(ii) If the annual information return has not been furnished within the prescribed time, section 285BA(5) empowers the Director of Income-tax (Central Information Branch) to issue notice requiring furnishing of annual information return within a period not exceeding 60 days from the date of service of such notice.

(iii) At present, under section 271FA, if a person who is required to furnish an annual information return, as required under section 285BA(1), fails to furnish such return within the time prescribed under that sub-section, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of ₹ 100 for every day during which the failure continues.

(iv) Section 271FA has now been substituted to provide that if a person who is required to furnish an annual information return, as required under section 285BA(1), fails to furnish such return within the time prescribed under section 285BA(2), the prescribed income-tax authority [i.e., Director of Income-tax (Central Information Branch)] may direct that such person shall pay, by way of penalty, a sum of ₹100 for every day during which the failure continues.

Further, where such person fails to furnish the annual information return within the period specified in the notice under section 285BA(5), he shall pay, by way of penalty, a sum of five hundred rupees 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.

The penal provisions under section 271FA w.e.f. 1st April, 2014 are summarized below -

Non-compliance of section	Penalty under section 271FA	Period
285BA(1)	₹ 100 per day of continuing default	1st September immediately following the financial year in which the transaction is registered or recorded till the date of furnishing the AIR or the date of expiry of the time specified in the notice under section 285BA(5), whichever is earlier.
285BA(5)	₹ 500 per day of continuing default	The day immediately following the day on which the time specified in notice under section 285BA(5) for furnishing the AIR expires till the date of furnishing of AIR.

(Effective from 1st April, 2014)

Example 17

A private bank has not filed its annual information return in relation to the specified financial transactions for the financial year 2012-13. A notice was issued by the prescribed income-tax authority on 1st October, 2013 requiring the bank to furnish the return by 31st October, 2013. The bank, however, furnished the AIR only on 16th November, 2013. What would be the penalty leviable under section 271FA?

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Answer

(1)	(2)	(3)	(4)	
Non-compliance of section	Penalty under section 271FA	Period	Quantum of penalty under section 271FA	
			(2) × (3)	(₹)
285BA(1)	₹ 100 per day of continuing default	1.9.2013 to 31.10.2013	61 days × ₹ 100	6,100
285BA(5)	₹ 500 per day of continuing default	1.11.2013 to 15.11.2013	15 days × ₹ 500	7,500
				13,600

15. MISCELLANEOUS PROVISIONS

(a) Reference to Foreign Exchange Management Act, 1999 in the place of Foreign Exchange Regulation Act, 1973/ Foreign Exchange Regulation Act, 1947 under the Income-tax Act, 1961

Related amendment in section: 138

(i) Even after repeal of "Foreign Exchange Regulation Act, 1973", the Income-tax Act, 1961 continues to make a reference to the said Act in many of its sections, for example, section 10(4)(ii), 10(4B), etc.

(ii) In order to correct this apparent anomaly, the Finance Act, 2013 has substituted the expression "Foreign Exchange Regulation Act, 1973" with "Foreign Exchange Management Act, 1999", wherever it occurs, in the Income-tax Act, 1961.

(iii) A specific amendment has also been made in section 138, relating to disclosure of information by the CBDT or any other income-tax authority in relation to, *inter alia*, dealings in foreign exchange as defined in section 2(d) of Foreign Exchange Regulation Act, 1947, to give reference to section 2(n) of "Foreign Exchange Management Act, 1999" in the place of section 2(d) of "Foreign Exchange Regulation Act, 1947".

(b) "Authorised Person" under Foreign Exchange Management Act, 1999 to be the "person responsible for paying" for the purpose of tax deduction at source under Chapter XVII and section 285 [Section 204]

(i) Section 204 provides for the meaning of "person responsible for paying" for the purpose of Chapter XVII and section 285.

(ii) Clause (iia) of section 204 provides that, in case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the "person responsible for paying" would be the authorised dealer responsible for remitting such sum to the non-resident Indian or crediting such sum to his Non-resident (External) Account maintained in accordance with Foreign Exchange Regulation Act, 1973 and related rules.

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(iii) Consequent to the substitution of the expression "Foreign Exchange Regulation Act, 1973" with "Foreign Exchange Management Act, 1999", reference to the term "Authorised dealer" under Foreign Exchange Regulation Act, 1973 has been substituted with the term "Authorised person", having the meaning assigned to it in section 2(c) of the Foreign Exchange Management Act, 1999.

(c) Relaxation of time limit for satisfying the conditions, the non-compliance of which would result in withdrawal of recognition of recognized provident fund [Rule 3 of Part A of Fourth Schedule to the Income-tax Act, 1961]

(i) Rule 4 in Part A of the Fourth Schedule to the Income-tax Act, 1961, provides for the conditions which are required to be satisfied by a provident fund for receiving or retaining recognition under the Income-tax Act, 1961.

(ii) Clause (ea) of the said Rule provides that for receiving and retaining recognition under the Income-tax Act, 1961, the fund shall be a fund of an establishment –

(1) to which the provisions of section 1(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply; or

(2) which has been notified by the Central Provident Fund Commissioner under section 1(4) of the said Act.

(iii) Further, such establishment is required to obtain exemption under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section.

(iv) In case where a provident fund has been accorded recognition on or before 31.3.2006 and such provident fund does not satisfy the conditions set out in clause (ea) of Rule 4 or any other condition specified by the Board on or before 31.3.2013, the recognition granted is withdrawn.

(v) The above time limit specified in the proviso to Rule 3(1) of Part A of the Fourth Schedule for a recognized provident fund, where it has received recognition on or before 31.03.2006, for satisfying the conditions set out in clause (ea) of Rule 4 and any other conditions such as the Board may notify, has now been extended from 31.3.2013 to 31.3.2014. Therefore, only if the fund does not satisfy such conditions on or before 31.3.2014, the recognition granted to the fund shall be withdrawn.

(Effective retrospectively from 1st April, 2013)

II WEALTH TAX

Introduction of provisions for enabling electronic filing of annexure-less return of net wealth [Sections 14A & 14B]

Related amendment in section: 46

(i) As per section 14 of the Wealth-tax Act, 1957, every person, whose net wealth or net wealth of any other person in respect of which he is assessable under the Act

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on the valuation date, exceeds the maximum amount not chargeable to wealth-tax, is required to furnish a return of his net wealth or the net wealth of such other person as on the valuation date in the prescribed form and verified in the prescribed manner setting forth particulars of the net wealth and such other particulars as may be prescribed.

(ii) The Wealth-tax Act, 1957 and the Wealth-tax Rules, 1957 require furnishing of certain documents and reports along with the return of net wealth.

(iii) Consequent to implementation of e-filing of income-tax returns and making the same mandatory for certain classes of income-tax assessees, sections 139C and 139D were introduced in the Income-tax Act, 1961. These sections contain enabling provisions for electronic filing of annexure-less return of income.

(iv) Likewise, for promoting electronic filing of annexure-less return of net wealth, new sections 14A and 14B have been inserted in the Wealth-tax Act, 1957 in line with sections 139C and 139D of the Income-tax Act, 1961.

(v) Section 14A empowers the CBDT to provide for a class or classes of persons who may not be required to furnish documents, statements, certificates, audit reports, reports of registered valuers etc. which are otherwise required to be furnished under any other provision of the Wealth-tax Act, 1957 (except section 14B) along with the return of net wealth. However, such documents, statements etc. have to be produced on demand before the Assessing Officer.

(vi) Further, for facilitating e-filing of return of net wealth, section 14B empowers the CBDT to make rules for the following purposes –

  (1) to specify the class or classes of persons who are mandatorily required to e-file the return of net wealth;

  (2) to prescribe the form and manner in which the returns are to be e-filed;

  (3) to specify the documents, statements, receipts, certificates, audit reports etc. which may not be furnished with the e-return but are to be produced on demand before the Assessing Officer;

  (4) to specify the computer resource or the electronic record to which the e-return may be transmitted.

(vii) Consequently, section 46(2) of the Wealth-tax Act, 1957 which provides for rule making powers of the Board, has been amended to empower the CBDT to make rules for implementing the provisions of section 14A and 14B i.e., the CBDT is empowered to make rules to provide for -

  (1) the documents, statements, receipts, certificates, audit reports, reports of registered valuers, etc. which may not be furnished along with the return but shall be produced on demand before the Assessing Officer;

  (2) (i) the class or classes of persons who are mandatorily required to e-file their wealth-tax returns,

    (ii) the prescribed form and manner in which returns may be e-filed; and

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(iii) the documents, statements, receipts, certificates, audit reports etc. which may not be furnished along with the e-return; and

(iv) the computer resource or electronic record to which such return may be transmitted under section 14B.

(Effective from 1st June, 2013)

SIGNIFICANT NOTIFICATIONS AND CIRCULARS ISSUED BETWEEN 1ST JULY, 2012 AND 30TH APRIL, 2013

I. NOTIFICATIONS

1. Notification No. 36/2012 dated 30.8.2012

Advance Pricing Agreement Scheme for the purpose of section 92CC prescribed

Section 92CC has been inserted by the Finance Act, 2012 to empower the CBDT to enter into an advance pricing agreement with any person for determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by such person. However, the CBDT can do so only with the approval of the Central Government.

Section 92CC(9) empowers the CBDT to prescribe a scheme, specifying the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Accordingly, in exercise of the powers conferred in section 92CC(9) read with section 295 of the Income-tax Act, 1961, the CBDT has prescribed rules specifying an Advance Pricing Agreement (APA) Scheme. Some of the important provisions of the scheme are briefed hereunder -

(1) Persons eligible to apply

Any person who has undertaken an international transaction or is contemplating to undertake an international transaction, shall be eligible to enter into an agreement under these rules.

(2) Pre-filing Consultation

(a) Every person proposing to enter into an agreement under these rules shall, by an application in writing, make a request for a pre-filing consultation in the prescribed form to the Director General of Income-tax (International Taxation).

(b) The pre-filing consultation shall, among other things,-

(i) determine the scope of the agreement;

(ii) identify transfer pricing issues;

(iii) determine the suitability of international transaction for the agreement;

(iv) discuss broad terms of the agreement.

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(c) The pre-filing consultation shall -

  (i) not bind the Board or the person to enter into an agreement or initiate the agreement process;

  (ii) not be deemed to mean that the person has applied for entering into an agreement.

(3) Application for advance pricing agreement

  (a) Any person, who has entered into a pre-filing consultation may, if desires to enter into an agreement shall furnish an application in the prescribed form along with proof of payment of requisite fee as specified, to the Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India in case of bilateral or multilateral agreement.

  (b) The application may be filed at any time -

    (i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or

    (ii) before undertaking the transaction in respect of remaining transactions.

  Note - The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.

(4) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.

(5) Terms of the agreement

  (a) An agreement may among other things, include -

    (i) the international transactions covered by the agreement;

    (ii) the agreed transfer pricing methodology, if any;

    (iii) determination of arm's length price, if any;

    (iv) definition of any relevant term to be used in item (ii) or (iii);

    (v) critical assumptions i.e., the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed;

    (vi) the conditions, if any, other than provided in the Act or these rules.

  (b) The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.

  (c) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.

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(d) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.

(6) Furnishing of Annual Compliance Report

The assessee shall furnish an annual compliance report in quadruplicate in the prescribed form to Director General of Income-tax (International Taxation) for each year covered in the agreement, within 30 days of the due date of filing income-tax return for that year, or within 90 days of entering into an agreement, whichever is later.

(7) Compliance Audit of the agreement

(a) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement. For this purpose, the Transfer Pricing Officer may require -

(i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;

(ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.

(b) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report is received by the Transfer Pricing Officer.

(8) Revision of an agreement

(a) An agreement, after being entered, may be revised by the Board either *suo moto* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if.-

(i) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(ii) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding ; or

(iii) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(b) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

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(c) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

(9) Cancellation of an agreement

(a) An agreement shall be cancelled by the Board for any of the following reasons:

(i) the compliance audit has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;

(ii) the assessee has failed to file the annual compliance report in time;

(iii) the annual compliance report furnished by the assessee contains material errors; or

(iv) the assessee is not in agreement with the revision proposed in the agreement.

(b) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.

(c) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.

(d) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(e) The order under the Act, declaring the agreement as void ab initio, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.

(10) Mere filing of an application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

(11) The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries".

2. Notification No. 40/2012 dated 20.09.2012

Investment in debt instruments issued by any infrastructure finance company registered with the Reserve Bank of India is an approved investment under section 11(5)

Section 11(5) provides the permitted modes of investment by a charitable trust or institution for claiming exemption under section 11. Clause (xii) of section 11(5) specifies that investment can be made by any other mode as may be prescribed. Rule 17C of the Income-tax Rules, 1962 specifies such other modes of investment.

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In exercise of the powers conferred by section 295 and section 11(5)(xii), the Central Government has, through this notification, inserted a new clause (viii) in Rule 17C of the Income-tax Rules, 1962 to provide that investment in debt instruments issued by any infrastructure finance company registered with the Reserve Bank of India is also a permitted mode of investment under section 11(5).

3. Notification No. 42/2012 dated 4.10.2012

Notification of class of cases, where compulsory issue of notice for assessing or reassessing the total income of immediately preceding six assessment years is not required

The Finance Act, 2012 has amended sections 153A and 153C w.e.f. 1-07-2012 to provide that the Central Government may notify the class or classes of cases (except the cases where any assessment or reassessment has abated) in which the Assessing Officer shall not be required to issue notice for initiation of assessment or reassessment of the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted or requisition was made.

As a result of the amendment in section 153A and section 153C, the assessment proceedings in the class or classes of cases so notified shall be carried out only for the assessment year relevant to the previous year in which search was conducted or requisition was made, except in cases where any assessment or reassessment in respect of any of the earlier six years has abated.

Accordingly, in exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

(i) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and

(ii) where, such search is conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

Circular No.10/2012 dated 31.12.2012 clarifies that the aforesaid amendment was introduced with a view to reduce infructuous and unnecessary proceedings under the

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Income-tax Act, 1961 in cases where a search is conducted under section 132 or requisition is made under section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

In such cases, the officer investigating the case, with the approval of the Director General of Income-tax, is required to certify that -

(i) the search is conducted under section 132 or the requisition is made under section 132A in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30, read with section 56 of the Representation of the People Act, 1951; or

(ii) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency; and

(iii) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

The certificate of the investigating officer shall be communicated to the Commissioner of Income-tax and the Assessing Officer having jurisdiction over the case of such person.

4. Notification No. 46/2012, dated 06.11.2012

(as amended by Notification No. 50/2012, dated 15.11.2012, 10/2013 dated 5-2-2013 & 23/2013 dated 22.3.2013)

Specification of bonds for interest exemption under section 10(15)(iv)(h)

Section 10(15)(iv)(h) exempts interest payable by any public sector company on such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available.

Accordingly, in exercise of the powers conferred by section 10(15)(iv)(h), the Central Government has specified the tax-free, secured, redeemable, non-convertible bonds of National Highways Authority of India (NHAI), Indian Railway Finance Corporation Limited (IRFCL), India Infrastructure Finance Company Limited, Housing and Urban Development Corporation Limited, National Housing Bank (NHB), Power Finance Corporation, Rural Electrification Corporation Limited, Jawaharlal Nehru Port Trust, Dredging Corporation of India Limited, Ennore Port Limited and The Indian Renewable Energy Development Agency Limited, to be issued during the financial year 2012-13, the interest on which would be exempt under the said section.

The notification also specifies certain conditions relating to tenure of bonds, PAN, rate of interest, issue expense and brokerage, public issue, repayment of bonds and selection of merchant bankers, as detailed therein, subject to fulfillment of which the exemption would be available.

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5. Notification No. 52/2012 dated 29.11.2012

Determination of FMV of unquoted equity shares for the purpose of sections 56(2)(vii), 56(2)(viia) & 56(2)(viib) [Amendment in Rule 11U & Rule 11UA]

Rule 11UA provides the manner of determination of fair market value of a property, other than immovable property, for the purposes of section 56. Rule 11U provides the meaning of the expressions used in determination of fair market value.

The CBDT has, through this notification, amended Rule 11U and renumbered Rule 11UA as Rule 11UA(1). Further, the method of determination of fair market value of unquoted equity shares for the purpose of section 56(2)(vii) and 56(2)(viia) has been modified. New sub-rule (2) has also been inserted to provide for the manner of determination of fair market value of unquoted equity shares for the purpose of section 56(2)(viib).

<u>Manner of determination of FMV of unquoted equity shares for the purpose of section 56(2)(vii) & 56(2)(viia) [Amendment in Sub-rule (1) of Rule 11UA]</u>

The fair market value of unquoted equity shares = $\frac{A-L}{PE} \times (PV)$

"A" refers to the adjusted book value of assets i.e., book value of assets in the balance sheet as reduced by certain specified deductions. "L" refers to the adjusted book value of liabilities i.e., book value of liabilities shown in the balance sheet, but not including, *inter alia,* -

(1) reserves, by whatever name called, other than those set apart towards depreciation and credit balance of the profit and loss account.

(2) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, 1961, to the extent of excess over the tax payable with reference to the book profits in accordance with the law applicable thereto.

The computation of adjusted book value of assets and adjusted book value of liabilities has been modified.

The adjusted book value of assets now refers to the book value of assets in the balance sheet as reduced by –

(1) any amount of tax paid as deduction or collection at source; or

(2) advance tax payment reduced by the amount of tax claimed as refund under the Income-tax Act, 1961; and

(3) any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

Further, the adjusted book value of liabilities would now mean the book value of liabilities shown in the balance sheet, but not including, *inter alia,* -

(1) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

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(2) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, 1961, to the extent of excess over the tax payable with reference to the book profits in accordance with the law applicable thereto.

<u>Manner of determination of FMV of unquoted equity shares for the purpose of section 56(2)(viib) [Insertion of sub-rule (2) in Rule 11UA]</u>

The Finance Act, 2012 has inserted clause (viib) in section 56(2) to provide for taxation of the consideration received by a closely held company for issue of shares at a premium (i.e., at a price that exceeds the face value of shares), to the extent it exceeds the fair market value of such shares.

As per sub-clause (i) of clause (a) of the *Explanation* to section 56(2)(viib), the fair market value of such unquoted equity shares shall be the value as may be determined in accordance with such method as may be prescribed.

Accordingly, sub-rule (2) has been inserted in Rule 11UA to prescribe the manner of determination of FMV of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of *Explanation* to section 56(2)(viib).

The FMV shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), *at the option* of the assessee, namely:—

(a) the fair market value of unquoted equity shares = $\frac{(A-L)}{PE} \times (PV)$

A = The book value of the assets in the balance sheet as reduced by the following -

(1) any amount of tax paid as deduction or collection at source
(2) any amount of advance tax payment

} *minus* the amount of tax claimed as refund under the Income-tax Act, 1961.

(3) any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of

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tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet

PV = the paid up value of such equity shares

(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.

Meaning of certain expressions, used in determination of Fair Market Value, amended [Rule 11U]

Consequent to insertion of sub-rule (2) in Rule 11UA, the meaning of certain expressions, defined in Rule 11U and used in determination of Fair Market Value, have been amended. The new definitions are as follows -

For the purpose of sub-rule (2) of Rule 11UA	In any other case
Definition of "accountant"	
A fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949, who is not appointed by the company as an auditor under – (i) section 44AB of the Income-tax Act, 1961 or (ii) section 224 of the Companies Act, 1956.	Meaning as assigned in the *Explanation* below section 288(2) i.e., (i) Chartered Accountant within the meaning of the Chartered Accountants Act, 1949; and (ii) In relation to any State, any person who by virtue of the provisions of section 226(2) of the Companies Act, 1956 is entitled to be appointed to act as an auditor of companies registered in that State.
Definition of "Balance Sheet"	
"Balance sheet", in relation to any company, means, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) - - as drawn up on the valuation date - which has been audited by the	"Balance sheet", in relation to any company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) – - as drawn up on the valuation date - which has been audited by the auditor

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auditor of the company appointed under section 224 of the Companies Act, 1956. Where the balance sheet on the valuation date is not drawn up, the expression "Balance Sheet" in relation to any company, would mean the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;	appointed under section 224 of the Companies Act, 1956.
<u>Definition of "valuation date"</u> The date on which the property or consideration, as the case may be, is received by the assessee.	Same as for sub-rule (2) i.e., the date on which the property or consideration, as the case may be, is received by the assessee.

6. Notification No. 56/2012 dated 31.12.2012

Tax not to be deducted on specified payments to notified entities under section 197A(1F)

The Finance Act, 2012 has inserted sub-section (1F) in section 197A to provide that no deduction of tax shall be made from such specified payments to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government.

Accordingly, the Central Government has notified that no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank –

(i) bank guarantee commission,

(ii) cash management service charges,

(iii) depository charges on maintenance of DEMAT accounts ,

(iv) charges for warehousing services for commodities,

(v) underwriting service charges,

(vi) clearing charges (MICR charges) and

(vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank,

The said notification shall come into force from the 1st January, 2013.

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7. Notification No. 4/2013 dated 24.1.2013

TDS under section 194A not attracted in respect of interest other than interest on securities credited to National Skill Development Fund

Section 194A(3)(iii)(f) provides that the provisions of tax deduction at source under section 194A in respect of interest other than interest on securities, shall not be attracted where such income is credited to such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

In exercise of the powers conferred by section 194A(3)(iii)(f), the Central Government has notified 'National Skill Development Fund'. Accordingly, the TDS provisions under section 194A would not be attracted in respect of interest other than interest on securities credited to National Skill Development Fund.

8. Notification No. 8/2013 dated 31.1.2013

Rules governing functioning of an Electoral Trust, for claim of exemption under section 13B, notified

Section 13B provides for special provisions relating to voluntary contributions received by electoral trusts. Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year if that electoral trust does not function in accordance with the rules made by the Central Government.

In exercise of the powers conferred by section 13B(b) read with section 295, the Central Government has notified Rule 17CA which provides that the following shall be the functions of an electoral trust referred to in section 13B -

(1) The electoral trust may receive voluntary contributions from

   a) an individual who is a citizen of India;

   b) a company which is registered in India; and

   c) a firm or Hindu undivided family or an Association of persons or a body of individuals, resident in India.

(2) A receipt indicating the following shall be issued by the trust immediately on receipt of any contribution indicating the following:

   a) name and address of the contributor;

   b) Permanent account number of the contributor or passport number in the case of a citizen who is not a resident;

   c) amount and mode of contribution including name and branch of the Bank and date of receipt of such contribution;

   d) name of the electoral trust;

   e) Permanent account number of the electoral trust;

   f) date and number of approval by the prescribed authority; and

   g) Name and designation of the person issuing the receipt.

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(3) The electoral trust shall not accept contributions-

a) from an individual who is not a citizen of India or from any foreign entity whether incorporated or not; and

b) from any other electoral trust which has been registered a company under section 25 of the Companies Act, 1956 and approved as an electoral trust under the Electoral Trusts Scheme, 2013.

(4) The electoral trust shall accept contributions only by way of an account payee cheque drawn on a bank or account payee bank draft or by electronic transfer to its bank account and shall not accept any contribution in cash.

(5) The electoral trust shall not accept any contribution without the PAN of the contributor, who is a resident and the passport number in the case of a citizen of India, who is not a resident.

(6) A political party registered under section 29A of the Representation of the People Act, 1951 shall be an eligible political party and an electoral trust shall distribute funds only to the eligible political parties.

(7) (i) The electoral trust may, for the purposes of managing its affairs, spend upto 5% of the total contributions received in a year subject to an aggregate limit of Rs.5 lakh in the first year of incorporation and Rs.3 lakh in subsequent years;

(ii) the total contributions received in any financial year alongwith the surplus from any earlier financial year, if any, as reduced by the amount spent on managing its affairs, shall be the distributable contributions for the financial year;

(iii) an electoral trust shall be required to distribute the distributable contributions received in a financial year, referred to in item (ii), to the eligible political parties before the 31st March of the said financial year, subject to the condition that at least 95% of the total contributions received during the financial year along with the surplus brought forward from earlier financial year, if any, are distributed.

(8) The trust shall obtain a receipt from the eligible political party indicating the name of the political party, its permanent account number, registration number, amount of fund received from the trust, date of the receipt and name and designation of person signing such receipt.

(9) The electoral trust shall not utilize any contributions for the direct or indirect benefit of the members or contributors, or for any of the following persons, namely:

(a) the members (including members of its Executive Committee, Governing Committee or Board of Directors) of the electoral trust;

(b) any relative of such Members;

(c) where such member or contributor is a Hindu undivided family, a member of that Hindu undivided family;

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(d) any person who has made a contribution to the trust;

(e) any person referred in sub-section (3) of section 13; and

(f) any concern in which any of the persons referred to in clauses (a),(b),(c),(d) and (e) has a substantial interest.

(10) (i) An electoral trust shall keep and maintain such books of account and other documents in respect of its receipts, distributions and expenditure as may enable the computation of its total income in accordance with the provisions of the Act;

(ii) The electoral trust shall also maintain a list of persons from whom contributions have been received and to whom the same have been distributed, containing the name, address and permanent account number (PAN) of each such person along with the details of the amount and mode of its payment including the name and branch of the bank.

(11) Every electoral trust shall get its accounts audited by an accountant as defined in the Explanation below section 288(2) and furnish the audit report in Form No.10BC along with particulars forming part of its Annexure, to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the electoral trust, on or before the due date specified for furnishing the return of income by a company under section 139.

(12) An electoral trust shall maintain a regular record of proceedings of all meetings and decisions taken therein.

(13) Every electoral trust shall furnish a certified copy of list of contributors and a list of political parties, to whom sums were distributed in the manner prescribed in sub rule (8), to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, every year along with the audit report as stipulated under sub-rule (12);

(14) Any change in the shareholders, subsequent to the approval granted under the Electoral Trusts Scheme, 2013 shall be intimated to the Board within thirty days of such change.

9. Notification No. 8/2013 dated 31.1.2013

Electoral Trusts Scheme

Section 2(22AAA) defines 'Electoral Trust' to mean a trust so approved by the CBDT, in accordance with the scheme made in this regard by the Central Government.

In exercise of the powers conferred by section 2(22AAA), the Central Government, has through this notification, notified the Electoral Trusts Scheme, 2013 to lay down the procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to political parties.

Eligibility

A company registered for the purposes of section 25 of the Companies Act, 1956 satisfying all of the following conditions shall be eligible to make an application for approval as an electoral trust, namely –

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(i) The company should be registered on or after 1.4.2012 for the purposes of section 25 of the Companies Act, 1956;

(ii) The name of the company registered for the purposes of section 25 of the Companies Act, 1956 has to include the phrase "electoral trust";

(iii) The sole object of the electoral trust should be to distribute the contributions received by it to the political party, registered under section 29A of the Representation of the People Act, 1951;

(iv) The electoral trust should have a permanent account number.

Criteria for Approval

An electoral trust shall be considered for approval if it fulfills all of the following conditions, namely –

(i) The company registered for the purposes of section 25 of the Companies Act, 1956, which satisfies the above conditions;

(ii) The object of the electoral trust shall not be to earn any profit or pass any direct or indirect benefit to its members or contributors, or to any person referred to in section 13(3) or any person referred to in Rule 17CA of the Rules;

(iii) It has made adequate arrangement for recording the receipts from the contributors in accordance with Rule 17CA;

(iv) The stipulations contained in Rule 17A for functioning of the electoral trust are specifically included in the articles of association of the company registered for the purposes of section 25 of the Companies Act, 1956.

Renewal of approval

(i) The approval shall be valid for the assessment year relevant to the financial year in which such application has been made and for a further period, not exceeding three assessment years, as may be specified in the approval.

(ii) The electoral trust may apply for renewal of approval at any time during the financial year immediately preceding the last assessment year, for which the approval has been originally granted, and such renewal of approval may be granted after examining the application in the same manner as laid out for approval in this scheme.

10. Notification No.40/2013 dated 6.6.2013

Notification of Cost Inflation Index for F.Y.2013-14

Clause (v) of Explanation to section 48 defines "Cost Inflation Index", in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index for urban non-manual employees.

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Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of Explanation to section 48, specified the Cost Inflation Index for the financial year 2013-14 as 939.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582
29.	2009-10	632
30.	2010-11	711
31.	2011-12	785
32.	2012-13	852
33.	2013-14	939

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II. CIRCULARS

1. Circular No. 5/2012 dated 1-8-2012

Inadmissibility of expenses incurred in providing freebees to medical practitioner by pharmaceutical and allied health sector industry

Section 37(1) provides for deduction of any revenue expenditure (other than those falling under sections 30 to 36) from the business income if such expense is laid out or expended wholly or exclusively for the purpose of business or profession. However, the *Explanation* below section 37(1) denies claim of any such expenses, if the same has been incurred for a purpose which is either an offence or prohibited by law.

The Central Board of Direct Taxes, considering the fact that the claim of any expense incurred in providing freebees to medical practitioner is in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, has clarified that the expenditure so incurred shall be inadmissible under section 37(1) of the Income-tax Act, 1961, being an expense prohibited by the law. The disallowance shall be made in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

This circular has also clarified that a sum equivalent to value of freebees enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources, as the case may be, depending on the facts of each case.

2. Circular No. 07/2012 dated 21.09.2012

Approval of loan agreements/long term infrastructure bonds and rate of interest for the purpose of section 194LC

The Finance Act, 2012 had inserted section 194LC in the Income-tax Act, 1961 to provide for lower rate of tax deduction at source @ 5% on gross interest payments made by an Indian company to a non-corporate non-resident or to a foreign company on borrowings made in foreign currency, subject to approval of the Central Government, by way of loan agreement or through long-term infrastructure bonds issued during the period from 01.07.2012 to 30.06.2015. The section further provides that interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.

Therefore, the approval of the Central Government is required in respect of both the loan agreement or bond issue and the rate of interest to be paid on such borrowings.

With a view to mitigate the compliance burden on the borrower by providing a mechanism involving approval in each and every case, the CBDT, through this circular, conveys the approval of the Central Government, for the purposes of section 194LC in respect of loan agreements and issue of long-term infrastructure bonds by Indian Companies subject to satisfaction of following conditions:

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(a) In respect of agreements for loan

1. The borrowing of money should be under a loan agreement.
2. The monies borrowed under the loan agreement by the Indian company should comply with section 6(3)(d) of the Foreign Exchange Management Act, 1999 read with *Notification No. FEMA3/2000-RB* viz. Foreign Exchange Management (Borrowing or Lending in Foreign exchange) Regulations 2000, dated May 3, 2000, as amended from time to time, (hereafter referred to as "ECB regulations"), either under the automatic route or under the approval route.
3. The borrowing company should have obtained a Loan Registration Number (LRN) issued by the Reserve Bank of India (RBI) in respect of the Agreement.
4. No part of the borrowing has taken place under the said agreement before 1st July, 2012.
5. The agreement should not be restructuring of an existing agreement for borrowing in foreign currency solely for taking benefit of reduced rate of tax deduction at source.
6. The end use of the funds and other conditions as laid out by the RBI under ECB regulations should be followed during the entire term of the loan agreement under which the borrowing has been made.

(b) In respect of issue of Bonds

1. The bond issued by the Indian company should be authorized under ECB regulations either under the automatic route or under the approval route.
2. The bond issue should have a loan Registration Number issued by the RBI.
3. The term "long term" means that the bond to be issued should have original maturity term of three years or more.
4. The bond issue proceeds should be utilized in the "infrastructure sector" only.
5. The term "infrastructure sector" shall have same meaning as is assigned to it by RBI under the ECB regulations.

(c) Rate of interest

Further, the Central Government has also approved the interest rate for the purpose of section 194LC as any rate of interest which is within the All-in-cost ceilings specified by the RBI under ECB regulations as is applicable to the borrowing by loan agreement or through a bond issue, as the case may be, having regard to the tenure thereof.

In view of the above, any loan agreement or bond issue, which satisfies the above conditions would be treated as approved by the Central Government for the purposes of section 194LC.

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The circular has further clarified that in case of other long term infrastructure bonds where the Indian company received subscription of such bonds in foreign currency and such bond issue is not covered under ECB regulations, the approval for the purpose of section 194LC shall be on case–to-case basis for which application has to be given in writing to Member (IT), CBDT with the relevant details of the purpose, period and rate of interest.

3. Circular No. 9/2012 dated 17.10.2012

Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas

In response to the representations received by CBDT, on the difficulties being faced in the matter of tax deduction at source on Gas Transportation Charges paid by the purchasers of Natural gas to the owners/sellers of gas, CBDT has, through this Circular, clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in Section 194C. Therefore, in such circumstances, the provisions of Chapter XVIIB are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position.

However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.

4. Circular No. 1/2013, dated 17.01.2013

Clarification on issues relating to export of computer software

Section 10AA provides deduction to assessees who derive any profits and gains from export of articles or things or services (including computer software) from the year in which the Unit begins to manufacture or produced such articles or things or provide services, as the case may be, subject to fulfillment of the prescribed conditions. *Explanation 2* to the said section clarifies that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

This circular provides certain clarifications in respect of following issues arising out of the said provisions:

	Issue	Clarification given by the CBDT
(1)	Would "On-site" development of	The software developed abroad at a client's place would be eligible for such benefit, because these would amount

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	computer software qualify as an export activity for tax benefit under section 10AA?	to 'deemed export'. However, it is necessary that there must exist a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit.
(2)	Would receipts from deputation of technical manpower for such "On-site" software development abroad at the client's place be eligible for deduction under section 10AA?	*Explanation 2* to section 10AA clarifies that profits and gains derived from 'services for development of software' outside India would also be deemed as profits derived from export. Therefore, profits earned as a result of deployment of technical manpower at the client's place abroad specifically for software development work pursuant to a contract between the client and the eligible unit should not be denied benefit under section 10AA provided such deputation of manpower is for the development of such software and all the prescribed conditions are fulfilled.
(3)	Is it necessary to have separate master service agreement (MSA) for each work contract?	As per the practice prevalent in the software development industry, generally two types of agreement are entered into between the Indian software developer and the foreign client. Master Services Agreement (MSA) is an initial general agreement between a foreign client and the Indian software developer setting out the broad and general terms and conditions of business under the umbrella of which specific and individual Statement of Works (SOW) are formed. These SOWs, in fact, enumerate the specific scope and nature of the particular task or project that has to be rendered by a particular unit under the overall ambit of the MSA. Clarification has been sought whether more than one SOW can be executed under the ambit of a particular MSA and whether SOW should be given precedence over MSA. It is clarified that the tax benefits under section 10AA would not be denied merely on the ground that a separate and specific MSA does not exist for each SOW. The SOW would normally prevail over the MSA in determining the eligibility for tax benefits unless the Assessing Officer is able to establish that there has been splitting up or reconstruction of an existing business or non-fulfillment of any other prescribed condition.

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(4)	Would tax benefit under section 10AA continue to be available in case of a slump sale of a unit?	The answer to this issue would depend on the facts of each case, such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfillment of prescribed conditions.
(5)	Can tax benefits under section 10AA be enjoyed by an eligible SEZ unit consequent to its transfer to another SEZ?	It is clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one SEZ to another in accordance with Instruction No. 59 of Department of Commerce, if all the prescribed conditions are satisfied under the Income-tax Act, 1961. It is further clarified that the unit so relocated will be eligible to avail of the tax benefit for the unexpired period at the rates applicable to such years.
(6)	Whether new units set up in the same location where there is an existing eligible unit would amount to expansion of the existing unit?	This issue is a matter of fact requiring examination and verification. However, it has been clarified that setting up of such a fresh unit in itself would not make the unit ineligible for tax benefits, provided – (i) the unit is set-up after obtaining necessary approvals from the competent authorities; (ii) it has not been formed by splitting or reconstruction of an existing business; and (iii) it fulfils all other conditions prescribed under section 10AA.

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