Circulars/Notifications Relevant for CA(Final): May 2015 Attempt

Circular No. & Date	Summary/Content
10/2013 dt. 16.12.2013	**Disallowance of any sum paid to a resident at any time during the previous year without deduction of tax under section 40(a)(ia):** Section 40(a)(ia) provides for disallowance of 30% of the sum payable to a resident, onwhich 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 section 139(1). There have been conflicting interpretations by judicial authorities regarding the applicability of provisions of section 40(a)(ia), with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'. Some court rulings have held that the provisions of disallowance under section 40(a)(ia) apply only to the amount which remained payable at the end of the relevant financial year and would not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source. **Departmental View: The CBDT's view is that the provisions of section 40(a)(ia) 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), the term "payable" would include "amounts which are paid during the previous year".**
1/2014 dt. 13.01.2014	**Non-deduction of tax at source on the service tax component comprised in payments made to residents, if the service-tax component is indicated separately** The CBDT vide this Circular has clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid/payable without including such service tax component.
2/2014 dt. 20.01.2014	**Taxability of Awards received by the Sportsmen:** The CBDT had issued Circular No.447 on 22nd January, 1986 clarifying that awards received by a sportsman, who is not a professional, will not be liable to tax in his hands as the award will be in the nature of a gift and/or personal testimonial. This Circular was applicable when the gift was not taxable in the hands of the recipient. Thereafter, in the year 2005, there was a fundamental change in the manner of treatment of gift through insertion of sub-clauses (xiii), (xiv) and (xv) of section 2(24). Corresponding amendments were also made in section 56(2) by insertion of clauses (v), (vi) and (vii), thereby making an amount of money or immovable property received without consideration taxable subject to provisions of these clauses. Consequently, the CBDT has, through this Circular, clarified that Circular No.447 had become inapplicable w.e.f. 1-4-2005, since the statutory provisions have overridden the same. It may however be noted that, in terms of provisions of section 10(17A), Central Government approves awards instituted by Central Government, State Government or other bodies as also the purposes for rewards instituted by Central Government or State Government from time to

	time. Tax exemption can be sought by eligible persons in respect of awards or rewards covered by such approvals. **Thus as on date except where an award received by a sportsman is exempt under section 10(17A), it shall be taxable in the hands of relevant sportsman.**
5/2014 dt. 11.02.2014	**<u>Clarification regarding disallowance of expenditure under section 14A:</u>** The Finance Act, 2001 had introduced section 14A, with retrospective effect from 1stApril, 1962, to provide that no deduction shall be allowed in respect of expenditure incurred relating to income which does not form part of total income. A controversy has arisen as to whether disallowance can be made by invoking section 14A even in those cases where no income has been earned by an assessee, which has been claimed as exempt during the financial year. The CBDT has, through this Circular, clarified that the legislative intent is to allow only that expenditure which is relatable to earning of income. Therefore, it follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether such income has been earned during the financial year or not. The above position is clarified by the usage of the term “includible” in the heading to section 14A [Expenditure incurred in relation to income not includible in total income] and Rule 8D [Method for determining amount of expenditure in relation to income not includible in total income], which indicates that it is not necessary that exempt income should necessarily be included in a particular year’s income, for triggering disallowance. Also, the terminology used in section 14A is “income under the Act” and not “income of the year”, which again indicates that it is not material that the assessee should have earned such income during the financial year under consideration. **In effect, section 14A read along with Rule 8D provides for disallowance of expenditure even where the taxpayer has not earned any exempt income in a particular year.**
9/2014 dt. 23.04.2014	**<u>Clarification regarding treatment of expenditure incurred for development of roads/highways in Build-Operate-Transfer (BOT) agreements under the Income Tax Act, 1961:</u>** The CBDT has, vide this Circular, clarified the tax treatment of expenditure incurred on development and construction of infrastructural facilities like roads/highways on Build-Operate-Transfer (BOT) basis with right to collect toll - whether the same is entitled todepreciation under section 32(1)(ii) or can be amortized by treating it as an allowable business expenditure under the relevant provisions of the Income- tax Act, 1961. **In view of the above, the CBDT, in exercise of the powers conferred under section 119, clarifies that the cost of construction on development of infrastructure facility, being roads/highways under BOT projects, may be amortized and claimed as allowable business expenditure under the Act in the following manner:** (i) The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortised evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility. (ii) Where an assessee has claimed any deduction out of initial cost of development of

	infrastructure facility of roads/highways under BOT projects in earlier years, the total deduction so claimed for the assessment years prior to assessment year under consideration may be deducted from the initial cost of infrastructure facility of roads/highways and the cost so reduced shall be amortised equally over the remaining period of toll concessionaire agreement. The clarification given in this Circular is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.
10/2014 dt. 06.05.2014	**Eligibility of deduction under section 80-IA for unexpired period, in case of an undertaking or enterprise developing an infrastructure facility, industrial park, SEZ and transferring the same to another enterprise or undertaking for operation and maintenance:** The CBDT has, through this circular, clarified that if – I. an enterprise or undertaking develops an infrastructure facility, industrial park or special economic zone, as the case may be; and II. transfers it to another enterprise or undertaking for operation and maintenance in accordance with the proviso to clause (i) or clause (iii) of sub-section (4) of section 80-IA; and III. this transfer is not by way of amalgamation or demerger, IV. the transferee shall be eligible for the deduction for the unexpired period. **Thus this circular provides benefit to the transferee undertaking for the remaining period under section 80IA.**
13/2014 dt. 28.07.2014	**Taxation of Alternative Investment Funds having status of Non-charitable trusts under Income-tax Act, 1961:** The SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations), aims at regulating all forms of private pool of funds in India. These regulations divide AIFs into three broad categories – Category I, Category II and Category III AIFs, on the basis of the operational strategies, objectives and fund structure. Category I AIFs include Venture Capital Funds which are established as a trust and Venture Capital Companies. Category I AIFs are eligible for "pass through status" under section 10(23FB) read with section 115U, in respect of income which arises to the fund from investment in venture capital undertaking (VCU), provided they comply with the additional conditions laid down under the Income-tax Act, 1961. Such income accruing or arising or received by a person out of investment made in a Category I AIF fulfilling the prescribed conditions under the Income-tax Act, 1961 shall be taxable in the like manner as if the person had made a direct investment in the VCU. In effect, the VCF (falling under Category I AIF) enjoys a pass through status in respect of such income under section 10(23FB). A large number of AIF's registered with SEBI have been set up in the form of non-charitable trusts. In this regard, clarification was sought from the CBDT about tax treatment in cases of AIFs being non-charitable trusts where the name of investor and beneficial interest are not explicitly known on the date of its creation owing to such information becoming available only when the fund starts accepting contributions from the investors. The issue is whether the income of such funds would be taxable in the hands of the trustees of the AIF in the capacity of a 'Representative assessee as defined in section 160(1)(iv) or in the hands of investors. In this regard, the CBDT has clarified that where the trust deed does not specify the name of

	investors or their beneficial interests, the provisions of section 164(1) would apply and the entire income of fund shall be liable to be taxed at Maximum Marginal Rate of income tax in the hands of the trustees of such AIF's in their capacity as 'Representative Assessee'. Consequently, the provisions of section 166 need not be invoked in the hands of the investor, as the income has already been subject to the tax in the hands of the Representative Assessee in accordance with section 164(1). However, in case of funds, where the name of beneficiaries and their interest in the Fund are determined i.e., stated in the trust deed, the tax on whole of the income of the fund – consisting of or including profit and gains of business, would be leviable upon the trustees of such AIF, being 'Representative Assessee' at maximum marginal rate in accordance with the provisions of section 161(1A). The Circular further clarifies that the tax treatment given above will not be operative in the area falling in the jurisdiction of a High Court which has taken or takes a contrary decision on the issue.
8/2014 dt. 31.03.2014	**<u>Taxability of partner's share, where the income of the firm is exempt under ChapterIII / deductible under Chapter VI-A:</u>** Section 10(2A) provides that a partner's share in the total income of a firm which is separately assessed as such shall not be included in computing the total income of the partner. In effect, a partner's share of profits in such firm is exempt from tax in his hands. An issue has arisen as to the amount which would be exempt in the hands of the partners of a partnership firm, in cases where the firm has claimed exemption/deduction under Chapter III or Chapter VI-A. The CBDT has clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Therefore, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption or deduction available under the provisions of the Act. **Thus this circular has removed the scope of any kind of ambiguity to tax a partner where the firm has availed the exemption under chapter III (e.g. section 10) or chapter VI-A (e.g. section 80IA)**
14/2014 dt. 08.10.2014	**<u>Allowability of deduction under section 10AA on transfer of technical manpower in the case of software industry</u>** The CBDT had earlier clarified vide Circular No.12/2014 dated 18th July, 2014 that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20% of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit. The limit of 20% was considered inadequate and restrictive and it impacted the competitiveness of Indian Software Industry in global market. Consequently, the matter was re-examined by the CBDT, and in supersession of Circular No.12/2014 dated 18th July, 2014, it has now been

	decided that the transfer or re-deployment of technical manpower from existing unit to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year should not exceed 50% of the total technical manpower actually engaged in development of software or IT enabled products in the new unit. Alternatively, if the assessee-enterprise is able to demonstrate that the net addition of the new technical manpower in all units of the assessee-enterprise is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10AA would not be denied provided the other prescribed conditions are also satisfied. The assessee-enterprise will have the choice of complying with any one of the two alternatives given above to avail the benefit of deduction under section 10AA. The Circular also clarifies that: a) it shall be applicable only in the case of assessees engaged in the development of software or in providing IT enabled services in SEZ units eligible for deduction under section 10AA. b) It shall not apply to the assessments which have already been completed. Further, no appeal shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this circular.
15/2014 dt. 17.10.2014	**In reference to section 194LC of the Income Tax Act 1961 the CBDT through this circular has conveyed the approval of Central Government for issue of long-term bonds including long-term infrastructure bonds by Indian companies which satisfy the following conditions:** a). The bond shall be issued at any time on or after 1st October, 2014 but before 1st July, 2017. b). The bond issue shall comply the relevant provisions of Foreign Exchange Management Act, 1999, read with relevant ECB regulations, either under automatic route or approval route. c). The bond issue should have Loan Registration Number issued by Reserve Bank of India. d). The term "long term" means that the bond to be issued should have original maturity term of three years or more Any bond issue satisfying the above conditions would be treated as approved by the Central Government for the purpose of section 194LC and consequentially a concessional withholding tax rate of 5% shall apply.

Notification No. & Date	Summary/Content
39/2013 dt. 31.05.2013	Section 194-IA was inserted by Finance Act, 2013, requiring 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 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. The time and mode of, payment of tax deducted at source under section 194-IA, furnishing Challan-cum-statement and TDS Certificate have been provided, by amending Rules 30, 31A & 31, respectively -

	(i) Such sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of seven days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB [Rule 30]. (ii) The amount so deducted has to be deposited to the credit of the Central Government by electronic remittance within the above mentioned time limit, into RBI, SBI or any authorized bank [Rule 30]. (iii) Every person responsible for deduction of tax under section 194-IA shall also furnish to the DGIT (Systems) or any person authorized by him, a challan-cum- statement in Form No.26QB electronically within seven days from the end of the month in which the deduction is made [Rule 31A]. (iv) Every person responsible for deduction of tax under section 194-IA shall furnish the TDS certificate in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB under Rule 31A, after generating and downloading the same from the web portal specified by the DGIT (Systems) or the person authorized by him [Rule 31].
54/2013 dt. 15.07.2013	Through this notification the Central Government has prescribed the conditions and guidelines for approval of an a Skill Development Project eligible for weighted deduction of 150% under section 35CCD of the Income Tax Act 1961.
57/2013 01.08.2013	Through this notification the Central Government has prescribed the documents and information, which are required to be furnished by the assessee for claiming treaty benefits under section 90 of the Income Tax Act 1961. Accordingly, the assessee shall provide the following information in Form No.10F: (i) Status (individual, company, firm etc.) of the assessee; (ii) Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others); (iii) Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident; (iv) Period for which the residential status, as mentioned in the certificate referred to in section 90(4) or section 90A(4), is applicable; and (v) Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.
73/2013 dt. 18.09.2013	**<u>Notification of Safe Harbour Rules</u>** Section 92CB(1) provides that the determination of arm's length price under section 92C or section

	92CA shall be subject to safe harbour rules. Safe harbour means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee. Section 92CB(2) empowers the CBDT to prescribe such safe harbour rules or circumstances under which the transfer price declared by the assessee shall be accepted by the Income-tax Authorities. Relevant rules are: Rule 10TD read with Rule 10TA, Rule 10TB and Rule 10TC **(Students are advised to go through the complete set of rules mentioned above, in the opinion of author a practical question on applicability of safe harbor rules is important topic from exam point of view).**
79/2013 dt. 07.10.2013	Through this notification the Reverse Mortgage Scheme is amended to include within its scope, disbursement to an annuity sourcing institution for periodic payments by way of annuity to the Reverse Mortgagor
86/2013 01.11.2013	**Notification of '<u>Cyprus</u>' as a Notified Jurisdictional Area under section 94A.**
94/2013 dt. 18.12.2013	Though this notification the Central Government has notified the amended Rajiv Gandhi Equity Saving Scheme 2013 for claiming deduction under section 80CCG of the Income Tax Act 1961.
18/2014 dt. 21.03.2014	Through this notification the Central Government has prescribed the conditions and guidelines for approval of an Agriculture Extension Project eligible for weighted deduction of 150% under section 35CCC of the Income Tax Act 1961.
31/2014 dt. 11.06.2014	**Cost Inflation Index for FY 2014-15 is notified as 1024**
GSR 588 (E) dt. 13.08.2014	**Ciling limit for investment in PPF account increased from Rs. 1 lac to Rs. 1.5 lacs.**
43/2014 dt. 16.09.2014	**Windmills installed on & after 1.4.2014 shall be entitled to a depreciation rate of 80%**
64/2013 dt.19.08.2013	Income received by a foreign company in India in Indian currency from 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 is exempt under section 10(48). For this purpose, the foreign company, as well as the arrangement or agreement, should be notified by the Central Government having regard to the national interest. The foreign company should not be engaged in any other activity in India, except receipt of income under such arrangement or agreement. The Central Government, having regard to the national interest, has notified for the purposes of the said clause, the National Iranian Oil Company, as the foreign company and the Memorandum of Understanding entered between the Government of India in the Ministry of Petroleum and Natural Gas and the Central Bank of Iran on the 20th January, 2013, as the agreement subject to the condition that the said foreign company shall not engage in any activity in India , other than the receipt of income under the agreement aforesaid.

Notes:

1. **Students are advised to give more importance to circulars than notification for exam point of view.**
2. **Please do not waste time of remembering the dates of relevant circular or notification.**
3. **The circular/notification numbers marked in bold may be treated more important from exam point of view.**
4. **For more details/clarify the original text of relevant circular/ notification may be referred to.**