

**F. No. 142/24/2013-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Direct Taxes)**

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**Dated, the 24<sup>th</sup> January, 2013**

# **EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2013**

**CIRCULAR****INCOME-TAX ACT****Finance Act, 2013 – Explanatory Notes to the Provisions of the Finance Act, 2013****CIRCULAR NO. 03/2014, DATED 24<sup>th</sup> JANUARY, 2014****AMENDMENTS AT A GLANCE**

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## 1. Introduction

**1.1** The Finance Act, 2013 (hereafter referred to as the Act) as passed by the Parliament, received the assent of the President on the 10<sup>th</sup> day of May, 2013

and has been enacted as Act No. 17 of 2013. This circular explains the substance of the provisions of the Act relating to direct taxes.

## **2. Changes made by the Act**

### **2.1 The Act has-**

(i) specified the rates of income-tax for the assessment year 2013-14 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2013-14.

(ii) amended sections 2,10, 36,40, 43, 56, 80C, 80CCG, 80D, 80G, 80GGB, 80GGC, 80-IA, 80JJAA, 87, 90, 90A, 115A, 115AD, 115BBD, 115-O, 115R, 132B, 138, 139, 142, 144C, 153, 153B, 153D, 167C, 179, 195, 196D, 204, 206AA, 206C, 245N, 245R, 246A, 252, 253, 271FA, 295 in the Income-tax Act, 1961;

(iii) omitted Chapter X-A and Section 144BA of the Income tax Act, 1961;

(iv) inserted new sections 32AC, 43CA, 80EE, 87A, 194-IA and 194LD in the Income-tax Act, 1961;

(v) inserted Chapter X-A consisting of sections 95 - 102, Chapter XII-DA consisting of sections 115QA – 115QC and Chapter XII-EA consisting of sections 115TA – 115TC, section-144BA and section-194LD in the Income-tax Act, 1961;

(vi) amended **rule 3** of Part **A** of the Fourth Schedule to the Income-tax Act, 1961;

(vii) amended sections 2 and 46 of the Wealth-tax Act, 1957;

(viii) inserted sections 14A and 14B in the Wealth-tax Act, 1957

(ix) amended section 98 of the Finance (No.2) Act, 2004;

(x) introduced Commodity Transaction Tax through Chapter VII.

## **3. Rate structure**

### **3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2013-14**

**3.1.1** In respect of income of all categories of assessee liable to tax for the assessment year 2013-14, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2012 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries"

and charging of tax payable in certain cases during the financial year 2012-13.

The major features of the rates specified in the said Part I are as follows:

### 3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person. –

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:-

Income chargeable to tax	Rate of income-tax		
	Individual (other than senior and very senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person	Individual, resident in India, who is of the age of sixty years or more but less than eighty years (senior citizen)	Individual, resident in India, who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,00,000	Nil	NIL	Nil
Rs. 2,00,001 - Rs. 2,50,000	10%		
Rs. 2,50,001 - Rs. 5,00,000		10%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%



Exceeding Rs. 10,00,000	30%	30%	30%
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In the case of every individual, Hindu undivided family, association of persons or body of individuals, no surcharge is levied.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed in all cases. For instance, if the income-tax computed is Rs. 1,00,000 then the education cess of two per cent is to be computed on Rs. 1,00,000 which works out to Rs. 2,000. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax. Thus, where the amount of tax computed is Rs. 1,00,000, the Education Cess of two per cent is Rs. 2,000, the said Secondary and Higher Education Cess will be computed on Rs. 1,00,000 which works out to be Rs. 1,000. The total cess in this case will amount to Rs. 3,000 (i.e., Rs. 2,000 + Rs. 1,000). No marginal relief shall be available in respect of such Cess.

### 3.1.3 Co-Operative Societies –

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed.

### **3.1.4 Firms –**

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act. No surcharge shall be levied in the case of a firm.

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed. In addition, such amount of tax shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax computed at the rate of one per cent on the amount of tax, in all cases.

**3.1.5 Local Authorities** –In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act. No surcharge shall be levied. However, Education Cess, and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed.

### **3.1.6 Companies –**

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of five per cent of such income tax only where the domestic company has total income exceeding one crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent only in the cases where such company has total income exceeding one crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. Also, in the case

of every company having total income chargeable to tax under section 115JB of the Income-tax Act, 1961 and where such income exceeds one crore rupees, marginal relief shall be provided.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2013-14.**

**3.2.1** In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2013-14 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2013 -14 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2012 except that in case of certain payments made to a non-resident (other than a company) or a foreign company, in the nature of income by way of royalty or fees for technical services, the rate shall be twenty-five percent. of such income instead of ten percent.

#### **3.2.2 Surcharge –**

The tax deducted at source in the following cases shall be increased by a surcharge for purposes of the Union indicated below:-

(i) In case of every non-resident person not being a company, the rate of surcharge is ten percent of tax where the income or aggregate of such income paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(ii) In case of payments made to foreign companies, the rate of surcharge is two per cent of such income tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five percent.

(iii) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm being a resident or a domestic company.

### **3.2.3 Education Cess –**

Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any, in the cases of persons not resident in India including companies other than domestic company. For instance, if income tax on a foreign company is Rs. 1,20,00,000 and the surcharge at the rate of two per cent. is Rs. 2,40,000, then the education cess of two per cent is to be computed on Rs. 1,22,40,000 which works out to Rs. 2,44,800.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the earlier illustration, where the amount of tax deducted is Rs. 1,20,00,000, the surcharge is Rs. 2,40,000, the said Secondary and Higher Education Cess will be computed at the rate of one percent on Rs. 1,22,40,000 which works out to be Rs. 1,22,400. The total cess in this case will, therefore, amount to Rs. 3,67,200 (i.e., Rs. 2,44,800 + Rs. 1,22,400).

### **3.3 Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2013-14.**

**3.3.1** The rates for deducting income-tax at source from Salaries and computing advance tax during the financial year 2013-14 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2013-14 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

#### **3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person –**

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative

society, firm, local authority and company). The basic exemption limit, the rates of tax and slabs of income for various categories remain the same as in financial year 2012-13. The rates of tax during the financial year 2013-14 are as follows:-

Income chargeable to tax	Rate of income- tax		
	Individual (other than senior and very senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India, who is of the age of eighty years or more. (very senior citizen)
Up to Rs. 2,00,000	Nil	Nil	Nil
Rs. 2,00,001 -Rs. 2,50,000	10%	Nil	Nil
Rs. 2,50,001 -Rs. 5,00,000		10%	
Rs. 5,00,001 -Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount

payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.3 Co-operative Societies**

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.4 Firms –**

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a firm having a total income exceeding one crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.5 Local Authorities-**

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income tax and surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

### **3.3.6 Companies-**

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of

five per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of ten per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent only where such company has total income exceeding one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that (i) the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed including surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

**3.4 Surcharge on Additional Income-tax** Where additional income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitization trust to its investors, the additional tax so payable shall be increased by a surcharge of ten percent of such tax.



## **4. Amendment in the definition of Capital Asset**

**4.1** The provisions contained in clause (14) of section 2 of the Income-tax Act, 1961, before amendment by the Act, define the term “capital asset” as property of any kind held by an assessee, whether or not connected with his business or profession. Certain categories of properties including agricultural land have been excluded from this definition. Sub-clause (iii) of clause (14) of section 2 provides that (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, forms part of capital asset.

**4.2** Item (b) of sub-clause (iii) of clause (14) of section 2 has been amended so as to provide that the land situated in any area within the distance, measured aerially (shortest aerial distance), (I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or (II) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh, shall form part of capital asset.

**4.3** The expression “population” has also been defined to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

**4.4** Similar amendments are also carried out in clause (IA) of section 2 of the Income-tax Act, 1961 relating to the definition of “agricultural income” and in respect of the definition of “urban land” in the Wealth-tax Act, 1957.

**4.5 Applicability** - These amendments take effect from 1<sup>st</sup> April, 2014 and accordingly, apply in relation to Assessment year 2014-15 and subsequent assessment years.

## **5. Keyman insurance policy**

**5.1** The provisions of clause (10D) of section 10 of the Income-tax Act, 1961 before amendment by the Act, inter alia, exempt any sum received under a

life insurance policy other than a keyman insurance policy. *Explanation 1* to the said clause (10D) defines a keyman insurance policy 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.

**5.2** It has been noticed that the policies taken as keyman insurance policy are being assigned to the keyman before its maturity. The keyman pays the remaining premium on the policy and claims the entire sum received under such policy as exempt on the ground that the policy is no longer a keyman insurance policy.

**5.3** The exemption under section 10(10D) is claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person. The Courts have also noticed this loophole in law.

**5.4** With a view to plug the loophole and check such practices to avoid payment of taxes, the provisions of clause (10D) of section 10 of the Income-tax Act, 1961 have been amended to provide that a keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy and consequently would not be eligible for any exemption under section 10(10D) of the Income-tax Act.

**5.5 *Applicability:*** - The amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessments years.

## **6. Exemption to income of Investor Protection Fund of depositories**

**6.1** Under the provisions of SEBI (Depositories and Participants) Regulations, 1996, as amended in 2012, the depositories are mandatorily required to set up an Investor Protection Fund. Section 10(23EA) of the Income-tax Act, 1961 provides that income by way of contributions from a recognised stock exchange received by an Investor Protection Fund set up by the recognised stock exchange shall be exempt from taxation .

**6.2** On similar lines, a new clause (23ED) has been inserted in section 10 of the Income-tax Act, 1961 wherein it has been provided that income, by way of contribution from a depository, of the Investor Protection Fund set up by the depository in accordance with the regulations prescribed by SEBI will not be included while computing the total income subject to same conditions as are applicable in respect of exemption to an Investor Protection Fund set up by recognised stock exchanges. 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.

**6.3 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

## **7. Pass through Status to certain Alternative Investment Funds**

**7.1** Section 10(23FB) of the Income-tax Act, 1961 before its amendment by the Act, provided that any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall be exempt from taxation. Section 115U of the Income-tax Act, 1961 provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner as if the person had made direct investment in the VCU.

**7.2** These sections provide a pass through status (i.e. income is taxable in the hands of investors instead of VCF/VCC) only to the funds which satisfy the investment and other conditions as are provided in SEBI (Venture Capital Fund) Regulations, 1996. Further the pass through status is available 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.

**7.3** The SEBI (Alternative Investment Funds) Regulations, 2012 (AIF regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF regulations) from 21st May, 2012. In order to provide pass through status to similar venture capital funds which are registered under new regulations and subject to same conditions of investment restrictions in the context of investment in a venture capital undertaking, section 10(23FB) has been amended to provide that–

(i) the existing VCFs and VCCs (i.e. which have been registered before 21/05/2012) and are regulated by the VCF regulations, as they stood before repeal by AIF regulations, would continue to avail pass through status as currently available.

(ii) in the context of AIF regulations, the Venture Capital Company shall be defined as a company and Venture capital fund shall be defined as a fund set up as a trust, which has been granted a certificate of registration as

Venture Capital Fund being a sub-category of Category I Alternative Investment Fund and satisfies the following conditions:-

(a) at least two-thirds of its investible funds are invested in unlisted equity shares or equity linked instruments of venture capital undertaking.

(b) no investment has been made by such AIFs in a VCU which is an associate company.

(c) units of a trust set up as AIF or shares of a company set up as AIF, are not listed on a recognised stock exchange.

(iii) in the context of AIF regulations, the Venture Capital Undertaking shall be defined in the manner as defined in the Alternative Investment Funds Regulations.

**7.4 Applicability:** - This amendment has been made effective retrospectively from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

## **8. Exemption of income received in India in Indian currency by a foreign company**

**8.1** Clause (48) of section 10 of the Income-tax Act, 1961 was introduced by the Finance Act, 2012 with effect from 01.04.2012. This clause provides exemption to a foreign company in respect of any income received by it in India in Indian currency on account of sale of crude oil to any person in India.

**8.2** The above clause was introduced in national interest so that payment can be made in Indian currency to foreign companies for import of crude oil. Similar facility is required in relation to certain other goods and services.

**8.3** Accordingly, clause (48) of section 10 of the Income-tax Act, 1961 has been amended to provide that income received in India in Indian currency by a foreign company on account of sale of goods or rendering of services, as may be notified by the Central Government, to any person in India shall also be exempt subject to the existing conditions mentioned in the said clause.

**8.4 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **9. Exemption to National Financial Holdings Company Limited**

**9.1** 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). Exemption from Income-tax was available to SUUTI in respect of its income up to 31st March, 2014. SUUTI has been succeeded by a new company wholly owned by the Central Government. It has been incorporated on 7th June, 2012 as National Financial Holdings Company Limited (NFHCL).

**9.2** In order to provide the exemption on the lines of SUUTI to NFHCL, clause (49) has been inserted in section 10 of the Income-tax Act, 1961 to grant exemption to NFHCL in respect of income accruing, arising or received on or before 31.03.2014.

**9.3 Applicability:** - This amendment has been made effective retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and assessment year 2014-15.

## **10. Incentive for acquisition and installation of new plant or machinery by manufacturing company**

**10.1** In order to encourage substantial investment in plant or machinery, a new section 32AC has been inserted in the Income-tax Act to provide that where an assessee, being a company,—

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

(b) invests a sum of more than Rs.100 crore in new assets (plant or machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015, then, the assessee shall be allowed—

(i) for assessment year 2014-15, a deduction of 15 percent of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14, if the cost of such assets exceeds Rs.100 crore;

(ii) for assessment year 2015-16, a deduction of 15 percent 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 assessment year 2014-15.

**10.2** The phrase “new asset” has been defined as new plant or machinery but does not include—

- (i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;
- (ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
- (iii) any office appliances including computers or computer software;
- (iv) any vehicle;
- (v) ship or aircraft; or
- (vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

**10.3** Further, the suitable safeguards have been provided to restrict the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply in a case of amalgamation or demerger but shall continue to apply to the amalgamated company or resulting company, as the case may be.

**10.4 Applicability:** This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **11. Clarification for amount to be eligible for deduction as bad debts in case of banks**

**11.1** Under the provisions of section 36(1)(viiia) of the Income-tax Act, before amendment by the Act, in computing the business income of certain banks and financial institutions, deduction is allowable in respect of any provision for bad and doubtful debts made by such entities subject to certain limits specified therein. The limit specified under section 36(1)(viiia)(a) of the Income-tax Act restricts the claim of deduction for provision for bad and doubtful debts for certain banks (not incorporated outside India) and certain cooperative banks to 7.5 percent of gross total income (before deduction under this clause) of such banks and 10 percent of the aggregate average advance made by the rural branches of such banks. This limit is 5 percent of gross total income (before deduction under this clause) under sections 36(1)(viiia)(b) and 36(1)(viiia)(c) for a bank incorporated outside India and certain financial institutions.

**11.2** Provisions of clause (vii) of sub-section (1) of section 36 of the Income-tax Act provides for deduction for bad debt actually written off as irrecoverable in the books of account of the assessee. The proviso to this clause provides that for an assessee, to which section 36(1) (viiia) of the Income-tax Act applies, deduction 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) (viiia) of the said Act.

**11.3** The provisions of section 36(1)(vii) of the Income-tax Act are subject to the provisions of section 36(2) of the said Act. The clause (v) of sub-section (2) of section 36 of the Income-tax Act provides that the assessee, to which section 36(1)(viiia) of the said Act applies, should debit the amount of bad debt written off to the provision for bad and doubtful debts account made under section 36(1) (viiia) of the Income-tax Act.

**11.4** Therefore, the banks or financial institutions are entitled to claim deduction for bad debt actually written off under section 36(1)(vii) of the Income-tax Act 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)(viiia) of the said Act. However, certain judicial pronouncements have created doubts about the scope and applicability of proviso to clause (vii) of sub-section (1) of section 36 of the Income-tax Act and held that the proviso to clause (vii) of sub-section (1) of section 36 of the Income-tax Act applies only to provision made for bad and doubtful debts relating to rural advances.

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

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

**11.7** In order to clarify the scope and applicability of provision of clause (vii), (viiia) of sub-section (1) and sub-section (2), an Explanation in clause (vii) of sub-section (1) of section 36 has been inserted stating that for the purposes of the proviso to clause (vii) of sub-section(1) of section 36 and clause (v) of sub-section (2) of section 36, only one account as referred to therein is made in respect of provision for bad and doubtful debts under clause (viiia) of sub-section (1) of section 36 and such account relates to all types of advances, including advances made by rural branches. Therefore, for an assessee to which clause (viiia) of sub-section (1) of section 36 applies, the amount of deduction in respect of the bad debts actually written off under clause (vii) of sub-section (1) of section 36 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 clause (viiia) of sub-section (1) of section 36 without any distinction between rural advances and other advances.

**11.8 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

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

**12.1** The provisions of section 40 of the Income-tax Act, 1961 before its amendment by the Act, specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". The non-deductible expense under the said section also includes statutory dues like fringe benefit tax, income-tax, wealth-tax, etc. Disputes have arisen in respect of income-tax assessment of some State Government undertakings as to whether any sum paid by way of privilege fee, license fee, royalty, etc. levied or charged by the State Government exclusively on its undertakings are deductible or not for the purposes of computation of income of such undertakings. In some cases, orders have been issued to the effect that surplus arising to such undertakings shall vest with the State Government. As a result it has been claimed that such income by way of surplus is not subject to tax. It is a settled law that State Government undertakings are separate legal entities than the State and are liable to income-tax.

**12.2** 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, section 40 of the Income-tax Act has been amended to provide that any amount paid by way of fee, charge, etc., which is levied exclusively on, or any amount appropriated, directly or



indirectly, 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”. The expression “State Government Undertaking” for this purpose includes –

- (i) a corporation established by or under any Act of the State Government;
- (ii) a company in which more than fifty per cent of the paid-up equity share capital is held by the State Government;
- (iii) a company in which more than fifty per cent 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);
- (iv) 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;
- (v) 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.

**12.3 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

### **13. Computation of income under the head “Profits and gains of business or profession” for transfer of immovable property in certain cases**

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

**13.2** Accordingly, a new section 43CA has been inserted in the Income tax Act which provides that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable shall be

deemed to be the full value of consideration for the purposes of computing income under the head "Profits and gains of business or profession".

**13.3** 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 the 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.

**13.4 Applicability:** This amendment take effects from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

#### **14. Taxability of immovable property received for inadequate consideration**

**14.1** Sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, before its amendment by the Act, inter alia, provided 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.

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

**14.3** Considering the fact that there may be a time gap between the date of agreement and the date of registration, it has been provided that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by

any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.

**14.4 Applicability:** - This amendment takes effect from 1st April, 2014 and accordingly, applies in relation to the assessment year 2014-15 and subsequent assessment years.

## **15. Raising the limit of percentage of eligible premium for life insurance policies of persons with disability or disease**

**15.1** Under the provisions contained in clause (10D) of section 10 of the Income-tax Act, 1961 before amendment by the Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt, subject to the condition that the premium paid for such policy does not exceed ten per cent of the 'actual capital sum assured'.

**15.2** Similarly as per the provisions of sub-section (3A) of section 80C of the Income-tax Act, prior to its amendment by the Act, the deduction under the said section is available in respect of any premium or other payment made on an insurance policy of up to ten per cent of the 'actual capital sum assured'.

**15.3** The above limit of ten per cent was introduced through the Finance Act, 2012 and applies to policies issued on or after 1<sup>st</sup> April, 2012. Some insurance policies for persons with disability or suffering from specified diseases provide for an annual premium of more than ten per cent of the actual capital sum assured. Due to the limit of ten per cent, these policies are ineligible for exemption under clause (10D) of section 10 of the Income-tax Act. Moreover in such cases, the deduction under section 80C is eligible only to an extent of the premium paid up to 10 percent of the 'actual capital sum assured'.

**15.4** In view of the above, it has now been provided that any sum including the sum allocated by way of bonus received under an insurance policy issued on or after 01.04.2013 for the insurance on the life of any person who is

(i) a person with disability or a person with severe disability as referred to in section 80U, or

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

shall be exempt under clause (10D) of section 10 of the Income-tax Act, if the premium payable for any of the years during the term of the policy does not exceed 15 percent of the actual capital sum assured.

**15.5** Sub-section (3A) of section 80C of the Income-tax Act has also been amended so as to provide that the deduction under the said section on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person referred to in para 15.4 above shall be allowed to the extent of the premium paid but does not exceed fifteen percent. of the actual capital sum assured.

**15.6 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **16. Expanding the scope of deduction and its eligibility under section 80CCG**

**16.1** Section 80CCG of the Income-tax Act, before its amendment by the Act, inter-alia, provide that a resident individual who has acquired listed equity shares in accordance with the scheme notified by the Central Government, shall be allowed a deduction of fifty per cent of the amount invested in such equity shares to the extent that the said deduction does not exceed twenty five thousand rupees.

**16.2** The deduction is one-time and is available only in one assessment year in respect of the amount so invested. The deduction is available to a new retail investor whose gross total income does not exceed ten lakh rupees. Rajiv Gandhi Equity Savings Scheme has been notified under section 80CCG.

**16.3** With a view to liberalize the incentive available for investment in capital markets by the new retail investors, the provisions of section 80CCG have been amended so as to provide that investment in listed units of an equity oriented fund shall also be eligible for deduction in accordance with the provisions of section 80CCG. For this purpose "equity oriented fund "shall have the meaning assigned to it in clause (38) of section 10 of the Income-tax Act.

**16.4** It has been further provided that the deduction under section 80CCG of the Income-tax Act 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 were first acquired by the new retail investor whose gross total income for the relevant assessment year does

not exceed twelve lakh rupees. The modified Rajiv Gandhi Equity Savings Scheme has also been notified on 18<sup>th</sup> December, 2013.

**16.5 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **17. Deduction for contribution to Health Schemes similar to CGHS**

**17.1** Section 80D of the Income Tax Act, before its amendment by the Act, inter alia, provided that the whole of the amount paid in the previous year out of the income chargeable to tax of the assessee, being an individual, to effect or to keep in force an insurance on his health or the health of his family or any contribution made towards the Central Government Health Scheme (CGHS) as does not exceed in the aggregate fifteen thousand rupees, is allowed to be deducted in computing the total income of the assessee.

**17.2** It has been noticed that there are other health schemes of the Central and State Governments, which are similar to the CGHS but no deduction is available to the subscribers of such schemes. In order to bring such schemes at par with the CGHS, section 80D has been amended. The benefit of deduction under this section within the said limit shall be available in respect of any payment or contribution made by the assessee to such other health scheme which has been notified by the Central Government in this behalf.

**17.3 Applicability:** This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **18. Deduction in respect of interest on loan sanctioned during financial year 2013-14 for acquiring residential house property**

**18.1** Under the provisions of section 24 of the Income-tax Act, before amendment by the Act, income chargeable under the head 'Income from House Property' is computed after making the deductions specified therein. The deductions specified under the aforesaid section are as under:-

- i. A sum equal to thirty per cent of the annual value;
- ii. Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

It has also been provided that where the property consists of a house or part of a house which is in the occupation of the owner for the purposes of his

own residence or 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, then the amount of deduction as mentioned above shall not exceed one lakh fifty thousand rupees subject to the conditions provided in the said section.

**18.2** Keeping in view the issue of affordable housing for families, an additional benefit for first home-buyers has been provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property.

**18.3** Section 80EE provides that in computing the total income of an assessee, being an individual, deduction shall be allowed on account of interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

**18.3.1** The deduction under the said section shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on 1<sup>st</sup> April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on 1<sup>st</sup> April, 2015.

**18.3.2** The deduction shall be subject to the following conditions:- (i) the loan is sanctioned by the financial institution during the period beginning on 1<sup>st</sup> April, 2013 and ending on 31<sup>st</sup> March, 2014; (ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees; (iii) the value of the residential house property does not exceed forty lakh rupees; (iv) the assessee does not own any residential house property on the date of sanction of the loan.

**18.3.3** It is also provided that where a deduction under section 80EE is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income Tax Act for the same or any other assessment year. The term "financial institution" has been defined to mean a banking company to which the Banking Regulation Act, 1949 applies including any bank or banking institution referred to in section 51 of that Act or a housing finance company. The term "housing finance company" has been defined to mean a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

**18.4 Applicability:** - This amendment takes effect from 1<sup>st</sup> April, 2014 and accordingly applies in relation to the assessment year 2014-15 and assessment year 2015-16.

## **19. One hundred percent deduction for donation to National Children's Fund**

**19.1** Under the provisions of section 80G of the Income-tax Act, before its amendment by the Act, an assessee is allowed a deduction from his total income in respect of donations made by him to certain funds and institutions. The deduction is allowed at the rate of fifty per cent of the amount of donations made except in the case of donations made to certain funds and institutions specified in clause (i) of sub-section (1) of said section 80G, where deduction is allowed at the rate of one hundred per cent.

**19.2** In the case of donations made to the National Children's Fund, a deduction at the rate of fifty per cent of the amount so donated was allowed.

**19.3** Donations to Funds which are of national importance have been generally provided a deduction of one hundred per cent of the amount donated. As the National Children's Fund is also a Fund of national importance, the section has been amended to provide a hundred per cent deduction in respect of any sum paid as donation to the said Fund in computing the total income of an assessee.

**19.4 Applicability:** - This amendment takes effect from 1<sup>st</sup> April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

## **20. Contribution not to be in cash for deduction under section 80GGB & section 80GGC**

**20.1** Under section 80GGB of the Income-tax Act, before its amendment by the Act, any sum contributed by an Indian company to any political party or an electoral trust in the previous year, is allowed as deduction in computing the total income of such Indian company. A similar deduction is available to an assessee, being any person other than local authority and artificial juridical person under section 80GGC.

**20.2** No specific mode was provided for making such contribution. With a view to discourage cash payments by the contributors, the provisions of aforesaid sections have been amended to provide that no deduction shall

be allowed under section 80GGB and 80GGC in respect of any sum contributed by way of cash.

**20.3 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **21. Extension of the sunset date under section 80IA for the power sector**

**21.1** Under the provisions contained in the clause (iv) of sub-section (4) of section 80IA, before amendment by the Act, a deduction of profits and gains is allowed to an undertaking which, –

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 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 modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2013.

**21.2** With a view to provide further time to such undertakings to commence the eligible activity for availing the tax incentive, the above provisions have been amended so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

**21.3 Applicability:** - These amendments take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **22. Deduction for additional wages in certain cases**

**22.1** Section 80JJAA, before amendment by the Act, provided for a deduction of an amount equal to thirty per cent 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. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.



**22.2** No deduction under this section is allowed if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking.

**22.3** The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also. Therefore, the provisions of section 80JJAA have been amended so as to provide that the deduction shall be available to an Indian Company deriving profits from manufacture of goods in a factory.

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

**22.5** It has also been provided that the deduction under this section shall not be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

**22.6 *Applicability:*** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

### **23. Rebate of Rs. 2000 for individuals having total income up to Rs. 5 lakh**

**23.1** With a view to provide tax relief to the individual tax payers who are in lower income bracket, a tax rebate has been provided to an assessee, being an individual resident in India and having total income not exceeding five lakh rupees.

**23.2** The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of two thousand rupees, whichever is less. Consequently any individual having income up to Rs. 2,20,000 will not be required to pay any tax and every individual having total income above Rs. 2,20,000/- but not exceeding Rs. 5,00,000/- shall get a tax rebate of Rs. 2000/-.

**23.3** Section 87A has been inserted in the Income-tax Act, 1961, and Section 87 of the said Act has also been consequentially amended.

**23.4 Applicability:** - These amendments take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **24. Tax Residency Certificate**

**24.1** Section 90 of the Income-tax Act empowers the Central Government to enter into an agreement with the Government of any foreign country or specified territory outside India for the purpose of –

- (i) granting relief in respect of double taxation,
- (ii) exchange of information and
- (iii) recovery of taxes.

Further section 90A of the Income-tax Act empowers the Central Government to adopt any agreement between specified associations for above mentioned purposes.

**24.2** In exercise of this power, the Central Government has entered into various Double Taxation Avoidance Agreements (DTAAs) with different countries and has adopted agreements between specified associations for relief of double taxation. The scheme of interplay between DTAA and domestic legislation ensures that a taxpayer, who is resident of one of the contracting country to the DTAA, is entitled to claim applicability of beneficial provisions either of DTAA or of the domestic law. Sub-section (4) of sections 90 and 90A of the Income-tax Act inserted by Finance Act, 2012 make submission of Tax Residency Certificate (TRC) containing prescribed particulars, as a condition for availing benefits of the agreements referred to in these sections.

**24.3** Concerns were expressed by Tax Authorities of other countries, as well as stakeholders that different countries issue TRC as per their practice and law. Therefore, the TRCs issued by different countries may not contain all the particulars which were mandatorily required to be included under section 90(4) or 90A (4) of the Income-tax Act.

**24.4** In order to address the concerns expressed, sub-section (4) has been amended to omit the requirement that the prescribed particulars are to be mandatorily part of the certificate to be issued by the foreign government. Therefore, TRC issued by different countries in their respective formats would meet the requirement of sub-section (4). However, sub-section (5) has been introduced in sections 90 & 90A of the Income-tax Act to provide that the taxpayer shall be required to furnish such other documents and information

as may be prescribed. This has been prescribed vide Notification 47/2013 dated 26<sup>th</sup> June 2013 amending Rule 21AB of Income-tax Rules, 1962.

**24.5 Applicability:** - These amendments have been made retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

## **25. GENERAL ANTI-AVOIDANCE RULE (GAAR)**

**25.1** The General Anti Avoidance Rule (GAAR) was introduced in the Income-tax Act by the Finance Act, 2012. The substantive provisions relating to GAAR are contained in Chapter X-A (consisting of sections 95 to 102) of the Income-tax Act. The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. The provisions of Chapter X-A as well as section 144BA would have come into force with effect from 1st April, 2014.

**25.2** A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government with broad terms of reference including consultation with stakeholders and finalising the GAAR guidelines and a road map for its implementation. The Expert Committee's recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR. The major recommendations of the Expert Committee have been accepted by the Government, with some modifications. Some of the recommendations accepted by the Government required amendment in the provisions of Chapter X-A and section 144BA.

**25.3** In order to give effect to the recommendations, the following amendments have been made in GAAR provisions inserted in the Income-tax Act through the Finance Act, 2012:-

(A) The provisions of Chapter X-A and section 144BA will come into force with effect from April 1, 2016 as against the current date of April 1, 2014. The provisions shall apply from the assessment year 2016-17 instead of assessment year 2014-15.

(B) An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The provision of section 96 providing that it should be "the main purpose or one of the main purposes" has been amended accordingly.

(C) The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route

was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The provisions of section 97 which provided that these factors would not be relevant have been amended accordingly.

(D) An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A. The provisions as contained in section 97 have been amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.

(E) The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The provision of section 144BA that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service has been amended accordingly.

(F) The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The provisions of section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been amended accordingly.

(G) The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years. The provisions of section 144BA have been be amended accordingly.

(H) The two separate definitions in the provisions of section 102, as inserted by Finance Act, 2012 namely "associated person" and "connected person" have been combined and there is only one inclusive provision defining a 'connected person'. The provisions of section 102 have been amended accordingly.

**25.4** Consequential amendments in other sections relating to procedural matters have also been made. Further, GAAR rules have been notified vide Notification No.75/2013 dated 23<sup>rd</sup> of September, 2013.

**25.5 Applicability:** - These amendments take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

## **26. Taxation of Income by way of Royalty or Fees for Technical Services**

**26.1** 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 under an agreement entered after 31.03.1976 and which are not effectively connected with permanent establishment, if any, of the non-resident in India. Prior to amendment of section 115A by the Act, the tax was payable on the gross amount of income at the rate of -

(i) 30% if income by way of royalty or FTS is received in pursuance of an agreement entered on or before 31.05.1997;

(ii) 20% if income by way of royalty or FTS is received in pursuance of an agreement entered after 31.05.1997 but before 01.06.2005; and

(iii) 10% if income by way of royalty or FTS is received in pursuance of an agreement entered on or after 01.06.2005.

**26.2** India has tax treaties with 87 countries, majority of tax treaties allow India to levy tax on gross amount of royalty at rates ranging from 10 per cent to 25 per cent, whereas the tax rate as per section 115A is 10 per cent. In some cases, this has resulted in taxation at a lower rate of 10 per cent even if the treaty allows the income to be taxed at a higher rate.

**26.3** In order to correct this anomaly, the tax rate in case of non-resident taxpayer, in respect of income by way of royalty and fees for technical services as provided under section 115A, has been increased from 10 per cent to 25 per cent. This rate of 25 per cent shall be applicable to any income by way of royalty and FTS received by a non-resident, under an agreement entered after 31.03.1976, which is taxable under section 115A.

**26.4 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

## **27. Lower rate of tax on dividends received from foreign companies**

**27.1** Section 115BBD of Income-tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26 per cent or more) at the rate of 15 per

cent if such dividend is included in the total income for the Financial Year 2012-13 i.e. Assessment Year 2013-14. The above provision was introduced as an incentive for repatriation of income earned by residents from investments made abroad subject to certain conditions.

**27.2** In order to continue the tax incentive for one more year, section 115BBD has been amended to extend the applicability of this section in respect of income by way of dividends received from a specified foreign company in Financial Year 2013-14 also, subject to the same conditions.

**27.3 Applicability:** - This amendment takes effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15.

## **28. Removal of the cascading effect of Dividend Distribution Tax (DDT)**

**28.1** Section 115-O of the Income-tax Act provides for taxation of distributed profits of a domestic company. It provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits shall be liable to be taxed at the rate of 15 per cent. The tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients.

**28.2** Section 115BBD of Income Tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26 per cent or more) at the rate of 15 per cent.

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

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

**28.5 Applicability:** - This amendment takes effect from 1st June, 2013.

**29. Additional Income-tax on distributed income by company for buy-back of unlisted shares**

**29.1** The provisions of Section 2(22) (e) of the Income-tax Act, before its amendment by the Act, provide the definition of dividends for the purposes of the Income-tax Act. Section 115-O provides for levy of Dividend Distribution Tax (DDT) on the company at the time when company distributes, declares or pays any dividend to its shareholders. Consequent to the levy of DDT the amount of dividend received by the shareholders is not included in the total income of the shareholder. The consideration received by a shareholder on buy-back of shares by the company is not treated as dividend but is taxable as capital gains under section 46A of the Act.

**29.2** A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains. Unlisted Companies, as part of tax avoidance scheme, resort to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

**29.3** In order to curb such practice, a new Chapter XII-DA has been inserted in the Income-tax Act to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax at the rate of 20 per cent of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy back by the company would be exempt under section 10 (34A) of the Income-tax Act where the company is liable to pay the additional income-tax on the buy-back of shares.

**29.4 Applicability:** - These amendments take effect from 1st June, 2013.

### **30. Rationalisation of tax on distributed income by the Mutual Funds**

**30.1** Under the provisions of section 115R of the Income-tax Act, before its amendment by the Act, any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to additional income-tax. In case of any distribution made by a fund other than equity oriented fund to a person who is not an individual and HUF, the rate of tax is 30 per cent whereas in case of distribution to an individual or an HUF it is 12.5 per cent or 25 per cent depending on the nature of the fund.

**30.2** In order to provide uniform taxation for all types of funds, other than equity oriented fund, the rate of tax on distributed income has been increased from 12.5 per cent to 25 per cent in all cases where distribution is made to an individual or a HUF.

**30.3** Further in case of an Infrastructure debt fund (IDF) set up as a Non-Banking Finance Company (NBFC) the interest payment made by the fund to a non-resident investor is taxable at a concessional rate of 5 per cent. However in case of distribution of income by an IDF set up as a Mutual Fund the distribution tax is levied at the rates described above in the case of a Mutual Fund.

**30.4** In order to bring parity in taxation of income from investment made by a non-resident Investor in an IDF whether set up as a IDF-NBFC or IDF-Mutual Fund, section 115R has been amended to provide that tax at the rate of 5 per cent on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

**30.5 Applicability:** - These amendments take effect from 1st June, 2013.

### **31. Taxation of Securitisation Trusts**

**31.1** Section 161 of the Income-tax Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust.

**31.2** The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act. The taxation at the level of trust due to existing provisions was considered to be restrictive particularly where the investors in the trust are persons which are exempt from taxation under the provisions of the Income-tax Act like Mutual Funds.

**31.3** In order to facilitate the securitisation process, a special taxation regime has been provided in respect of taxation of income of securitisation entities,



set up as a trust, from the activity of securitisation. Section 10 of the Income-tax Act has been amended and also a new Chapter XII-EA has been inserted therein for providing a special tax regime. The salient features of the special regime are:-

(i) In case of securitisation vehicles which are set up as a trust being a "Special purpose distinct entity" under SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 or "Special Purpose Vehicle" in the form of trust (not as a company or other entity) under the guidelines on securitisation of standard assets issued by RBI and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

(ii) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the lines of income distribution tax levied in the case of mutual funds. The additional income-tax shall be levied at the rate of 25 per cent in case of distribution being made to investors who are individual and HUF and at the rate of 30 per cent in other cases. No additional income-tax shall be payable if the income distributed by the securitisation trust is received by a person in whose case income, irrespective of its nature and source, is not chargeable to tax. For instance, in the case of income being distributed to a mutual fund, whose income from all sources are exempt under section 10(23D) of the Income-tax Act, no additional income tax shall be payable.

(iii) Consequent to the levy of distribution tax, the distributed income received by the investor will be exempt from tax under section 10 (23D) of the Income-tax Act.

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

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

**31.4 Applicability:** - This amendment takes effect from 1st June, 2013.

## **32. Application of seized assets under section 132B**

**32.1** The provisions contained in section 132B of the Income-tax Act, before amendment by the Act, *inter-alia*, provide that seized cash may be adjusted

against any existing liability under the Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default. Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search.

**32.2** Accordingly, said section 132B has been amended 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.

**32.3 Applicability:** - This amendment takes effect from 1<sup>st</sup> June, 2013.

### **33. Replacement of terms "Foreign Exchange Regulation Act, 1947" and "Foreign Exchange Regulation Act, 1973" with "Foreign Exchange Management Act, 1999"**

**33.1** Section 138 of the Income-tax Act provides for disclosure of information in respect of assesses. Sub-clause (i) of clause (a) of sub-section (1) of the said section, inter-alia, provides that the Board or any Income-tax authority specified by it may furnish or cause to be furnished to any officer or body performing any functions under any law relating to dealings in foreign exchange as defined in section 2(d) of the Foreign Exchange Regulation Act, 1947, any information so as to enable him to perform his functions under that law. Foreign Exchange Regulation Act, 1947 (FERA) referred to in the said section was repealed in 1973 and was substituted by Foreign Exchange Regulation Act, 1973. In 1999 a new Act, Foreign Exchange Management Act, 1999 (FEMA) was introduced. The definition of foreign exchange in FERA, 1947 has undergone slight modification in FEMA, 1999. The term foreign exchange is defined in clause (n) of section 2 of FEMA, 1999.

**33.2** In view of the above, sub-clause (i) of clause (a) of sub-section (1) section 138 of the Income-tax Act has been amended to provide that foreign exchange shall have the meaning as assigned to it in section 2(n) of FEMA, 1999.

**33.3** Similar amendments have been made in sections 10(4), 10(4B), 10(15), 10A, 10B, 48, 115AB, 115C, and 196A of the Income-tax Act.

**33.4 Applicability:** - This amendment will take effect from 1st April, 2013.

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

**34.1** The provisions contained in sub-section (9) of section 139, before amendment by the Act, provide that 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 fifteen days. If the defect is not rectified within the time allowed by the Assessing Officer, the return is treated as an invalid return. The conditions, the non-fulfillment of which renders the return defective have been provided in the *Explanation* to the aforesaid sub-section. Section 140A provides that 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. It has been noticed that a large number of assesses furnish their returns of income without payment of self-assessment tax.

**34.2** With a view to ensure compliance of the provisions of section 140A, the *Explanation* to sub-section (9) of section 139 of the Income-tax Act has been amended 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.

**34.3 Applicability:** - This amendment takes effect from 1<sup>st</sup> June, 2013.

### **35. Direction for special audit under sub-section (2A) of section 142**

**35.1** Sub-section (2A) of section 142 of the Income-tax Act, before its amendment by the Act, *inter-alia*, provided that if at any stage of the proceedings, 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 in the prescribed form. The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts.

**35.2** Sub-section (2A) of section 142 has been amended to provide that if at any stage of the proceedings before him, the Assessing Officer, having

regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit in the prescribed form.

**35.3 Applicability:** - This amendment takes effect from 1<sup>st</sup> June, 2013.

### **36. Exclusion of time in computing the period of limitation for completion of assessments and reassessments**

**36.1** Section 153 of the Income-tax Act, *inter-alia*, provides the time limit for completion of assessment and reassessment of income by the Assessing Officer. *Explanation* to section 153 provides that certain periods specified therein shall be excluded while computing the period of limitation for the purposes of the said section. Under the provisions of clause (iii) of *Explanation 1* to section 153 of the Income-tax Act, prior to its amendment by the Act, the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit, is excluded in computing the period of limitation for the purposes of assessment or reassessment. However, it did not provide for exclusion of time in case the direction of the Assessing Officer as aforesaid is set aside by the court.

**36.2** Accordingly clause (iii) of *Explanation 1* to section 153 has been amended to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish report of such audit under that sub-section; or where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

**36.3** Similarly, clause (viii) of *Explanation 1* to section 153 of the Income-tax Act, before its amendment by the Act, provided for exclusion of the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one

year, whichever is less, in computing the period of limitation for the purposes of section 153. At times more than one reference for exchange of information is made in one case and the replies from the foreign Competent Authorities are also received in parts. In such cases, there will always be a dispute for counting 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. Similar dispute may also arise with regard to the date on which the information so requested is received.

**36.4** With a view to clarify the above situation, the aforesaid clause (viii) of *Explanation 1* to section 153 has been amended to provide that 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 of the Income-tax Act and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

**36.5** Similar amendments have also been made in *Explanation* to section 153B of the Income-tax Act relating to time limit for completion of search assessment.

**36.6 Applicability:** - These amendments take effect from 1<sup>st</sup> June, 2013.

### **37. Time limit for completion of assessment or reassessment where reference is made to Transfer Pricing Officer.**

**37.1** Sections 153 and 153B of the Income-tax Act, *inter alia*, provide the time limit for completion of assessment and reassessment of income by the Assessing Officer. Time limits have been provided for completion of assessment or reassessment under sections 143(3), 147, 153A, 153C etc. of the Income-tax Act. These time limits get extended if a reference is made under section 92CA of the Income-tax Act to the Transfer Pricing Officer (TPO) during the course of assessment/reassessment proceedings. These time limits are either from the end of financial year in which notice for initiation of the proceeding was served or from the end of the assessment year to which the proceedings relate.

**37.2** Vide Finance Act, 2012 the period of limitation as provided in sections 153 and 153B of the Income-tax Act was extended by three months. In all the cases where reference under section 92CA of the Income-tax Act was made to the Transfer Pricing Officer the period of limitation was extended to one

year from the existing 9 months. Similar amendments were made in other parts of section 153 and section 153B of the Income-tax Act wherever reference of section 92CA was made.

**37.3** As a result of insertion of 3<sup>rd</sup> proviso in sub-section (1) of section 153 an anomaly arose. In a case relating to assessment year 2009-10, where a reference was made under section 92CA of the Income-tax Act and the TPO passed the order before 01.07.2012, it could not get covered by the 3<sup>rd</sup> proviso which was inserted vide Finance Act 2012. Further, it could not get covered by 2<sup>nd</sup> proviso either. Therefore, it found a place only in 153(1) (a) as per which the time limit would be two years from the end of assessment year i.e. upto 31.03.2012. Therefore, it did not get the benefit of one extra year as was intended. Further, before amendments vide Finance Act 2012 this case would have been covered under 2<sup>nd</sup> proviso and the time limit for completion would have been 31-12-2012 (33 months). Thus, with the insertion of 3<sup>rd</sup> proviso vide Finance Act 2012 the time limit got reduced from 31-12-2012 to 31-03-2012. This was not the intent of the legislature.

**37.4** In view of the above, the provisions of 3<sup>rd</sup> proviso to sub-section (1) of section 153 of the Income-tax Act have been amended to provide that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1<sup>st</sup> day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA of the Income-tax Act is made, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words 'two years', the words "three years" had been substituted."

**37.5** Similar amendments have been made in sub-section (2), sub-section (2A) of section 153 and section 153B of the Income-tax Act where similar anomaly arose due to amendments carried out vide Finance Act, 2012 in the said sections.

**37.6 Applicability:** - The amendments take effect retrospectively from 1<sup>st</sup> July, 2012.

### **38. Clarification of the phrase "tax due" for the purposes of recovery in certain cases**

**38.1** Section 179 of the Income-tax Act provides that where the tax due from a private company cannot be recovered from such company, then the director (who was the director of such company during the 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. This provision is intended to recover outstanding demand under the Income-tax Act of a private company from the directors of such company in certain cases. However, some courts have interpreted the phrase 'tax due', used in section 179, does not include penalty, interest and other sum payable under the Income-tax Act.

**38.2** In view of the above, it has been clarified that for the purposes of the said section 179, the expression "tax due" includes penalty, interest or any other sum payable under the Income-tax Act. Amendment on the similar lines for clarifying the expression 'tax due' has also been made to the provisions of section 167C of the Income-tax Act.

**38.3 Applicability:** - These amendments take effect from 1st June, 2013.

### **39. Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land)**

**39.1** There is a statutory requirement under section 139A of the Income-tax Act read with rule 114B of the Income-tax Rules, 1962 to quote Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of Rs.5 lakh or more. However, the information furnished to the Income-tax Department in Annual Information Returns by the Registrar or Sub- Registrar indicate that a majority of the purchasers or sellers of immovable properties, valued at Rs.30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of immovable property.

**39.2** Under the provisions of the Income-tax Act, prior to its amendment by the Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

**39.3** In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, a new section 194-IA has been inserted in the Income-tax Act to provide that every transferee, at the time of making payment or crediting of any sum as consideration for

transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1 per cent of such sum.

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

**3.5** Further, in view of the provisions of section 203A every person deducting tax under this newly inserted section 194-IA would have required to obtain Tax Deduction and Collection Account Number (TAN). In order to reduce the compliance burden on the deductor deducting tax under this section, it is provided that the provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of section 194-IA.

**39.6 Applicability:** - This amendment takes effect from 1st June, 2013.

#### **40. Income by way of interest on certain bonds and Government securities**

**40.1** Considering the current account deficit situation and the need to have foreign investment in India in rupees, a new section 194LD has been inserted in the Income-tax Act to provide for reduced rate of 5 per cent of withholding tax as against the normal rate of 20 per cent on interest payable on or after the 1<sup>st</sup> day of June, 2013 but before the 1<sup>st</sup> day of June, 2015 in respect of a rupee denominated bond of an Indian company or a Government security if the payment is made to a Foreign Institutional Investor (FII) or a Qualified Foreign Investor (QFI). It has been further provided that interest rate on rupee denominated bonds of an Indian company should not exceed the threshold limit to be notified by the Government. This rate has been notified vide Notification 56/2013 dated 29<sup>th</sup> July 2013 as below:

(i) in case of bonds issued before the 1<sup>st</sup> day of July, 2010, the rate of interest shall not exceed 500 basis points (bps) over the Base Rate of State Bank of India as on the 1<sup>st</sup> day of July, 2010.

(ii) in case of bonds issued on or after the 1<sup>st</sup> day of July, 2010, the rate of interest shall not exceed 500 basis points (bps) over the Base Rate of State Bank of India applicable on the date of issue of the said bonds.

**40.2 Applicability:** - This amendment takes effect from 1st June, 2013.

#### **41. Meaning of “person responsible for paying” under Chapter XVII**

**41.1** Chapter XVII of the Income-tax Act, 1961 deals with collection and recovery of tax. Section 204 of the Income-tax Act defines the expression



“person responsible for paying”. As per clause (iia) of the said section 204 the expression “person responsible for paying” 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, means the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 and any rules made thereunder. The expression “authorised dealer” as mentioned above has been defined in the Explanation to the said section as having the meaning as assigned to it in clause (b) of section 2 of the Foreign Exchange Regulation Act, 1973. Further, in the Explanation, reference has been made to Foreign Exchange Regulation Act, 1973.

**41.2** In 1999, Foreign Exchange Management Act, 1999 (FEMA) was introduced and it replaced the Foreign Exchange Regulation Act, 1973. In FEMA, the expression “authorised dealer” has been replaced by “authorised person”.

**41.3** In view of the replacement of the Foreign Exchange Regulation Act, 1973 by the Foreign Exchange Management Act, 1999, an amendment in section 204 of the Income-tax Act has been made whereby the words “authorised dealer” have been replaced by the words “authorised person”. Further “authorised person” has been defined to have the meaning as assigned to it in clause (c) of section 2 of the Foreign Exchange Management Act, 1999.

**41.4 Applicability** - This amendment takes effect from 1<sup>st</sup> April, 2013.

## **42. Exemption from requirement of furnishing PAN under section 206AA to certain non-resident bond holder.**

**42.1** Under section 194LC of the Income-tax Act, the payment of interest by an Indian company to a non-resident on money borrowed in foreign currency under a loan agreement or through issue of a long term infrastructure bond is subject to deduction of tax at the rate of 5 per cent instead of general rate of deduction of tax at the rate of 20 per cent. Under section 206AA of the Act, if such non-resident does not provide his Permanent Account Number (PAN) to the payer, then the tax is required to be withheld at the rate of 20 per cent.

**42.2** Considering the practical difficulties in obtaining PAN by the non-resident bondholders, section 206AA has been amended to provide that provisions of section 206AA of the Income-tax Act shall not apply to interest paid to a non-resident on long-term infrastructure bonds referred to in section 194LC of the Income-tax Act.

**42.3 Applicability:** - This amendment takes effect from 1<sup>st</sup> June, 2013.

### **43. Removal of exemption from levy of Tax Collection at Source (TCS) to cash sale of any coin or any other article weighing 10 grams or less**

**43.1** Finance Act, 2012 amended the provisions of section 206C of the Income-tax Act to provide that the seller of bullion or jewellery shall collect tax at the rate of 1 per cent of sale consideration from every buyer of bullion or jewellery if sale consideration exceeds two lakh rupees or five lakh rupees respectively and the sale is in cash. Further, it has also been provided that bullion shall not include any coin or any other article weighing 10 grams or less. As threshold of sales consideration for levy of TCS on cash sale of bullion has already been provided, there was no justification for providing separate exemption from levy of TCS to cash sale of any coin or any other article weighing 10 grams. In view of the above, section 206C has been amended to withdraw the separate exemption from levy of TCS provided to cash sale of any coin or any other article weighing 10 grams.

**43.2 Applicability:** - This amendment takes effect from the 1<sup>st</sup> June, 2013.

### **44. Appointment of President of the Appellate Tribunal**

**44.1** The provisions of section 252 of the Income-tax Act, *inter-alia*, provide for the constitution of Income Tax Appellate Tribunal (ITAT), the qualification of judicial members and accountant members, the appointment of president, senior vice-presidents and vice presidents etc. Sub-section (3) of section 252 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.

**44.2** The choice of the President is confined only to Senior Vice-President or one of the Vice Presidents as the President. In order to provide for a wider choice in the selection of a suitable candidate for the post of President of the tribunal an amendment has been carried out to include persons from judiciary.

**44.3** Accordingly, the provisions of sub-section (3) of section 252 have been amended to provide that the Central Government shall appoint a person

who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.

**44.4 Applicability:** - The amendment takes effect from 1<sup>st</sup> June, 2013.

#### **45. Penalty under section 271FA for non-filing of Annual Information Return**

**45.1** Section 285BA of the Income-tax Act mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2) thereof. Sub-section (5) of the section empowers the Assessing Officer to issue notice if the annual information return has not been furnished by the due date.

**45.2** Section 271FA of the income-tax Act, prior to its amendment by the Act, provided that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA of the Income-tax Act, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

**45.3** Section 271FA of the income-tax Act has been amended to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA of the income-tax Act, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

**45.4** It is further provided that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, 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.

**45.5 Applicability** - This amendment takes effect from 1<sup>st</sup> April, 2014.

#### **46. Extension of time for approval in Part A of the Fourth Schedule to the Income-tax Act, 1961**

**46.1** Rule 4 in Part A of the Fourth Schedule to the Income-tax Act provides for conditions which are required to be satisfied by a Provident Fund for

receiving or retaining recognition under the Income-tax Act. One of the requirements of rule 4 as contained in clause (ea) is that the establishment has to be notified by the Central Provident Fund Commissioner under section 1(4) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [EPF & MP Act] and has obtained exemption under section 17 of the said Act.

**46.2** Rule 3 in Part A of the Fourth Schedule to the Income-tax Act provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under the said rule 4 and the conditions which the Board may specify by rules.

**46.3** The first proviso to sub-rule (1) of rule 3, prior to its amendment by the Act, *inter alia*, specified that in a case where recognition under the Income-tax Act has been accorded to any provident fund on or before 31st March, 2006, but such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st March 2013, the recognition to such fund shall be withdrawn.

**46.4** A number of applications were pending with the Employees' Provident Fund Organization (EPFO) for grant of exemption under section 17 of EPF & MP Act. With a view to provide further time to the EPFO to decide on the pending applications seeking exemption under section 17 of the EPF & MP Act, the first proviso has been amended, so as to extend the time limit from 31st March, 2013 to 31st March, 2014.

**46.5 Applicability:** - This amendment takes effect retrospectively from 1st April, 2013.

## **47. Exemption from wealth tax to agricultural land situated in urban area.**

**47.1** Finance Act, 1992 amended the provisions of Wealth-tax Act with effect from 1<sup>st</sup> April, 1993 to provide that wealth tax shall be levied only on certain specified assets. The definition of assets on which wealth tax is leviable *inter alia* includes urban land. As per this definition urban land means land situated in the jurisdiction of municipality or cantonment board or land situated in notified area. However, certain categories of urban land such as land on which construction of a building is not permissible, land held for industrial purpose, land held as stock in trade, have been excluded from the definition of urban land. Normally on agricultural land, either no construction is allowed

or allowed only for a specific purpose (mainly for agricultural needs), but no specific exemption has been provided to the agricultural land. Recently it has been held by the Hon'ble Supreme Court that agricultural land situated in urban area is liable for wealth tax. As the wealth tax is levied only on unproductive assets, there was no intention to levy wealth tax on the agricultural land which cannot be termed as unproductive assets.

**47.2** In view of the above, the definition of urban land in the Wealth-tax Act, 1957 has been amended to specifically provide that wealth tax is not leviable on urban land which is,

- (i) classified as agricultural land in the records of the Government; and
- (ii) used for agricultural purposes.

**47.3 Applicability:** - This amendment takes effect retrospectively from 1<sup>st</sup> April, 1993.

#### **48. Enabling provisions for facilitating electronic filing of annexure-less return of net wealth**

**48.1** Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth 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. Currently, certain documents, reports are required to be furnished along with the return of net wealth under the provisions of Wealth-tax Act read with the provisions of Wealth-tax Rules.

**48.2** Sections 139C and 139D of the Income-tax Act contain provisions for facilitating filing of annexure-less return of income in electronic form by certain class of income-tax assesses. In order to facilitate electronic filing of annexure-less return of net wealth, new sections 14A and 14B have been inserted in the Wealth-tax Act on similar lines.

**48.3** Consequently, the provisions of section 46 of the Wealth-tax Act which provide for rule making powers of the Board have also been amended.

**48.4 Applicability:** - These amendments take effect from 1st June, 2013.

#### **49. Securities Transaction Tax (STT)**

**49.1** Securities Transaction Tax (STT) on transactions in specified securities was introduced vide Finance (No.2) Act, 2004.

**49.2** Section 98 of the Finance (No.2) Act, 2004 has been amended to reduce STT rates in the taxable securities transactions as indicated hereunder:-

**TABLE**

S.No.	Nature of Taxable securities transaction	Payable by	Existing Rates (in per cent)	Proposed Rates (in per cent)
(1)	(2)	(3)	(4)	(5)
1.	Delivery based purchase of units of an equity oriented fund entered into in a recognised stock exchange in India	Purchaser	0.1	Nil
2.	Delivery based sale of units of an equity oriented fund entered into in a recognised stock exchange in India	Seller	0.1	0.001
3.	Sale of a futures in securities	Seller	0.017	0.01
4.	Sale of a unit of an equity oriented fund to the mutual fund	Seller	0.25	0.001

**49.3 Applicability** - These amendments take effect from 1<sup>st</sup> June, 2013 and will accordingly apply to any transaction made on or after that date.

## **50. Commodities Transaction Tax**

**50.1** Commodities Transaction Tax (CTT) has been introduced vide Chapter VII of the Act and has come into force from 1<sup>st</sup> July, 2013 as notified vide Notification S.O. 1768(E) dated 19<sup>th</sup> June, 2013. The CTT Rules, 2013 have been notified vide Notification S.O. 1769 (E) dated 19<sup>th</sup> June, 2013. CTT is levied on taxable commodities transactions entered into in a recognised association.

**50.2** 'Taxable commodities transaction' has been defined to mean a transaction of sale of commodity derivatives in respect of commodities other than agricultural commodities traded in recognised associations. CTT is to be

collected on taxable commodities transactions by the recognised associations.

**50.2.1** Agricultural commodities which are not liable to CTT are almond, barley, cardamom, castor seed, channa/gram, copra, coriander/dhaniya, cotton, cotton seed oilcake/kapasia khali, guar seed, isabgul seed, jeera, kapas, maize feed, pepper, potato, rape/mustard seed, raw jute, red chilli, soya bean/seed, soymeal, turmeric, wheat.

**50.3** The tax is levied at the rate, given in the Table below, on taxable commodities transactions undertaken by the seller as indicated hereunder:-

**TABLE**

S. No.	Taxable commodities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
1.	Sale of commodity derivative	0.01 per cent	Seller

**50.4** The provisions with regard to collection and recovery of CTT, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution, filing of appeal, power to the Central Government, etc. have also been provided.

**50.5** Further, section 36 of the Income-tax Act has been amended to provide that an amount equal to the commodities transaction tax 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.

**50.6.1** Sub-section (5) of section 43 of the Income-tax Act has also been amended to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association shall not be deemed to be speculative transaction. The eligible transaction shall include only those transactions in commodity derivatives which are subject to CTT. An *Explanation* has been inserted to provide that the expression "commodity derivative" shall have the meaning assigned to it under Chapter VII of the Act.

**50.6.2 Applicability** - The amendments in sections 36 and 43 of the Act take effect from 1<sup>st</sup> April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

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**[Ashis Mohanty]**

**Under Secretary to the Government of India**

Dated 24.01.2024

[F. No. 142/24/2013-TPL]

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4. All Chief Commissioners/Director General of Income-tax – with a request to circulate amongst all officers in their regions/charges.
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**[Ashis Mohanty]**

**Under Secretary to the Government of India**