Finance Act 2013

Important Income Tax Amendments

Applicable for ICAI DTL- Final May 2014 attempt

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Index of Amendments

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Taxes and Surcharge

Surcharge on income-tax

For A.Y. 2014-15- Surcharge on income tax is to be levied as follows :

	Upto Rs. 1 Crore	Between Rs. 1 crore to 10 Crore	Beyond Rs. 10 Crore
On Domestic Companies	Nil	5%	10%
On Foreign Companies	Nil	2%	5%
On Non Corporate Assessees	Nil	10%	10%

Marginal relief is available in cases where taxable income is exceeding Rs. 1 crore/10 Crore.

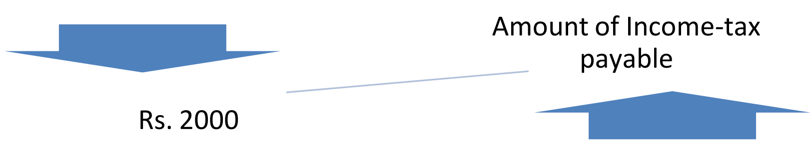
Surcharge on Dividend Distribution Tax

Surcharge on Dividend Distribution Tax (DDT) payable by a company has been increased to 10% in all cases. It is to be noted that surcharge on DDT is levied irrespective of amount of dividend or income of the company. Thus effective rate of DDT shall be 16.995% taking into account basic rate of 15% + surcharge 10% and cess 3%.

Tax rebates of Rs 2000 to individual resident having income up to Rs 500000 – Sec. 87A

With a view to provide tax relief to the individual tax payers whose total income does not exceed Rs. 5,00,000, a rebate is being provided from the tax payable.

The rebate shall be equal to :



whichever is less.

Impact

- Any individual having income up to Rs 2,20,000 will not be required to pay any tax.
- Every individual having total income between Rs. 2,20,000/- and Rs. 5,00,000/- shall get a tax relief of Rs. 2000/-.

Mutual Fund Dividend Tax (Sec. 115R)

Rate of Mutual Fund Dividend Tax shall now be as follows :

	Equity Oriented Fund	Other Funds
Paid to Individual/HUF	0%	25%+S.C. 10% + Cess 3%=28.325%
Paid to Others	0%	30% +S.C. 10% + Cess 3%=33.99%

Apart from above, in case of a mutual fund under Infrastructure debt fund (IDF) scheme, dividend paid to non resident investor shall be subjected to tax @5%+S.C. 10% + Cess 3%.

This amendment become effective from 1st June, 2013.

Taxation of Income by way of Royalty or Fees for Technical Services

Section 115A of the Income-tax Act provides for determination of tax in case of a non-resident taxpayer where the total income includes any income by way of Royalty and Fees for technical services (FTS) received and which are not effectively connected with permanent establishment, if any, of the non-resident in India.

The tax is payable on the gross amount of income without allowing any deduction for any expenditure. The present rate of this tax is 10%. It is being increased to 25%.

Transactions in Immovable Properties

Tax Deduction at Source (TDS) on transfer of immovable properties (other than agricultural land) : New Section 194-IA

A new section 194-IA is being introduced to propose TDS in case of purchase of immovable property.

Following are the salient features of the new provision :

- Section is applicable on every person who purchases from a resident an immovable property. *(all individual, H.U.F., every body is covered)*
- Applicable only when seller is resident in India. (in case seller is non- resident, TDS is already applicable by virtue of Sec. 195.
- Rate of TDS is 1% of purchase consideration.
- Applicable when the purchase consideration paid or payable for the transfer of property exceeds Rs. 50,00,000.
- The tax is to be deducted at the time of credit of amount to the account of seller or at the time of making the payment, whichever is earlier. *(This means that in case of payments in instalments, TDS shall be required at the time of payment of every instalment)*
- Purchase of rural agricultural land (as defined u/s. 2(14)) is exempt from this provision.
- The person deducting tax under this section shall not be required to obtain TAN.
- In case of compulsory acquisition of any immovable property under any law for the time being in force, TDS is to be made u/s. 194LA and accordingly no TDS is required under this section.

The provision is applicable w.e.f. 01-06-1013 and shall accordingly apply on purchase of property made on or after this date.

Land in Rural Area- Change in Definition

Various provisions of Income Tax act and Wealth Tax act gives exemption to land situated in rural area.

For this purpose, land situated within the municipal limits of any township having population of more than 10,000 is treated as situated in "urban area".

Apart from this, land situated beyond the municipal limit but upto a certain distance is also treated as "urban land". From A.Y. 2014-15 following land shall be treated as situated in urban area and accordingly shall not be eligible for exemptions granted to land in rural area.

Township having a population of more than ten thousand but upto one lakh	• Land situated upto 2 kilometers from the municipal limits
Township having a population of more than one lakh but upto ten lakh	• Land situated upto 6 kilometers from the municipal limits
Township having a population of more than ten lakh	• Land situated upto 8 kilometers from the municipal limits

Further the section is providing that distance is to be “measured aerially”.

Provisions Affected

Above amendments shall be applicable for following provisions :

Sec. 2(1A)- Agriculture Land	Sec. 2(14)- Capital Assets- Exemption to Agriculture Land	Sec. 2(ea) of Wealth Tax Act- Exemption to Rural Land

Population according to which census

With respect to Income tax, population for this purpose is to be taken according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

However for Wealth tax, population for this purpose is to be taken according to the last preceding census of which the relevant figures have been published before the valuation date.

For sale of immovable property, stamp duty value shall be treated as sale consideration, even if sold as “Business Asset” :New Sec. 43CA

Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than its stamp duty value, then such stamp duty value is taken as full value of consideration under section 50C of the Income-tax Act. Sec. 50C provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade.

Now it has been provided by inserting a new section 43CA that even in case of stock in trade also, 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 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”.

Provisions of Sec. 50C(2) and 50C(3) regarding reference to valuation officer shall be applicable in this case also.

Stamp Duty Value- Relevant Date

It has also been provided that 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 and not as on the date of registration for such transfer.

However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by any mode other than cash on or before the date of the agreement.

Taxability of immovable property received for inadequate consideration- Sec. 56

The existing provisions of section 56 of the Income-tax Act provide that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

The existing provision does not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration.

From A.Y. 2014-15, if any immovable property is received for a consideration which is less than the stamp duty value of the property and the difference exceeds Rs. 50000, this difference shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

Stamp Duty Value- Relevant Date

Here again 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, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement.

Corporate Assessees

Incentive for acquisition and installation of new plant or machinery by manufacturing company- Investment Allowance (Sec. 32AC)

A new section 32AC is being inserted in the Income tax Act to provide that where a company invests minimum Rs. 100 crore in new plant and machinery in next 2 years, it shall get an investment allowance of 15% of the cost of new plant and machinery.

The salient features of the new scheme are as follows :

Conditions for allowability

1. This deduction is available only to a company.
2. The company should be engaged in the business of manufacture or production of any article or thing.
3. The deduction is available in respect of new plant or machinery acquired and installed between 01.04.2013 to 31.03.2015.
4. The aggregate amount of actual cost of such new plant or machinery should exceed Rs. 100 crore.

Calculation of Deduction

The deduction is allowed as follows :

1. The deduction shall be allowed @15% of the actual cost of new plant or machinery.
2. This is a one time deduction i.e. it shall not be allowed every year.
3. Deduction shall be allowed in P.Y. 2013-14, if the actual cost of new plant or machinery acquired and installed during the year exceeds Rs. 100 crore.
4. Deduction for P.Y. 2014-15 shall be 15% of total actual coast of new plant or machinery acquired and installed between 01.04.2013 to 31.03.2015 as reduced by deduction allowed in the P.Y. 2013-14.

For example

(Rs. In Crore)

Actual cost of new Plant or Machinery acquired and installed in :	Case 1	Case 2	Case 3
P.Y. 2013-14	120	90	60
P.Y. 2014-15	60	30	30
Deduction available for :			
P.Y. 2013-14	18	0	0
P.Y. 2014-15	9	18	0

Deduction Not Available

This deduction is not available in respect of following plant & machinery :

1. Ship or aircraft

2. Any plant or machinery which before its installation by the assessee was used either within or outside India by any other person (i.e. any 2nd hand plant & machinery)
3. Any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house.
4. Any office appliances including computers or computer software.
5. Any vehicle.
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.

Cancellation of Deduction

If the new plant or machinery is sold or otherwise transferred, within a period of 5 years from the date of its installation, the amount of deduction allowed under this section in respect of such new asset shall be treated as taxable business income of the assessee of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

☛ *This allowance is separate from depreciation and hence shall not be required to be reduced for calculating w.d.v..*

Buy Back of Unlisted Shares by Companies (Sec. 115QA)

To the list of different taxes payable by a company under the Income tax act, which already includes Income Tax/MAT and Dividend Distribution Tax, one more tax has been added. This tax is payable by the company on buy back of its own unlisted shares.

1. In case of buy back of its own shares from shareholder (other than shares listed on a recognised stock exchange) by a domestic company, an additional tax is payable by the company.

2. The rate of tax is **20%** + Surcharge (10% of tax) + Education Cess.

3. The amount on which this tax is payable is to be calculated as follows :

   Consideration paid by the company on buy-back of shares

   minus

   the amount which was received by the company for issue of such shares

4. This tax is payable in addition to the income-tax chargeable in respect of company's total income. Even if no income-tax is payable by the company on its total income, this tax is payable.

5. The principal officer of the domestic company and the company are liable to pay this tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholder on buy-back of shares

6. No deduction under any other provision of this Act is allowed to the company or a shareholder in respect of the amount of this tax .

7. In case of default in payment of tax within the given time limit, the principal officer of the company and the company shall be liable to pay interest @ 1% for every month or part thereof on the amount of such tax for the period of delay.

8. Further, in case of default, the principal officer of the company and the company shall be deemed to be an assessee in default in respect of the amount of tax payable and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Share Buy Back : Treatment For Share Holders

Any income arising to a shareholder, on account of buy back of shares by the company (not being shares listed on a recognised stock exchange) as referred to in section 115QA, is fully exempt from tax in the hands of shareholder. [Sec. 10(34A)]

This amendment will take effect from 1st June, 2013.

Dividend received from Foreign Subsidiary : Sec. 115BBD

Rate of tax

Any dividend received by an Indian company from its foreign subsidiary (in *which Indian Company holds 26% or more of equity share capital),* is taxed under Sec. 115BBD at a lower rate of 15%. Earlier this lower tax rate was to remain applicable only upto FY 12-13. Now this shall continue for one more year.

Dividend Distribution Tax (Sec. 115-O)

1. The amount on which this tax is payable is to be calculated as follows :

Amount of dividend declared, distributed or paid by the assessee company

minus

i. Dividend received by it from its subsidiary
ii. Dividend paid to any person for New Pension System Trust

- Amount of dividend received from the subsidiary is to be reduced only when
  - In case of subsidiary being an Indian company, it has paid tax under this section on such dividend.
  - In case of subsidiary being an foreign company, the tax is payable by the domestic company u/s. 115BBD.
- For this section, a company is to be treated as subsidiary of another only if that other holds more then 50% of the nominal value of equity share capital of the company.

Deductions

Expanding the scope of deduction and its eligibility under section 80CCG

The existing provisions of section 80CCG provide that a resident individual who has acquired listed equity shares in accordance with the Rajiv Gandhi Equity Savings Scheme(RGESS), shall be allowed a deduction of 50% of the amount invested in such equity subject to maximum Rs. 25000.

The deduction is a one-time deduction and is presently available only in one year in respect of the amount so invested. The deduction is available to a new retail investor whose gross total income does not exceed ten lakh rupees.

Following changes have been introduced in this provision w.e.f. A.Y. 2014-15

- Investment in listed units of an equity oriented fund shall also be eligible for deduction in accordance with the provisions of section 80CCG.
- The deduction under this section shall be allowed for three consecutive years, beginning with the year in which the listed equity shares or listed units were first acquired by the new retail investor.
- The limit of gross total income of the tax payer has been increased to Rs. 12,00,000.

Donations to National Importance Funds : Sec. 80G

Donation given to National Children's Fund shall now be eligible for 100% deduction u/s. 80G.

Additional Deduction upto Rs. 1,00,000 for Housing Loan Interest- Sec. 80EE

Under the existing provisions of section 24 of the Income-tax Act, a deduction of interest paid on housing loan is allowed. In case of property used for self residential purpose, this deduction is limited upto Rs. 150000.

An additional deduction of Rs. 100000 in respect of interest on loan taken for residential house property is proposed to be provided by inserting a new section 80EE in the Income-tax Act.

Following are the provisions of this section :

Payment Eligible for Deduction : Interest payable on loan taken by assessee from any financial institution for the purpose of acquisition of a residential house property.

Type of assessee : Only individual

Amount of Deduction : Maximum Rs. 1 lakh.

Period of Deduction

- ✓ The deduction is available only for the P.Y. 2013-14.
- ✓ However where the interest payable for the year is less then Rs. 1,00,000, the balance deduction is available in next year.

Conditions to be fulfilled

(i) The loan has been taken from a bank or a housing finance company.
(ii) The loan is sanctioned between 01-04-13 to 31-03-14.
(iii) The amount of loan is upto twenty-five lakh rupees
(iv) The value of the residential house property is upto forty lakh rupees.
(v) The assessee does not own any residential house property on the date of sanction of the loan.

Link with interest deductible u/s. 24

- If the house is a self occupied property, interest upto Rs. 1,50,000 is deductible u/s. 24. Deduction under section 80EE shall be allowed only for that much interest which exceeds Rs. 1,50,000.
- If the house is not self occupied property, the total interest is allowed as deduction u/s. 24. As such no deduction shall be available u/s. 80EE.

Contribution to Political Parties : not to be in cash for deduction under section 80GGB & section 80GGC

Under the existing provisions of section 80GGB and 80GGC, any sum contributed by an Indian company to any political party or an electoral trust in the previous year, is allowed as 100% deduction in computing the total income of the tax payer.

It is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under these sections if the contribution is by way of cash.

Deduction for wages paid to regular workman : Sec. 80JJAA

Sec. 80JJAA provides exemption in respect of wages paid to new regular workman appointed during the year subject to certain conditions.

It is proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to only such Indian Company which derives profits from manufacture of goods in a factory and shall be available only in respect of workman employed in factory.

Insurance Sector

Raising the percentage of eligible premium for life insurance policies of persons with disability or disease

As per Sec. 10(10D) as amended last year, any sum received under a life insurance policy is exempt, subject to the condition that the premium paid for such policy does not exceed 10% of the 'actual capital sum assured'.

Similarly as per the existing provisions contained in section 80C, the deduction is available in respect of any premium paid on an insurance policy of up to 10% of the 'actual capital sum assured'.

Some insurance policies for persons with disability or suffering from specified diseases provide for an annual premium of more than 10% of the actual capital sum assured.

To take care of this, for the purpose of Sec. 10(10D) and Sec. 80C both, the limit of premium is being increased from 10% to 15% of the policy amount for the insurance on the life of any person who is :-

- a person with disability or a person with severe disability as referred to in section 80U, or
- suffering from disease or ailment as specified in the rules made under section 80DDB.

The policy need to be issued on or after 01-04-2013 for this purpose.

Keyman Insurance Policy

Any sum received under a life insurance policy is exempt from tax u/s. 10(10D). However this exemption is not available to the amount received under a keyman insurance policy.

In some cases keyman insurance policy are being assigned to the keyman before its maturity. The keyman pays the remaining premium on the policy and claims the sum received under the policy as exempt on the ground that the policy is no longer a keyman insurance policy. Thus, the exemption under section 10(10D) is being claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person.

To check this, now it is being provided that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy. Sec. 10(10D) is being amended for this purpose.

Other Amendments

Exemption to Income from Sale of Crude Oil

Any income received in India in Indian currency by a foreign company on account of sale of crude oil, *any other goods or rendering of services, as may be notified by the Central Government in this behalf*, to any person in India shall be exempt from tax u/s. 10(48)

Provided that—

(i) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government;

(ii) having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf; and

(iii) the foreign company is not engaged in any activity, other than receipt of such income, in India.

Clarification for amount to be eligible for deduction as bad debts in case of banks

Under the existing provisions of section 36(1)(viia) of the Income-tax Act, in computing the business income of banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein.

The limit specified under section 36(1)(viia)(a) for Indian Banks is 7.5% of gross total income of such banks and 10% of the aggregate average advance made by the rural branches of such banks.

To the banks, deduction on account of actual bad debt is allowed only for 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) of the Act.

Certain judicial pronouncements have created doubts by interpreting that there are separate accounts in respect of provision for bad and doubtful debt for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances.

Now it is being clarified by way of an explanation that the amount of deduction in respect of the bad debts actually written off 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.

Disallowance of certain fee, charge, etc. in the case of State Government Undertakings

Section 40 of the act provides for certain amounts which are not allowed as deduction while calculating taxable business income of an assessee. In the list of disallowable items, one more item is being added now which is applicable for those assessees who are "state government undertaking".

It is proposed to amend section 40 of the Income-tax Act to provide that :-

- any amount paid by way of fee, charge, etc. which is levied exclusively on, or
- any amount appropriated from,
- a State Government undertaking,
- by the State Government,

shall not be allowed as deduction for the purposes of computation of income of such undertakings under the head "Profits and gains of business or profession".

State Government undertaking: Meaning
For the purposes of this provision, a State Government undertaking includes—

- a corporation established by or under any Act of the State Government;
- a company in which more than 50% of the paid-up equity share capital is held by the State Government;
- a company in which more than 50% of the paid-up equity share capital is held by the entity referred to in clause (*i*) or clause (*ii*) (whether singly or taken together);
- a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government

Commodities Transaction

- U/s. 36of the income tax act, Commodities Transaction Tax (CTT) shall be allowed as deductible expenditure while calculating business income of the tax payer.
- An transaction in respect of trading in commodity derivatives carried out in a recognised association shall not be treated as "Speculative trasanction".

Tax Residency Certificate

Vide F.A. 2012, it has been made mandatory that for availing benefit of a Double Taxation Avoidance Agreement (DTAA) between India and other country, the resident of that other country has to submit a Tax Residency Certificate of that country.

A clarification is being inserted now to provide that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the DTAAs.

Liability of partners of limited liability partnership in liquidation.(sec. 167C)

Where any tax due from a limited liability partnership in respect of any income of any previous year cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax.

The person shall be saved from the liability if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.

For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.

Liability of directors of private company in liquidation. (Sec. 179)

Where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

The person shall be saved from the liability if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.

Specific Entities Related Amendments

Alternative Investment Funds included in the definition of Venture Capital Fund- Sec. 10(23FB)

The definition of Venture Capital Fund shall now include a fund/company which has been granted a certificate of registration as Venture Capital Fund under the SEBI(Alternative Investment Funds) Regulations, 2012 (AIF regulations).

Securitisation Trust

1. Any income of a securitisation trust from the activity of securitisation is fully exempt from tax. [Sec. 10 (*23DA*)]
2. Any income by way of distributed income referred to in section 115TA, received from a securitisation trust by an investor of the said trust is fully exempt from tax. [Sec. 10 (35A)]

3. **Tax on Securitisation Trust on income distributed to investors [Sec. 115TA] :**
   - In respect of amount of income distributed by the securitisation trust to its investors , securitisation trust shall be liable to pay additional income-tax on such distributed income at the following rate:
     (i) 25% on income distributed to an individual or a Hindu undivided family,
     (ii) 30% on income distributed to any other person,
     (iii) Nil on income distributed to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act.

- The tax is required to be paid to the credit of the Central Government within 14 days from the date of distribution or payment of such income, whichever is earlier.
- The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th September in each year, furnish to the prescribed income-tax authority, a statement giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.
- Where the person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust fails to pay the whole or any part of the tax, within the time, he or it shall be liable to pay simple interest at the rate of 1% every month or part thereof on the amount of such tax for the period of delay. [Sec. 115TB]

  ☛ "Securitisation" and "securitization trust" are the concepts defined under the SEBI regulations or guidelines of RBI.

Investor Protection Fund

Exemption u/s. 10(23ED) is being provided to Investor Protection Fund in respect of the income which is in the nature of contributions received from a depository.

The fund must have been set up by a depository in accordance with the regulations of the Central Government.

Where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared.

TDS/TCS

Tax Deduction at Source (TDS) on transfer of immovable properties (other than agricultural land) : New Section 194-IA

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TDS from Income by way of interest on certain bonds and government securities (Sec. 194LD)

Type of Assessee (Payer)	Any person
Type of Payment	Interest to a Foreign Institutional Investor or a Qualified Foreign Investor, Payable on or after the 01-06-2013 but before 01-06-2015 Payable in respect of investment made by the payee in- i) a rupee denominated bond of an Indian company or (ii) a Government security.
Time of Deduction	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
Rate of TDS	5%

Sec. 206AA not applicable where TDS is u/s. 194LC

U/s. 206AA, if PAN of deductee is not available then minimum rate of TDS is 20%. w.e.f. 01-06-2013, this provision shall not be applicable in respect of payment of interest on Long Term Infra. Bonds , where payment is made to any non resident u/s. 194LC.

T.C.S. from buyer of Bullion and Jewellery [Sec. 206C (1D)]:

Every person, being a seller who receives **any amount in cash as consideration** for **sale of bullion** ~~(excluding any coin or any other article weighing ten grams or less)~~ **or jewellery,** shall at the time of receipt of such amount in cash, collect from the buyer, a sum equal to 1% of sale consideration as income-tax, if such consideration exceeds –

1. For sale of bullion, Rs. 2,00,000.
2. For sale of jewellery, Rs. 5,00,000.

Procedural Provisions

Application of seized assets under section 132B

The existing provisions contained in section 132B of the Income-tax Act, *inter alia*, provide that seized assets may be adjusted against any existing liability under the Income-tax Act and Wealth-tax Act, in respect of which assessee is in default or deemed to be in default.

Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature.

Accordingly, it is proposed to amend the aforesaid section so as to clarify that the existing liability does not include advance tax payable.

Return of Income filed without payment of self- assessment tax to be treated as defective return

Sec. 139(9) is being amended to provide that where return of income has been filed without payment of self assessment of tax together with interest, the return shall be treated as defective return.

It may be noted that as per the section, where 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 15 days. If the defect is not rectified within the time allowed by the Assessing Officer, the return is treated as an invalid return and then all the provisions of the act is applicable as if no return has been filed by the assessee.

New criterion for directing special audit u/s. 142(2A)

The existing provisions contained u/s. 142(2A) of the Income-tax Act provide that 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, give direction for special audit of assessee's accounts.

Presently, as per the language of law, the only criterion for special audit is the "nature and complexity of the accounts". Now it is being proposed that direction for special audit may be issued having regard to the :

- the nature and complexity of the accounts,
- volume of the accounts,
- doubts about the correctness of the accounts,
- multiplicity of transactions in the accounts
- specialised nature of business activity of the assessee

This amendment will take effect from 1st June, 2013.

Time Limit for completion of assessment-when reference has been made to TPO – Sec. 153/153B

When during the course of any assessment , matter has been referred to Transfer Pricing Officer (T.P.O.), the time limit for completion of assessment u/s. 153/153B shall be extended by 1year.

This provision is applicable for all types of assessments i.e. Scrutiny Assessment, Best Judgement Assessment, Re assessment, Fresh Assessment and Search Assessment.

Penalty under section 271FA for non-filing of Annual Information Return

U/s. 271FA, penalty of Rs. 100 per day may be charged if Annual information return has not been furnished upto the due date.

It is proposed to amend the section so as to provide that if the A.I.R. is not filed even after a notice by A.O., penalty may be levied @Rs. 500 per day after the time period specified in notice expired.

E-filing of Wealth Tax Returns

Presently, returns of wealth tax are filed manually. It is proposed to commence e- filing of wealth tax returns also.

Note :

1. Amendments in below mentioned sections have not been covered in this material, being of insignificant/clarificatory nature -Sec. 80D, 80IA, 115AD,195, 196D, 204, 252.

2. Amendments related with General Anti Avoidance Rule (GAAR) (Sec. 144BA, 144C,153D, 253, 245N, 245R, 246A and 253) have also not been covered in this material as they are applicable from A.Y. 2016-17.

Important Circulars

SECTION 40(a)(ia) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - INTEREST, ETC., PAID TO RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE - CLARIFICATION REGARDING CONFLICTING INTERPRETATIONS BY JUDICIAL AUTHORITIES ON APPLICABILITY OF PROVISIONS OF SECTION 40(a)(ia) WITH REGARD TO AMOUNT NOT DEDUCTIBLE IN COMPUTING INCOME CHARGEABLE UNDER HEAD 'PROFITS AND GAINS OF BUSINESS OR PROFESSION'

CIRCULAR NO.10/DV/2013 , DATED 16-12-2013

It has been brought to the notice of the Board that there are conflicting interpretations by judicial authorities regarding the applicability of the provisions of section 40(a)(ia) of the Income-tax Act, 1961 ('the Act') with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'.

2. Section 40(a)(ia) of the Act reads as under:
"…any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139...":

3. In the case of *Merilyn Shipping & Transports* v. *Addl. CIT* [2012] 20 taxmann.com 244 (Visakhatatnam) it was held by Special Bench of ITAT, Vishakhapatnam, that the provisions of section40(a)(ia) of the Act would apply only to the amount which remained payable at the end of the relevant financial year and could not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source. The order of the Special Bench has since been put under interim suspension by the Andhra Pradesh High Court.

3.1 The Hon'ble Calcutta High Court and Hon'ble Gujarat High Court in the case of *Commissioner of Income-tax, Kolkata-XI* v. *Crescent Exports Syndicate* [2013] 33 taxmann.com 250 (Calcutta) and *Commissioner of Income-tax-IV* v. *Sikandarkhan N Tunvar* [2013] 33 taxmann.com 133 (Gujarat) respectively, have held that section 40(a)(ia) of the Act would cover not only the amounts which are payable at the end of the previous year but also which are payable at any time during the year.
3.2 The Hon'ble High Courts have further held that the intention of the legislation was to disallow certain types of expense, subject to provisions of Chapter XVII-B which at payable at any time during the year but no tax was deducted at source or if deducted was not paid within the stipulated time. There is no such condition that amount should remain payable at the end of the year.

3.3 The Hon'ble Allahabad High Court in *CIT* v. *Vector Shipping Service (P.) Ltd.* [2013] 38 taxmann.com 77 (Allahabad) has affirmed the decision of the Special Bench in *Merilyn Shipping* that for disallowance under section 40(a)(ia) of the Act, the amount should be payable and not which has been paid during the year. However, the decisions of the Hon'ble Gujarat and Calcutta High Courts (*supra*) were not brought to the attention of the Hon'ble Allahabad High Court.

3.4 In the case of *ACIT, Circle 4(2), Mumbai* v. *Rishti Stock and Shares Pvt. Ltd.* in ITA No. 112/Mum/2012, Hon'ble ITAT, Mumbai in its order dated 2-8-2013 has examined the decision of the

Hon'ble Allahabad High Court (*supra*) as regards to section 40(a)(ia) of the Act and concluded that the same was an 'orbiter dicta' while the decisions of the Hon'ble Gujarat and Calcutta High Court (*supra*) were '*ratio decidendi*'. The ITAT accordingly applied the view taken by the Hon'ble Gujarat and Calcutta High Court as *ratio decidendi* prevails over an *orbiter dicta*.

4. After careful examination of the issue, the Board is of the considered view that the provision of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term "payable" would include "amounts which are paid during the previous year".

SECTION 10A, READ WITH SECTIONS 10AA & 10B OF THE INCOME-TAX ACT, 1961 -

FREE TRADE ZONE - CLARIFICATION ON ISSUES RELATING TO APPLICABILITY OF CHAPTER IV OF THE ACT AND SET OFF AND CARRY FORWARD OF BUSINESS LOSSES

CIRCULAR NO. 7/DV/2013 /MISC./M-116/2012-ITJ], DATED 16-7-2013

It has been brought to the notice of the Board that the provisions of 10A/10AA/10B/10BA of the Income-tax Act, with regard to applicability of Chapter IV of the Act and set off and carry forward of losses, are being interpreted differently by the Officers of the Department as well as by different High Courts.

All income for the purposes of computation of total income is to be classified under the following heads of income and computed in accordance with the provisions of Chapter IV of the Act-

- Salaries
- Income from house property
- Profits and gains of business and profession
- Capital gains
- Income from other sources

The income computed under various heads of income in accordance with the provisions of Chapter IV of the IT Act shall be aggregated in accordance with the provisions of Chapter VI of the IT Act, 1961. This means that first the income/loss from various sources *i.e.* eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act.

Thereafter, the income from one ahead is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or sections 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee.

If after aggregation of income in accordance with the provisions of sections 70 and 71 of the Act, the resultant amount is a loss from eligible unit it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.