DIRECT TAXES
AMENDMENTS BY FINANCE ACT, 2013

1

TAX RATES FOR ASSESSMENT YEAR 2014-15

I A	***In case of every individual other than the individual referred to in IB and IC or in case of Hindu Undivided Family: Resident as well as Non -resident***	
	Total Income	***Rates of Income Tax***
1	Where the total income does not exceed ₹ 2,00,000	NIL
2	Where the total income exceeds ₹ 2,00,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,00,000
3	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 30,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
4	Where the total income exceeds ₹ 10,00,000	₹ 1,30,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

I B	***In case of every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year:***	
	Total Income	***Rates of Income Tax***
1	Where the total income does not exceed ₹ 2,50,000	NIL
2	Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,50,000
3	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 25,000 plus 20% of the amount by which the total income exceeds ₹5,00,000
4	Where the total income exceeds ₹ 10,00,000	₹ 1,25,000 plus 30% of the amount by which the total income exceeds ₹10,00,000

I C ***In case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:***

	Total Income	***Rates of Income Tax***
1	Where the total income does not exceed ₹ 5,00,000	NIL
2	Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹5,00,000
3	Where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹10,00,000

POINTS TO BE NOTED:

1. The tax rates given in IA above are for residents as well as non -residents.

2. The tax rates given in IB) and IC) are for a resident individual. Therefore, in case of a senior citizen or super senior citizen being a non-resident, the tax rates given in IA shall apply.

3. ***Surcharge on Income-tax***
   The income tax so calculated or in section 111A or section 112 shall, in case of every **individual or HUF**, be increased by a **surcharge of 10%** of such income tax, ***if the total income exceeds ₹1 crore.***

II. In case of every **LOCAL AUTHORITY**, 30% of the total income. The income tax so calculated or in section 111A or section 112 shall, in case of every local authority, be increased by a **surcharge of 10%** of such income tax, ***if the total income exceeds ₹1 crore.***

III. In case of a **FIRM**, 30% of the total income. The income tax so calculated or in section 111A or section 112 shall, in case of every firm, be increased by a **surcharge of 10%** of such income tax, ***if the total income exceeds ₹1 crore.***

IV. In case of a **DOMESTIC COMPANY**, 30% of the total income. The income tax so calculated or in section 111A or section 112 shall, in case of every domestic company, be increased by a **surcharge of 5%** of such income tax, ***if the total income exceeds ₹1 crore but does not exceed ₹10 crores. And where total income exceeds ₹10 crores, surcharge shall be levied at 10% of such income tax.***

V. In case of a **FOREIGN COMPANY**, 40% of the total income. The income tax so calculated or in section 111A or section 112 shall in case of every foreign company be increased by a **surcharge of 2%** of such income tax, ***if the total income exceeds ₹1 crore but does not exceed ₹10 crores. And where total income exceeds ₹10 crores, surcharge shall be levied at 5% of such income tax.***

MARGINAL RELIEF

A. In case I, II and III above i.e., in case of Individual, HUF, Local authority and Firm, where the total income exceeds ₹ 1 crore, then, the aggregate of income tax and surcharge shall be restricted to:

Tax on ₹ 1 crore + Total Income – ₹ 1 crore

B. In case of domestic/ Foreign company, where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crores, then the aggregate of income tax and surcharge shall be restricted to:

   Tax on ₹ 1 crore + Total Income – ₹ 1 crore

C. In case of domestic company, where the total income exceeds ₹ 10 crore, then the aggregate of income tax and surcharge shall be restricted to:

   Tax on ₹ 10 crore with surcharge of 5% + Total Income – ₹ 10 crore

D. In case of foreign company, where the total income exceeds ₹ 10 crore, then the aggregate of income tax and surcharge shall be restricted to:

   Tax on ₹ 10 crore with surcharge of 2% + Total Income – ₹ 10 crore

Illustration 1:
In case of a resident individual, age below 60 years, calculation of tax liability and marginal relief shall be as under:

The aggregate of income tax and surcharge shall be restricted to:

Tax on ₹ 1 crore + Total Income – ₹ 1 crore

Total Income	***Income Tax and surcharge***
₹ 1,00,00,000	₹28,30,000
₹ 1,01,00,000	₹28,60,000 + ₹2,86,000 = ₹31,46,000 Restricted to ₹29,30,000
₹ 1,02,00,000	₹28,90,000 + ₹2,89,000 = ₹31,79,000 Restricted to ₹30,30,000
₹ 1,04,00,000	₹29,50,000 + ₹2,95,000 = ₹32,45,000 Restricted to ₹32,30,000
₹ 1,04,20,000	₹29,56,000 + ₹2,95,600 = ₹32,51,600 Restricted to ₹32,50,000
₹ 1,05,00,000	₹29,80,000 + ₹2,98,000 = ₹32,78,000 No Restriction

Illustration 2:
In case of domestic company, where the total income exceeds ₹ 1 crore but does not exceeds ₹ 10 crores, then the aggregate of income tax and surcharge shall be restricted to:

Tax on ₹ 1 crore + Total Income – ₹ 1 crore

Total Income	***Income tax and surcharge***
₹ 1,00,00,000	₹ 30,00,000
₹ 1,01,00,000	₹ 30,30,000 + ₹ 1,51,500 = ₹ 31,81,500 Restricted to ₹ 31,00,000
₹ 1,02,00,000	₹ 30,60,000 + ₹ 1,53,000 = ₹ 32,13,000 Restricted to ₹ 32,00,000
₹ 1,02,10,000	₹ 30,63,000 + ₹ 1,53,150 = ₹ 32,16,150 Restricted to ₹ 32,10,000
₹ 1,03,00,000	₹ 30,90,000 + ₹ 1,54,500 = ₹ 32,44,500 No Restriction
₹ 1,04,00,000	₹ 31,20,000 + ₹ 1,56,000 = ₹ 32,76,000 No Restriction

Illustration 3:
In case of domestic company, where the total income exceeds ₹ 10 crore, then the aggregate of income tax and surcharge shall be restricted to:

Tax on ₹ 10 crore with surcharge of 5% + Total Income – ₹ 10 crore

Total Income	***Income tax and surcharge***
₹ 10,00,00,000	₹ 3,00,00,000 + ₹ 15,00,000 = ₹ 3,15,00,000
₹ 10,01,00,000	₹ 3,00,30,000 + ₹ 30,03,000 = ₹ 3,30,33,000 Restricted to 3,16,00,000
₹ 10,05,00,000	₹ 3,01,50,000 + ₹ 30,15,000 = ₹ 3,31,65,000 Restricted to 3,20,00,000
₹ 10,10,00,000	₹ 3,03,00,000 + ₹ 30,30,000 = ₹ 3,33,30,000 Restricted to 3,25,00,000
₹ 10,20,00,000	₹ 3,06,00,000 + ₹ 30,60,000 = ₹ 3,36,60,000 Restricted to 3,35,00,000
₹ 10,25,00,000	₹ 3,07,50,000 + ₹ 30,75,000 = ₹ 3,38,25,000 No Restriction

SECTION 87A: REBATE OF INCOME-TAX IN CASE OF CERTAIN INDIVIDUALS

- An assessee, being an **individual resident in India**,
- whose total income does not exceed ₹ 5,00,000, shall be entitled to a deduction,
- from the amount of income-tax on his total income with which he is chargeable for any assessment year,
- of an amount **equal to 100% of such income-tax** or
- **an amount of ₹ 2,000,**
- **whichever is less.**

Illustration:
Mr. A earned a total income of ₹2,75,000. Compute his tax liability.

Tax on ₹2,75,000	₹ 7,500
Less: Relief under section 87A	₹ 2,000
	₹ 5,500
Add: Education cess @ 3%	₹ 165
Net tax payable	**₹ 5,665**

EDUCATION CESS

IN ALL THE ABOVE CASES THE INCOME TAX COMPUTED ABOVE AS INCREASED BY SURCHARGE, IF ANY, AND AFTER ALLOWING MARGINAL RELIEF SHALL BE FURTHER INCREASED BY EDUCATION CESS OF 3% FOR ASSESSMENT YEAR 2014-15.

SECTION 288A: ROUNDING OFF OF INCOME

The taxable income shall be rounded off to the nearest multiple of ₹ 10 and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.

SECTION 288B: ROUNDING OFF OF TAX

Any amount payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ₹ 10 and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.

2

CAPITAL GAINS

Cost Inflation Index for the Financial Year 2013-14 is 939.

SECTION 451: CHARGING SECTION

Section 451 is the charging section of capital gains and it provides as under:

- any profits and gains arising from
- ***transfer***
- of a ***capital asset***
- effected in the previous year
- shall be chargeable to income-tax under the head capital gains
- ***in the previous year in which transfer took place.***

SECTION 214: DEFINITION OF "CAPITAL ASSET"

"Capital asset" means property of any kind held by an assessee whether or not connected with his business or profession, ***but does not include*** -

i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession;

ii personal effects, that is to say, ***movable property*** i ncluding wearing apparel and furniture held for personal use by the assessee or any member of his family dependent on him, ***but excludes—***

a ***jewellery;***
b ***archaeological collections;***
c ***drawings;***
d ***paintings;***
e ***sculptures; or***
f) ***any work of art.***

Explanation - For the purposes of this sub-clause, "jewellery" includes –

a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

b precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

iii) **agricultural land in India**, not being land situated -

A in any area which is comprised within the jurisdiction of a municipality whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name or a cantonment board and which has a population of not less than ten thousand; or

B) **in any area within the distance, measured aerially,—**

I not being more than two kilometres, 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 kilometres, 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 kilometres, 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.

Explanation: "Population" 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.

Amended by Finance Act, 2013

Analysis of Amendment Finance Act, 2013

1. Rural agricultural land in India is excluded from definition of capital asset under section 214 so that its transfer does not result in taxable capital gains. Urban agricultural land in India is a "Capital asset". Prior to amendment by Finance Act, 2013, Urban agricultural land meant agricultural land situated in India in –

a) Any area within the jurisdiction of a municipality or cantonment board having population of not less than 10,000 according to last preceding census, or

b Any area within such distance not exceeding 8 Kms 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.

2. Finance Act, 2013, has amended, with effect from Assessment year 2014-15, the definition of "Urban agricultural land". With effect from Assessment year 2014-15 urban agricultural land means agricultural land situated in India-

a) In any area within the jurisdiction of a municipality whether known as a municipality, municipal corporation, notified area committee, town committee, or by any other name or a cantonment board and which has a population of not less than 10,000

b measured aerially shortest aerial distance,

I. upto 2 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10,000 but not exceeding 1 lakh; or

II. upto 6 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 1 lakh but not exceeding 10 lakh; or

III. upto 8 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10 lakh.

The expression 'population' shall mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

3. The effect of amendment is that the distance to be seen from municipality / cantonment board for agricultural land to be considered as urban land has been changed from uniformly 8 kms to within 8 kms depending on population of municipality or cantonment board. Secondly, distance is to be measured straight line aerially as bird flies and not by road method which was used by Courts in various decisions.

The shortest aerial distance i.e. distance as the bird flies means:
"A straight line distance between two places. A human would have to travel further to get from one point to another due to obstacles or lack of roads or trails, but a bird can go in a straight line between them."

"The 'distance as the bird flies' is a way to describe the distance between two locations without considering all the variable factors. As an example traveling from Delhi to Agra involves multiple option of routes. The driving distance might be about 200 kms, but the distance "as the bird files' is about 170 kms approx.

Why is there such a big difference? The bird flies in a straight line, while drive have to follow the roads whichever way they twist and turn. The bird always flies in a straight line, so telling a distance is much easier using the bird than the car".

iv ***Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.***

POINTS TO BE NOTED:

Agricultural land in India is a capital asset if it is situated:

a) in any area which is comprised within the jurisdiction of a municipality whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name or a cantonment board and which has a population of not less than ten thousand; or

b in any area within such distance, measured aerially shortest aerial distance,

i. upto 2 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10,000 but not exceeding 1 lakh; or

ii. upto 6 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 1 lakh but not exceeding 10 lakh; or

iii. upto 8 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10 lakh.

3

SPECIAL PROVISION IN CASE OF LAND OR BUILDING

THERE IS NO CHANGE IN THIS SECTION

SECTION 50C: SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION IN CERTAIN CASES

1 *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed* ***or assessable*** *by any authority of a State Government hereafter in this section referred to as the "stamp valuation authority" for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed* ***or assessable*** *shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

2 *Without prejudice to the provisions of sub-section 1, where —*

a *the assessee claims before any Assessing Officer that the value adopted or assessed* ***or assessable*** *by the stamp valuation authority under sub-section 1 exceeds the fair market value of the property as on the date of transfer; and*

b *the value so adopted or assessed* ***or assessable*** *by the stamp valuation authority under sub-section 1 has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of the Wealth-tax Act, 1957, shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under section 16A1 of that Act.

Explanation- For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

3 *Subject to the provisions contained in sub-section 2, whe re the value ascertained under sub-section 2 exceeds the value adopted or assessed* ***or assessable*** *by the stamp valuation authority referred to in sub-section 1, the value so adopted or assessed* ***or assessable*** *by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.*

Words in Bold added by Finance Act, 2009

SECTION 15515: RECTIFICATION

- *Where in the assessment for any year,*
- *a capital gain arising from the transfer of a capital asset, being land or building or both,*
- *is computed by taking the full value of the consideration received or accruing as a result of the transfer*
- *to be the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section 1 of section 50C,*
- *and subsequently such value is revised in any appeal or revision or reference referred to in clause b of sub-section 2 of that section,*
- *the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking*
- *the full value of the consideration to be the value as so revised in such appeal or revision or reference;*
- *and the provisions of section 154 shall, so far as may be, apply thereto,*
- *and the period of 4 years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision or reference.*

Question 1:

Mr. X had purchased a house property on 01.04.1979 for ₹ 3,00,000 FMV as on 01.04.1981 – ₹4,20,000. This property is sold by Mr. X on 23.12.2013 to Mr. Y. Mr. X has declared ₹50 lakhs as the sales consideration for the purposes of computation of capital gains whereas, the value assessed by the Government Authority for the purposes of stamp duty valuation is:

Case I: ₹ 49,00,000

Case II: ₹ 62,00,000

Evaluate the tax implication on the above transaction in the hands of Mr. X and Mr. Y.

Answer:

Case I: ***Assessment Year 2014-15***

In the hands of Mr. X

Capital Gains

Period of holding: 01.04.1979 to 22.12.2013 Long Term	
Sales Price [Section 50C shall not apply]	₹ 50,00,000
Less: Indexed Cost of Acquisition 4,20,000 X 939/100	₹ 39,43,800
Long Term Capital Gain	**₹ 10,56,200**

In the hands of Mr. Y

Cost of Acquisition = ₹ 50,00,000

Case II: ***Assessment Year 2014-15***

In the hands of Mr. X

Capital Gains

Period of holding: 01.04.1979 to 22.12.2013 Long Term	
Sales Price [Section 50C shall apply]	₹ 62,00,000
Less: Indexed Cost of Acquisition 4,20,000 X 939/100	₹ 39,43,800
Long Term Capital Gain	**₹ 22,56,200**

In the hands of Mr. Y

Income from other sources under section 562vii) = ₹ 12,00,000
Cost of Acquisition as per section 494 = ₹ 62,00,000

Question 2:

Mr. A had purchased a land on 15.08.1987 for ₹ 7,00,000. The said land is sold on 02.03.2014 to Mr. B. Mr.A has declared ₹ 55,00,000 as the consideration for the sale of the land whereas, the value assessed by Government Authority for stamp duty valuation purposes is ₹68,00,000. Mr. A claims that the fair market value of the land as on the date of transfer is less than the value adopted by the Government Authority for the purpose of payment of stamp duty, though he has not appealed in any manner against the value so adopted by such authority.

What is the correct value of sales consideration to be considered for computation of capital gains?

Answer:

By virtue of sections 50C(2 and 50C(3, where the assessee claims that the value adopted or assessed or assessable by the stamp valuation authority under section 50C(1 exceeds the fair market value of the property as on the date of transfer and the value adopted or assessed or assessable by the stamp valuation authority has not been disputed in any appeal or revision or no reference has been made before any authority or court or the High Court, then the Assessing Officer **may** refer the valuation of the capital asset to a Valuation Officer and where such reference is made, the provisions of section 16A of the Wealth-tax Act, 1957 shall apply.

Where the value ascertained by the Valuation Officer is below the value adopted or assessed or assessable by the stamp valuation authority, the same would be taken as the value of sales consideration for the purposes of computation of capital gains but if the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the stamp valuation authority, the value assessed by such authority shall be taken as the full value of sales consideration.

Question 3:

Suppose in Question 2 above, the Assessing Officer refers the valuation of the land to a Valuation Officer as per the provisions of section 50C2 and the Valuation Officer ascertains the value of land as:

i) ***Case I*** ***:*** ₹ 66,00,000
ii) ***Case II*** ***:*** ₹ 70,00,000
iii) ***Case III*** ***:*** ₹ 52,00,000

Answer:

Case I: ***Assessment Year 2014-15***
In the hands of Mr. A

Capital Gains

Period of holding:	15.08.1987 to 01.03.2014	Long Term
Sales Price [By virtue of section 50C(3]		₹ 66,00,000
Less: Indexed Cost of Acquisition 7,00,000 X 939/150		₹ 43,82,000
Long Term Capital Gain		**₹ 22,18,000**

Note: Income from other sources in hands of Mr. B shall be ₹ 11,00,000 as per section 562vii and cost of acquisition shall be ₹ 66,00,000 as per section 494.

Case II: ***Assessment Year 2014-15***
In the hands of Mr. A

Capital Gains

Period of holding:	15.08.1987 to 01.03.2014	Long Term
Sales Price [By virtue of section 50C(3]		₹ 68,00,000
Less: Indexed Cost of Acquisition 7,00,000 X 939/150		₹ 43,82,000
Long Term Capital Gain		**₹ 24,18,000**

Note: Income from other sources in hands of Mr. B shall be ₹ 13,00,000 as per section 562vii and cost of acquisition shall be ₹ 68,00,000 as per section 494.

Case III: ***Assessment Year 2014-15***
In the hands of Mr. A

Capital Gains

Period of holding:	15.08.1987 to 01.03.2014	Long Term
Sales Price		₹ 55,00,000
Less: Indexed Cost of Acquisition 7,00,000 X 939/150		₹ 43,82,000
Long Term Capital Gain		**₹11,18,000**

Question 4:
Suppose in Question 2 above, Mr. A had appealed against the value assessed by the stamp valuation authority in the High Court. The High Court, by its order dated 25.12.2015 reduces the value to ₹56,00,000. Previously, the Assessing Officer had computed capital gains, for the Assessment Year 2014-15, on the basis of the sales consideration of ₹ 68,00,000. Suggest the course of action to be adopted by Mr. A.

Answer:
The Assessing Officer shall amend his earlier order by passing a rectification order under section 15515. In the rectification order he shall amend his earlier order of assessment and compute the capital gains with

reference to sales price of ₹ 56,00,000 instead of ₹ 68,00,000. The rectification order under section 155 15 can be passed upto 31.03.2020.

Revised Computation of Capital Gains for Assessment Year 2014-15
In the hands of Mr. A

Period of holding: 15.08.1987 to 01.03.2014 Long Term	
Sales Price	₹ 56,00,000
Less: Indexed Cost of Acquisition 7,00,000 X 939/150	₹ 43,82,000
Long Term Capital Gain	**₹ 12,18,000**

Note: Income from other sources in hands of Mr. B shall be rectified to be ₹ 1,00,000 as per section 562vii) and cost of acquisition of property shall be ₹ 56,00,000 as per section 494.

Question 5:
Mr. A sells his building to Mr. B on 1.1.2014 for ₹ 30,00,000 through a power of attorney. No registry is done for the said property. Mr. A purchased this property on 1.3.2002 for ₹10,00,000. Assessable stamp duty value is ₹50,00,000. Discuss the tax implication on the said transaction.

Answer:

Assessment Year 2014-15
In the hands of Mr. A

Capital Gains

Period of holding: 1.3.2002 to 31.12.2013 Long Term	
Sales Price [By virtue of section 50C]	₹ 50,00,000
Less: Indexed Cost of Acquisition 10,00,000 X 939/426	₹ 22,04,225
Long Term Capital Gain	**₹ 27,95,775**

Note: Income from other sources in hands of Mr. B shall be ₹ 20,00,000 as per section 562vii and cost of acquisition shall be ₹ 50,00,000 as per section 494.

4

MEASURES TO PREVENT GENERATION AND CIRCULATION OF UNACCOUNTED MONEY

Section 56(2)(vii) was introduced by Finance Act, 2009 (Amended by Finance Act, 2010) to stop the practice of converting black money into white money through medium of gifts.

Section 56(2)(viia) was introduced by Finance Act, 2010 to stop the practice of converting black money into white money through certain transactions. Further, section 56(2)(viib) has been introduced by Finance Act, 2012 to stop the practice of converting black money into white money through certain transactions.

Section 68 has been amended and a new section 115BBE has been introduced to stop the practice of converting black money into white money through certain transactions.

TAXATION OF GIFTS

The following provisions of law were there in the Income Tax Act prior to Finance Act, 2009 and the following provisions also exist after Finance Act, 2009.

1. **Section 47** provides that the following transaction shall not be regarded as transfer for the purpose of section 45 and therefore no capital gains shall arise:

   "Any transfer of a capital asset under a gift".

   Therefore, no capital gains shall arise on transfer of a capital asset under a gift.

2. **Section 49(1)** which deals with cost of acquisition provides that where a capital asset became the property of the assessee under a gift, then the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner acquired it. Therefore, the COA in hands of donee shall be the COA in the hands of donor.

3. **Section 2(42A)** which deals with period of holding provides that for determining the nature of capital gains in the hands of the assessee who acquired the asset by way of transaction referred to in section 49(1), the period for which the asset was held by the previous owner shall also be considered.

4. The law of taxation of gifts as contained in section 56(2)(vii) has been introduced by Finance Act, 2009 and amended by Finance Act, 2010, Finance Act, 2012 and Finance Act, 2013.

5. Section 56(2)(vii) introduced by Finance Act, 2009 and amended by Finance Act, 2010, Finance Act, 2012 and Finance Act, 2013 provides as under:

SECTION 56(2)(vii): PURCHASE/GIFT RECEIVED BY INDIVIDUAL OR HUF

The following shall be taxable under the head "Income from Other Sources":

Where an **individual or a Hindu undivided family receives**, in any previous year, **from any person** or persons **on or after the 1st day of October, 2009,—**

(a) any sum of money, without consideration, the AGGREGATE value of which exceeds ₹ 50,000, the whole of the aggregate value of such sum**;**

(b) any immovable property, –

(i) without consideration, the stamp duty value of which exceeds ₹ 50,000, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the stamp duty value of such property as exceeds such consideration;

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause.

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property.

(Amended by Finance Act, 2013)

(c) any property, other than immovable property,—

(i) **without consideration,** the **AGGREGATE fair market value of which exceeds ₹ 50,000,** the whole of the aggregate fair market value of such property;

(ii) **for a consideration which is less than the AGGREGATE fair market value of the property by an amount exceeding ₹50,000,** the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in section 50C(2), the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and section 155(15) shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:

Provided further that this clause shall not apply to any sum of money or any property received (Referred as specified person)—

(i) from any relative; or

(ii) on the occasion of the marriage of the individual; or

(iii) under a will or by way of inheritance; or

(iv) in contemplation of death of the payer or donor, as the case may be; or

(v) from any local authority as defined in the Explanation to clause (20) of section 10; or

(vi) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C); or

(vii) from any trust or institution registered under section 12AA.

Explanation.—For the purposes of this clause,—

(a) "**assessable**" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C;

(b) "**fair market value**" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;

(c) For the purposes of this sub-clause, **"jewellery"** includes –

(i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(ii) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(d) "**property**" **means the following *capital asset* of the assessee, namely:—**

(i) immovable property being land or building or both;
(ii) shares and securities;
(iii) jewellery;
(iv) archaeological collections;
(v) drawings;
(vi) paintings;
(vii) sculptures;
(viii) any work of art; or
(ix) bullion.

Clarification from Finance Ministry

Section 56(2)(vii) shall apply if property is in nature of "Capital Assets" in hands of recipient. If property is Stock in trade, raw material and consumable stores of the business in hands of recipient, then section 56(2)(vii) has no application.

For example, if an individual who is a jeweller buys jewellery from a customer for ₹ 80 lakhs and FMV of jewellery is ₹ 100 lakhs. Now, section 56(2)(vii) shall not apply since jeweller receives jewellery as stock-in-trade. As and when he will sell the jewellery say for ₹ 105 lakhs then ₹ 25 lakhs shall be taxable as his Business Income.

(e) For the purposes of this clause, "**relative**" means—

(A) **In case of an Individual**

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) brother or sister of either of the parents of the individual;

(*v*) any lineal ascendant or descendant of the individual;

(*vi*) any lineal ascendant or descendant of the spouse of the individual;

(*vii*) spouse of the person referred to in clauses (*ii*) to (*vi*).

(B) In case of Hindu Undivided Family (HUF), any member thereof.

(Inserted by Finance Act, 2012)

Therefore, as per the amendment by Finance Act, 2012, there will be no tax implications where a HUF receives from any member of the HUF the gifts referred to in section 56(2)(vii) or purchases assets referred to in section 56(2)(vii) from its member at a price lower than stamp duty value / FMV.

(f) "**stamp duty value**" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

GIFT IN CONTEMPLATION OF DEATH

Such gifts cannot be considered as receipt liable to tax under the section. The concept is defined and explained in section 191 of the Indian Succession Act, 1925, which reads as follows:

"Section 191: *Property transferable by gift made in contemplation of death* –

(1) A man may dispose, by gift made in contemplation of death, of any **movable property** which he could dispose of by will.

(2) A gift said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any **movable property** to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made."

MEMORANDUM EXPLAINING THE PROVISIONS OF FINANCE BILL, 2013

TAXABILITY OF IMMOVABLE PROPERTY RECEIVED FOR INADEQUATE CONSIDERATION

The existing provisions of sub-clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act, inter alia, provide that where any immovable property is received by an individual or HUF without

consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

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

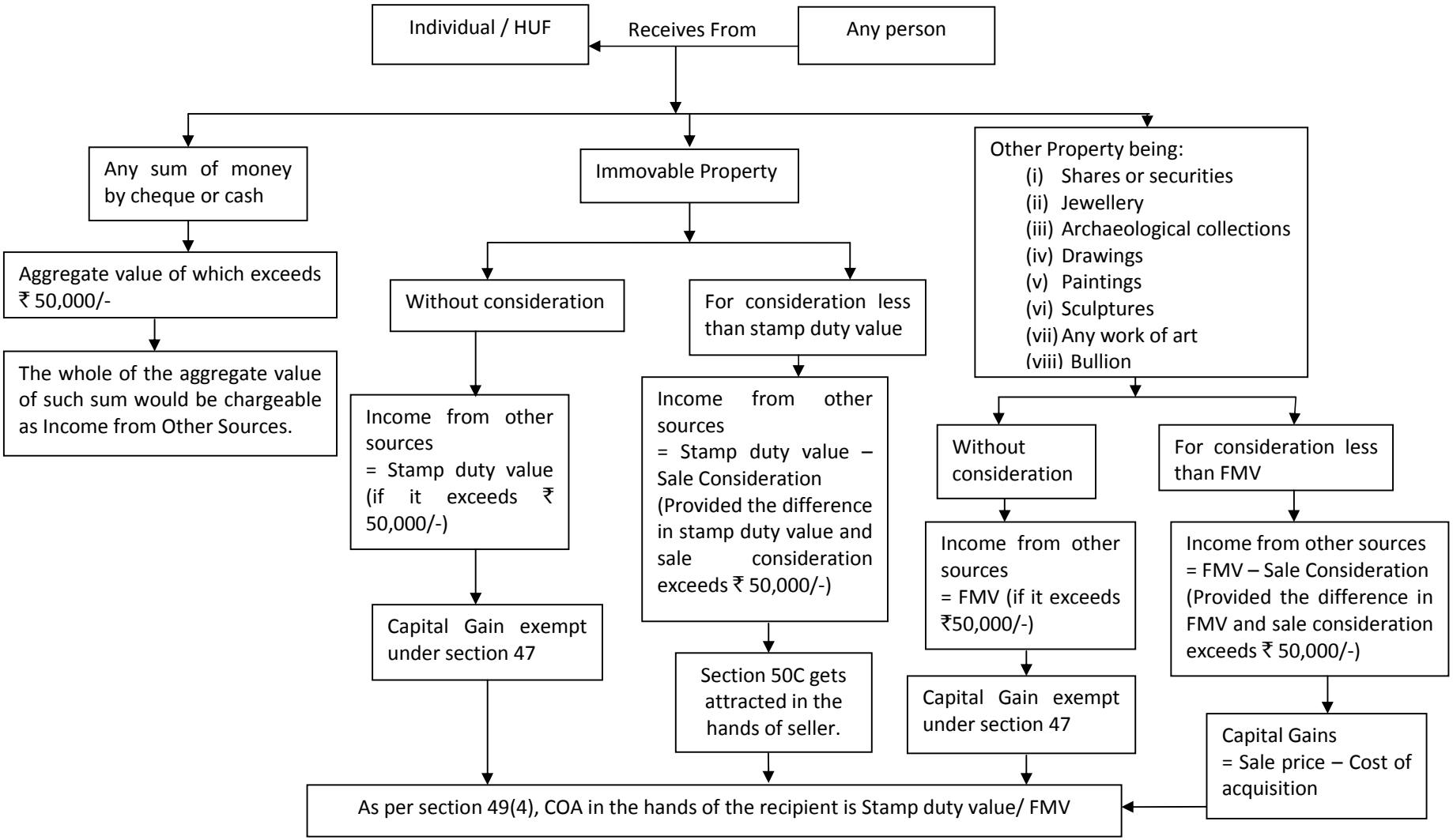
Considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the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

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

SECTION 49(4): COST OF ACQUISITION

Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (*vii*) or clause (viia).

ANALYSIS OF SECTION 56(2)(vii) READ WITH SECTION 50C, SECTION 47 AND SECTION 49(4)



GIFTS RECEIVED BY INDIVIDUAL & HUF

Cost to Donor = ₹ 10,00,000
Date of Purchase of donor 01.01.2001
Date of Gift 31.12.2013
Stamp Duty value / FMV on 31.12.2013 = ₹ 25,00,000

Nature of Property Gifted	Capital Gains in hands of Donor	Income from Other sources in the hands of Donee under section 56(2)(vii)	COA in the hands of Donee under section 49(4)	Period of Holding in hands of Donee
1. Immovable property being Land or Building	Exempt under section 47	Stamp duty value of property if it exceeds ₹ 50,000. i.e. Stamp Duty Value = ₹ 25,00,000 I/O/S = ₹ 25,00,000	Stamp duty value of property if it exceeds ₹ 50,000. i.e. Stamp Duty Value = ₹ 25,00,000 COA in the Hands of Donee = 25,00,000	Since section 49(1) is not applicable, section 2(42A) shall not apply. Period of holding shall be from 31.12.2013 in hands of donee.
2. Shares & Securities 3. Jewellery 4. Archaeological Collections 5. Drawings 6. Paintings 7. Sculptures 8. Any work of Art 9. Bullion	Exempt under section 47	Fair Market Value of such property if it exceeds ₹ 50,000. i.e. FMV of property = ₹ 25,00,000 I/O/S = ₹ 25,00,000	Fair Market Value of such property if it exceeds ₹ 50,000. i.e. FMV of property = ₹ 25,00,000 COA in the Hands of Donee = 25,00,000	Since section 49(1) is not applicable, section 2(42A) shall not apply. Period of holding shall be from 31.12.2013 in hands of donee.
10. Any other assets e.g., car, plant, machinery, etc.	Exempt under section 47	NONE	COA in the hands of the Donee as per section 49(1) = ₹ 10,00,000	Period of Holding of donor shall also be considered as per section 2(42A) i.e. from 1.1.2001

GIFTS RECEIVED BY INDIVIDUAL & HUF FROM SPECIFIED PERSONS E.G. RELATIVES, ON OCCASION OF MARRIAGE, ETC.

Cost to Donor = ₹ 10,00,000
Date of Purchase of donor 01.01.2001
Date of Gift 31.12.2013
Stamp Duty value / FMV on 31.12.2013 = ₹ 25,00,000

Nature of Property Gifted	Capital Gains in hands of Donor	Income from Other sources in the hands of Donee under section 56(2)(vii)	COA in the hands of Donee under section 49(1)	Period of Holding in hands of Donee
1. Immovable property being Land or Building	Exempt under section 47	NIL	COA in the hands of the Donee as per section 49(1) = ₹ 10,00,000	Period of Holding of donor shall also be considered as per section 2(42A) i.e. from 1.1.2001
2. Shares & Securities 3. Jewellery 4. Archaeological Collections 5. Drawings 6. Paintings 7. Sculptures 8. Any work of Art 9. Bullion	Exempt under section 47	NIL	COA in the hands of the Donee as per section 49(1) = ₹ 10,00,000	Period of Holding of donor shall also be considered as per section 2(42A) i.e. from 1.1.2001
10. Any other assets e.g., car, plant, machinery, etc.	Exempt under section 47	NIL	COA in the hands of the Donee as per section 49(1) = ₹ 10,00,000	Period of Holding of donor shall also be considered as per section 2(42A) i.e. from 1.1.2001

SALE TO INDIVIDUAL & HUF

Cost in the hands of seller = ₹ 10,00,000
Date of acquisition by seller 01.01.2001
Sale Price = ₹ 17,00,000 Date of Sale 31.12.2013
Stamp Duty value / FMV on 31.12.2013 = ₹ 25,00,000

Nature of Property Sold	Capital Gains in hands of Seller	Income from Other sources in the hands of buyer under section 56(2)(vii)	COA in the hands of buyer under section 49(4)	Period of Holding in hands of buyer
1. Immovable property being Land or Building	Sale Price = 17 L Stamp duty Value = 25 L Section 50C applies. Capital Gain = 25 L – 10L = 15 L Subject to Indexation	Section 56(2)(vii) attracted as per Finance Act, 2013 Income from other sources = Stamp Duty Value – Sale Price = 25 L – 17 L = 8 L	Section 49(4) is applicable since section 56(2)(vii) attracted. COA in the hands of the buyer is ₹25,00,000	From the date he purchased the property from the seller. i.e. 31.12.2013
2. Shares & Securities 3. Jewellery 4. Archaeological Collections 5. Drawings 6. Paintings 7. Sculptures 8. Any work of Art 9. Bullion	Sale Price = 17 L FMV = 25 L Section 50C does not apply. Capital Gain = SP – COA = 17 L – 10L = 7 L	Fair Market Value – Sale Price = 25L – 17L = 8L	FMV of the property = ₹ 25,00,000	From the date he purchased the property from the seller. i.e. 31.12.2013
10. Any other assets e.g., car, plant, machinery, etc.	Sale Price = 17 L FMV = 25 L Section 50C does not apply. Capital Gain = SP – COA = 17 L – 10L = 7 L	NIL	Purchase price of the property = ₹ 17,00,000	From the date he purchased the property from the seller. i.e. 31.12.2013

SALE TO INDIVIDUAL & HUF BY SPECIFIED PERSONS

Cost in the hands of seller = ₹ 10,00,000
Date of acquisition by seller 01.01.2001
Sale Price = ₹ 17,00,000 Date of sale 31.12.2013
Stamp Duty value / FMV on 31.12.2013 = ₹ 25,00,000

Nature of Property Sold	Capital Gains in hands of Seller	Income from Other sources in the hands of buyer under section 56(2)(vii)	COA in the hands of buyer (Section 49(4) is not applicable)	Period of Holding in hands of buyer
1. Immovable property being Land or Building	Sale Price = 17 L Stamp duty Value = 25 L Section 50C Applies. Capital Gain = 25 L – 10L = 15 L Subject to Indexation	NIL	Purchase price of the property = ₹ 17,00,000	From the date he purchased the property from the seller.
2. Shares & Securities 3. Jewellery 4. Archaeological Collections 5. Drawings 6. Paintings 7. Sculptures 8. Any work of Art 9. Bullion	Sale Price = 17 L FMV = 25 L Section 50C does not have any implication. Capital Gain = SP – COA = 17 L – 10L = 7 L	NIL	Purchase price of the property = ₹ 17,00,000	From the date he purchased the property from the seller.
10. Any other assets e.g., car, plant, machinery, etc.	Sale Price = 17 L FMV = 25 L Section 50C does not have any implication. Capital Gain = SP – COA = 17 L – 10L = 7 L	NIL	Purchase price of the property = ₹ 17,00,000	From the date he purchased the property from the seller.

SECTION 43CA: SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES (INTRODUCED BY FINANCE ACT, 2013)

(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

MEMORANDUM EXPLAINING THE PROVISIONS OF FINANCE BILL, 2013

COMPUTATION OF INCOME UNDER THE HEAD "PROFITS AND GAINS OF BUSINESS OR PROFESSION" FOR TRANSFER OF IMMOVABLE PROPERTY IN CERTAIN CASES

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

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

It is also proposed to provide that where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by any mode other than cash on or before the date of the agreement.

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

Illustration:
Mr. Harish entered into an agreement to sell a building and land appurtenant thereto to Mr. Kushal on 1.1.2013 for ₹ 50 Lakh. Mr. Kushal made an advance payment through cheque of ₹ 5 lakh on 1.1.2013. The stamp duty value on the date of agreement was ₹ 58 Lakh. Mr. Harish purchased this property on 1.1.2011 for ₹ 10 Lakh.

Mr. Kushal makes the balance payment of ₹ 45 lakhs on 30.6.2013 and gets the property registered in his name on that date when the stamp duty value has been increased to ₹ 70 Lakhs. Possession of the property was also handed over to him on 30.6.2013.

Mr. Kushal sold the property on 31.12.2013 for ₹ 100 lakhs.

Examine the taxability of the transaction in the hands of Mr. Harish and Mr. Kushal, if:

(i) Both Mr. Harish and Mr. Kushal treat it as capital asset.
(ii) Both Mr. Harish and Mr. Kushal treat it as stock in trade.
(iii) Mr. Harish treats it as capital asset but Mr. Kushal treats it as stock in trade.
(iv) Mr. Harish treats it as stock in trade but Mr. Kushal treats it as capital asset.

Answer:

Case -1: Both Mr. Harish and Mr. Kushal treat it as capital asset

In the hands of Mr. Harish
Assessment Year 2014-15

Income under the Head Capital Gains

Period of Holding	1.1.2011 to 29.6.2013	Short Term
Sale Consideration (As per section 50C)		₹ 70 Lakhs
Less: Cost of Acquisition		₹ 10 Lakhs
Short Term Capital Gain		**₹ 60 Lakhs**

In the hands of Mr. Kushal
Assessment Year 2014-15

Income from Other Sources

Income from other sources [Section 56(2)(vii)]	₹ 8 Lakhs

Cost of Acquisition as per section 49(4) shall be ₹ 58 Lakh.

Income under the Head Capital Gains

Period of Holding	30.6.2013 to 30.12.2013	Short Term
Sale Consideration		₹ 100 Lakhs
Less: Cost of Acquisition		₹ 58 Lakhs
Short Term Capital Gain		**₹ 42 Lakhs**

Case -2: Both Mr. Harish and Mr. Kushal treat it as stock-in-trade

In the hands of Mr. Harish
Assessment Year 2014-15

Income under the Head PGBP

Sale Consideration (As per section 43CA)	₹ 58 Lakhs
Less: Cost of Acquisition	₹ 10 Lakhs
PGBP	**₹ 48 Lakhs**

In the hands of Mr. Kushal
Assessment Year 2014-15

Income from Other Sources

Income from other sources [Section 56(2)(vii)] shall be taken as Nil since he purchased it as stock-in-trade and not as capital asset.

Cost of stock shall be ₹ 50 Lakh.

Income under the Head PGBP

Sale Consideration	₹ 100 Lakhs
Less: Cost of Acquisition	₹ 50 Lakhs
PGBP	**₹ 50 Lakhs**

Case 3: Mr. Harish treats it as capital asset but Mr. Kushal treats it as stock in trade.

In the hands of Mr. Harish
Assessment Year 2014-15

Income under the Head Capital Gains

Period of Holding	1.1.2011 to 29.6.2013	Short Term
Sale Consideration (As per section 50C)		₹ 70 Lakhs
Less: Cost of Acquisition		₹ 10 Lakhs
Short Term Capital Gain		**₹ 60 Lakhs**

In the hands of Mr. Kushal
Assessment Year 2014-15

Income from Other Sources

Income from other sources [Section 56(2)(vii)] shall be taken as Nil since he purchased it as stock-in-trade and not as capital asset.

Cost of stock shall be ₹ 50 Lakh.

Income under the Head PGBP

Sale Consideration	₹ 100 Lakhs
Less: Cost of Acquisition	₹ 50 Lakhs
PGBP	**₹ 50 Lakhs**

Case 4: Mr. Harish treats it as stock in trade but Mr. Kushal treats it as capital asset.

In the hands of Mr. Harish
Assessment Year 2014-15

Income under the Head PGBP

Sale Consideration (As per section 43CA)	₹ 58 Lakhs
Less: Cost of Acquisition	₹ 10 Lakhs
PGBP	**₹ 48 Lakhs**

In the hands of Mr. Kushal
Assessment Year 2014-15

Income from Other Sources

Income from other sources [Section 56(2)(vii)]	₹ 8 Lakhs

Cost of Acquisition as per section 49(4) shall be ₹ 58 Lakh.

Income under the Head Capital Gains

Period of Holding	30.6.2013 to 30.12.2013	Short Term
Sale Consideration		₹ 100 Lakhs
Less: Cost of Acquisition		₹ 58 Lakhs
Short Term Capital Gain		**₹ 42 Lakhs**

EXAMPLES

Example 1:
Mr. A sells his building to Mr. B on 1.1.2014 for ₹ 30,00,000. Mr. A purchased this property on 1.3.2001 for ₹10,00,000. The stamp valuation authority determined the value of the building at:

Case – I: ₹ 30,40,000
Case – II: ₹ 50,00,000

Discuss the tax implication on the transaction.

Answer:
Case – I

Assessment Year 2014-15
In the hands of Mr. A

Capital Gains

Period of holding: 1.3.2001 to 31.12.2013 (Long Term)	
Sales Price [By virtue of section 50C]	₹ 30,40,000
Less: Indexed Cost of Acquisition 10,00,000 X 939/406	₹ 23,12,808
Long Term Capital Gain	**₹ 7,27,192**

In the hands of Mr. B

Section 56(2)(vii) is not attracted since the difference does not exceed Rs. 50,000.

Cost of Acquisition = ₹ 30,00,000

Case – II ***Assessment Year 2014-15***

In the hands of Mr. A

Capital Gains

Period of holding: 1.3.2001 to 31.12.2013 (Long Term)	
Sales Price [By virtue of section 50C]	₹ 50,00,000
Less: Indexed Cost of Acquisition 10,00,000 X 939/406	₹ 23,12,808
Long Term Capital Gain	**₹ 26,87,192**

In the hands of Mr. B

Section 56(2)(vii) attracted as per amendment by Finance Act, 2013. Income from other sources shall be Rs. 20,00,000. Cost of acquisition as per section 49(4) shall be Rs. 50,00,000

Example 2:

Mr. X sells his building to M/s. STU Ltd. on 1.1.2014 for ₹ 30,00,000. Mr. X purchased this property on 1.3.2001 for ₹10,00,000. The stamp valuation authority determined the value of the building at ₹50,00,000. Discuss the tax implication on the same.

Answer:

Assessment Year 2014-15

In the hands of Mr. X

Capital Gains

Period of holding: 1.3.2001 to 31.12.2013 (Long Term)	
Sales Price [By virtue of section 50C]	₹ 50,00,000
Less: Indexed Cost of Acquisition 10,00,000 X 939/406	₹ 23,12,808
Long Term Capital Gain	**₹ 26,87,192**

In the hands of M/s STU Ltd.

Section 56(2)(vii) is not applicable.

Cost of Acquisition = ₹ 30,00,000

Example 3:

Mr. Z sells his building to his wife Mrs. Z on 1.1.2014 for ₹ 30,00,000. Mr. Z purchased this property on 1.3.2001 for ₹10,00,000. The stamp valuation authority determined the value of the building at ₹1,00,00,000. Discuss the tax implication on the same.

Answer:

Assessment Year 2014-15

In the hands of Mr. Z

Capital Gains

Period of holding: 1.3.2001 to 31.12.2013 (Long Term)	
Sales Price [By virtue of section 50C]	₹ 1,00,00,000
Less: Indexed Cost of Acquisition 10,00,000 X 939/406	₹ 23,12,808
Long Term Capital Gain	**₹ 76,87,192**

In the hands of Mrs. Z

Section 56(2)(vii) not applicable.

Cost of Acquisition = ₹ 30,00,000 (Section 49(4) shall not apply).

Note: In this case, Mr. Z should have gifted the building to his wife Mrs. Z. No Capital Gain shall be attracted since gift is exempt under section 47. Section 50C shall also not apply.

ANALYSIS OF VALUATION RULES OF UNQUOTED EQUITY SHARES

The fair market value of unquoted equity shares shall be as under:

Assets – Liabilities x Paid up value of unquoted equity shares
Paid up equity share capital

Assets

Include book value of all assets including fixed assets, current assets and investment.

Not to include

1. Advance tax (+) TDS (+) TCS (–) Income tax refund claimed [It means that the income tax refund is an asset).
2. Debit balance of Profit and Loss account
3. Miscellaneous expenditure not written off
4. Discount on issue of Debenture not written off
5. Unamortised amount of deferred expenditure not representing any asset.

Liabilities

Includes

1. Preference share capital
2. Debentures
3. Loans (secured and unsecured)
4. Current liabilities and ascertained provisions
5. Depreciation Reserve
6. Dividend payable on equity and preference shares if the same has been declared at AGM before the date of transfer
7. Correct provision for Taxation (–) [Advance Tax + TDS + TCS (–) Income tax refund claimed]
8. Arrears of dividend payable in respect of cumulative preference shares even if shown as contingent liabilities

Not to include

1. Equity share capital
2. Dividend payable on equity and preference shares if such dividend has not been declared before the date of transfer at AGM.
3. Credit balance of Profit and Loss Account
4. Any Reserve e.g. General Reserve, Workmen Compensations Reserve, Foreign Exchange, Fluctuation Reserve
5. Excess provisions including excess provision for Tax
6. Provision for unascertained liabilities
7. Contingent Liabilities

Example 1:

Mr. A received gift of 10,000 shares of XYZ Pvt. Ltd. On 20.2.2014 and Balance sheet of XYZ Pvt. Ltd. Is as under:

Balance Sheet of XYZ Pvt. Ltd.
As at 20.2.2014

Liabilities	Amount	Asset	Amount
Share Capital		**Fixed Assets**	10,56,00,000
Paid up Equity share Capital 1 crore share of ₹ 10/-each	10,00,00,000	**Investment**	
		Shares of Subsidiary Company	25,00,000
Preference share capital	19,00,000	**Current Assets, Loans & Advances**	
Reserves & Surplus			
Workman Compensation reserve	10,00,000	Current Assets	70,00,000
Sinking Fund	15,00,000	Advance Tax	13,00,000
Foreign Exchange fluctuation Reserve	18,00,000	Tax Deducted at Source	2,00,000
		Miscellaneous Expenditure	
Depreciation Reserve	5,00,000	Discount on issue of debenture not written off	9,00,000
Loans			
Unsecured Loan	30,00,000	Debit Balance of Profit &Loss A/c	14,00,000
Secured Loan	40,00,000		
Current Liabilities & Provisions			
Provision on Taxation	20,00,000		
Provision for unascertained Liabilities	12,00,000		
Current Liabilities	11,00,000		
Dividend payable	9,00,000		
Total	**11,89,00,000**	**Total**	**11,89,00,000**

Additional Information:

1. Dividend payable of 9,00,000 was declared at AGM held on 25.2.2014.
2. Contingent Liabilities include arrears of dividend of ₹ 2,00,000 payable on cumulative preference shares.
3. Provision for taxation in excessive by ₹ 1,00,000.

Solution:

Assets = Fixed Asset + Investment + Current Assets

Assets = 10,56,00,000 + 25,00,000 + 70,00,000 = 11,51,00,000

Liabilities = Pref. sh. Cap. + Depreciation Reserve + Unsecured Loans + Secured loan + Provision for Taxation + Current Liabilities + Arrears of Dividend on cumulative pref. shares

Liabilities = 19,00,000 + 5,00,000 + 30,00,000 + 40,00,000 + 4,00,000* + 11,00,000 + 2,00,000 = 1,11,00,000
*20,00,000 – 1,00,000 – 13,00,000 – 2,00,000

Value of unquoted equity shares = $\frac{11,51,00,000 - 1,11,00,000}{10,00,00,000}$ x 1,00,000 **= ₹ 1,04,000**

Example 2:

Mr. A received gift of 10,000 shares of XYZ Pvt. Ltd. On 20.2.2014 and Balance sheet of XYZ Pvt. Ltd. Is as under:

Balance Sheet of XYZ Pvt. Ltd.
As at 20.2.2014

Liabilities	Amount	Asset	Amount
Share Capital		**Fixed Assets**	10,56,00,000
Paid up Equity share Capital 1 crore share of ₹ 10/-each	10,00,00,000	**Investment**	
		Shares of Subsidiary Company	25,00,000
Preference share capital	19,00,000	**Current Assets, Loans & Advances**	
Reserves & Surplus			
Workman Compensation reserve	10,00,000	Current Assets	70,00,000
Sinking Fund	15,00,000	Advance Tax	23,00,000
Foreign Exchange fluctuation Reserve	18,00,000	Tax Deducted at Source	2,00,000
		Miscellaneous Expenditure	
Depreciation Reserve	5,00,000	Discount on issue of debenture not written off	9,00,000
Loans			
Unsecured Loan	30,00,000	Debit Balance of Profit &Loss A/c	4,00,000
Secured Loan	40,00,000		
Current Liabilities & Provisions			
Provision on Taxation	20,00,000		
Provision for unascertained Liabilities	12,00,000		
Current Liabilities	11,00,000		
Dividend payable	9,00,000		
Total	**11,89,00,000**	**Total**	**11,89,00,000**

Additional Information:

1. Dividend payable of 9,00,000 was declared at AGM held on 25.2.2014.
2. Contingent Liabilities include arrears of dividend of ₹ 2,00,000 payable on cumulative preference shares.
3. Provision for taxation in excessive by ₹ 1,00,000.

Solution:

Assets = Fixed Asset + Investment + Current Assets

Assets = 10,56,00,000 + 25,00,000 + 70,00,000 + 6,00,000 = 11,57,00,000

Liabilities = Pref. sh. Cap. + Depreciation Reserve + Unsecured Loans + Secured loan + Provision for Taxation + Current Liabilities + Arrears of Dividend on cumulative pref. shares

Liabilities = 19,00,000 + 5,00,000 + 30,00,000 + 40,00,000 + NIL* + 11,00,000 + 2,00,000 = 1,07,00,000
*20,00,000 – 1,00,000 – (23,00,000 + 2,00,000 – 6,00,000)

Value of unquoted equity shares = $\frac{11,57,00,000 - 1,07,00,000}{10,00,00,000}$ x 1,00,000 **= ₹ 1,05,000**

5

INVESTMENT ALLOWANCE (INTRODUCED BY FINANCE ACT, 2013)

SECTION 32AC: INVESTMENT IN NEW PLANT OR MACHINERY

(1) Where an assessee, being a **company**, engaged in the **business of manufacture or production of any article or thing**, **acquires and installs** new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds ₹ 100 crores, then, there shall be allowed a deduction,—

(a) for the assessment year 2014-15, of a sum equal to 15% of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds ₹ 100 crores; and

(b) for the assessment year 2015-16, of a sum equal to 15% of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

(2) If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger, within a period of 5 years from the date of its installation, the amount of deduction allowed under sub-section (1) in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

(3) Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company, as the case may be, as they would have applied to the amalgamating company or the demerged company.

(4) For the purposes of this section, **"new asset" means any new plant or machinery (other than ship or aircraft) 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; or

(v) 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.

ANALYSIS

Eligible Assessee:

- Deduction is available only to a Company (Indian as well as Foreign); and

- Company must be engaged in the business of manufacture or production of any article or thing.

Conditions to be satisfied:

- Assessee acquires and installs the new plant & machinery on or after 1st April, 2013 but on or before 31st March, 2015 (both acquisition and installation should be completed within the abovementioned period); and

- Aggregate amount of actual cost of such new plant & machinery should exceed ₹ 100 crores.

Amount of Deduction:

- **For Assessment Year 2014-15:** 15% of the actual cost of new plant & machinery acquired and installed during previous year 2013-14, if actual cost exceeds ₹ 100 crores.

- **For Assessment Year 2015-16:** 15% of the actual cost of new plant & machinery acquired and installed during previous year 2013-14 and 2014-15, if actual cost exceeds ₹ 100 crores, as reduced by deduction already allowed in Assessment Year 2014-15 under this section (if any).

Lock-in-Period:

- There shall be a lock-in-period of 5 years from the date of installation.

- If new plant & machinery on which investment allowance deduction has been availed, has been sold or transferred within 5 years from the date of installation, then deduction allowed under section 32AC shall be deemed to be the income under the head PGBP of the year in which plant & machinery is sold. This will be in addition to gains arising from transfer of the plant & machinery. This shall however not apply if plant and machinery is transferred in a scheme of amalgamation or demerger.

- In case of amalgamation or demerger, the amalgamated/ resulting company should not sell / transfer the plant & machinery for a period of 5 years from the date it was installed by amalgamating / demerged company. If it is sold / transferred by amalgamated / resulting company in the above-said lock-in-period of 5 years, the deduction allowed to amalgamating/ demerged company shall be deemed to be the income under the head PGBP of amalgamated/ resulting company of the previous year in which plant & machinery is sold / transferred. This will be in addition to gains arising from transfer of plant & machinery.

Plant & Machinery Not Eligible for Deduction:

(i) ship or aircraft

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

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

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

(v) any vehicle; 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.

Point to be noted:

- **This deduction is in addition to the depreciation and additional depreciation.**
- **Deduction under section 32AC shall not be reduced from the WDV of block of asset.**
- **To claim deduction under section 32AC, there is no condition that plant and machinery should be actually put to use.**
- **This deduction is not available to power generating units.**
- **This deduction will not be restricted to 50%, if plant & machinery purchased and installed is used for less than 180 days during the previous year.**

EXAMPLES

Example 1:
XYZ Ltd. commences its business of manufacturing of polythene bags on 1-5-2013. It purchased the following assets:

- New plant and machinery on 1-8-2013 worth ₹ 150 crores.
- Imported second hand plant & machinery of ₹ 10 crores on 1-6-2013
- Office equipments of ₹ 5 crores during the month of July 2013
- Computers of ₹ 7 crores on 3-8-2013

All the above-mentioned assets were installed and put to use on 20-9-2013. Compute the eligible amount of deduction under section 32AC.

Answer:

XYZ Ltd.
Assessment Year 2014-15

Computation of Deduction under section 32AC

Eligible Investment	
New plant and machinery	₹ 150 crores
Imported second hand plant & machinery (Only new plant & machinery is eligible)	Nil
Office equipments [Specifically excluded under section 32AC(4)]	Nil
Computers [Specifically excluded under section 32AC(4)]	Nil
Total Eligible Investment under section 32AC	**₹ 150 crores**
Amount of deduction under section 32AC	**₹ 22.5 crores**
WDV of Block of Plant & Machinery – 15%	
Op. WDV as on 1-4-2013	Nil
Add: Assets purchased during the previous year	₹ 165 crores
WDV for Assessment Year 2014-15	₹ 165 crores
Normal Depreciation under section 32(1)(ii) @ 15% on ₹ 165 crores	₹ 24.75 crores
Additional Depreciation under section 32(1)(iia) @ 20% on ₹ 150 crores	₹ 30 crores
WDV as on 1-4-2014	**₹ 110.25 crores**

Example 2:
ABC Ltd. engaged in the business of manufacturing carpets, purchased new plant and machinery of ₹ 200 crores on 30-9-2013. However, the same has been installed and put to use on 29-3-2014. Compute the eligible amount of deduction under section 32AC.

Answer:

ABC Ltd.
Assessment Year 2014-15

Computation of Deduction under section 32AC

Actual cost of new plant & Machinery	₹ 200 crores
Deduction under section 32AC @ 15% of actual cost	₹ 30 crores
Normal Depreciation under section 32(1)(ii) @ 15% @ 50%	₹ 15 crores
Additional Depreciation under section 32(1)(iia) @ 20% @ 50%	₹ 20 crores

Example 3:
Suppose in example 2 above, if plant & machinery has been installed and put to use on 1-4-2014. Compute the eligible amount of deduction under section 32AC.

Answer:

ABC Ltd.
Assessment Year 2014-15

Deduction under section 32AC is not available since the installation was not completed as on 31-3-2014.

No depreciation and no additional depreciation since plant & machinery was not put to use in previous year 31.3.2014.

Assessment Year 2015-16

Computation of Deduction under section 32AC

Actual cost of new plant & Machinery	₹ 200 crores
Deduction under section 32AC @ 15% of actual cost	₹ 30 crores
Normal Depreciation under section 32(1)(ii) @ 15%	₹ 30 crores
Additional Depreciation under section 32(1)(iia) @ 20%	₹ 40 crores

Example 4:
PQR Ltd. engaged in the business of manufacturing, purchased new plant and machinery of ₹ 100 crores on 30-9-2013. The same was installed & put to use on 30-9-2013. Another plant and machinery was purchased on 15-6-2014 of ₹ 50 crores which was installed and put to use by 30-6-2014. Compute the eligible amount of deduction under section 32AC for Assessment Year 2014-15 and 2015-16.

Answer:

PQR Ltd.
Assessment Year 2014-15

Deduction under section 32AC is not available since the eligible investment does not exceed ₹ 100 crores.

Normal Depreciation under section 32(1)(ii) @ 15%	₹ 15 crores
Additional Depreciation under section 32(1)(iia) @ 20%	₹ 20 crores
WDV of Block as on 1-4-2014	₹ 65 crores

Assessment Year 2015-16

Computation of Deduction under section 32AC

Actual cost of new plant & Machinery purchased and installed:	
➢ during previous year 2013-14	₹ 100 crores
➢ during previous year 2014-15	₹ 50 crores
Total Eligible Investment	**₹ 150 crores**
Deduction under section 32AC @ 15% of actual cost	₹ 22.5 crores

Opening WDV of Block as on 1-4-2014	₹ 65 crores
Add: Purchases during the previous year	₹ 50 crores
WDV for Assessment Year 2015-16	**₹ 115 crores**
Normal Depreciation under section 32(1)(ii) @ 15% on ₹ 115 crores	₹ 17.25 crores
Additional Depreciation under section 32(1)(iia) @ 20% on ₹ 50 crores	₹ 10 crores
WDV of Block as on 1-4-2014	**₹ 87.75 crores**

Example 5:
JK Ltd. engaged in the business of manufacturing, purchased new plant and machinery of ₹ 250 crores on 30-9-2013. However, the same has been installed on 30-11-2013. Another plant and machinery was purchased on 15-6-2014 of ₹ 150 crores which was installed by 30-6-2014. Compute the eligible amount of deduction under section 32AC for Assessment Year 2014-15 and 2015-16.

Answer:

JK Ltd.
Assessment Year 2014-15

Computation of Deduction under section 32AC

Actual cost of new plant & Machinery	₹ 250 crores
Deduction under section 32AC @ 15% of actual cost	₹ 37.5 crores

Assessment Year 2015-16

Computation of Deduction under section 32AC

Actual cost of new plant & Machinery purchased and installed:	
➢ during previous year 2013-14	₹ 250 crores
➢ during previous year 2014-15	₹ 150 crores
Total Eligible Investment	**₹ 400 crores**
15% of actual cost	₹ 60 crores
Less: Deduction allowed in Assessment Year 2014-15	₹ 37.5 crores
Deduction allowed under section 32AC for Assessment Year 2015-16	**₹ 22.5 crores**

Example 6:
Suppose in the above example 5, if JK Ltd. sell a part of machinery which was purchased on 30-9-2013 on 1.5.2016 whose actual cost was ₹ 50 crores. What will be the consequences?
Answer:

JK Ltd.
Assessment Year 2017-18

Since machinery on which deduction under section 32AC has been claimed was sold before 5 years of installation, therefore, deduction allowed earlier shall now be the income chargeable to tax under the head PGBP.

Income under the head PGBP	₹ 7.5 crores

* It is assumed that block of asset continue to exist, therefore, no capital gain shall be computed on such sale.

Example 7:
Suppose in the above example 5, if JK Ltd. was amalgamated with ABC Ltd. on 1-4-2015 and all the assets and liabilities of JK Ltd. stands transferred to ABC Ltd. as on that date. ABC Ltd. sells a part of machinery which was purchased on 30-9-2013 on 1-5-2016 whose actual cost was 50 crores. What will be the consequences?

Answer:

JK Ltd.
Assessment Year 2016-17

No consequence on transfer of asset to ABC Ltd. under the scheme of amalgamation.

ABC Ltd.
Assessment Year 2017-18

Since machinery on which deduction under section 32AC has been claimed was sold before 5 years from the date of installation, therefore, deduction allowed earlier shall now be the income chargeable to tax under the head PGBP.

Income under the head PGBP ₹ 7.5 crores

* It is assumed that block of asset continue to exist, therefore, no capital gain shall be computed on such sale.

Example 8:

Year ended 31-3-2014

	Date of Installation	Date of put to use	Actual cost
New Plant & Machinery	31.3.2014	31.3.2014	₹ 80 crores
Vehicles	31.3.2014	31.3.2014	₹2 crores
Old Plant & Machinery	31.3.2014	31.3.2014	₹ 10 crores

Year ended 31-3-2015

	Date of Installation	Date of put to use	Actual cost
New Plant & Machinery	31.3.2015	31.3.2015	₹ 70 crores
Vehicles	31.3.2015	31.3.2015	₹2 crores
Old Plant & Machinery	31.3.2015	31.3.2015	₹ 30 crores

WDV of Block 15% as on 1-4-2013 = ₹ 20 crores

Answer:

Assessment Year 2014-15

Investment Allowance under section 32AC = Nil
Depreciation under section 32(1)(ii) 7.5% of ₹ 92 crores = ₹ 6.9 crores
Additional Depreciation under section 32(1)(iia) 10% of ₹ 80 crores = ₹ 8 crores

Opening WDV of Block as on 1-4-2013	₹ 20 crores
Add: Purchases during the previous year	₹ 92 crores
WDV for Assessment Year 2014-15	**₹ 112 crores**
Normal Depreciation under section 32(1)(ii)	₹ 9.9 crores
Additional Depreciation under section 32(1)(iia)	₹ 8 crores
WDV of Block as on 1-4-2014	**₹ 94.1 crores**

Assessment Year 2015-16

Investment Allowance under section 32AC = ₹ 150 crores X 15% = ₹ 22.50 crores

Opening WDV of Block as on 1-4-2014	₹ 94.1 crores
Add: Purchases during the previous year	₹ 102 crores
WDV for Assessment Year 2015-16	**₹ 196.1 crores**
Normal Depreciation under section 32(1)(ii) @ 15% on ₹ 94.1 crores	₹ 14.115 crores
Normal Depreciation under section 32(1)(ii) @ 7.5% on ₹ 102 crores	₹ 7.65 crores
Additional Depreciation under section 32(1)(iia) @ 10% on ₹ 70 crores	₹ 7 crores
WDV of Block as on 1-4-2015	**₹ 167.335 crores**

MEMORANDUM EXPLAINING THE FINANCE BILL, 2013

INCENTIVE FOR ACQUISITION AND INSTALLATION OF NEW PLANT OR MACHINERY BY MANUFACTURING COMPANY

In order to encourage substantial investment in plant or machinery, it is proposed to insert a new section 32AC 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 ₹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% 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 ₹100 crore;

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

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

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

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

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

(iv) any vehicle;

(v) ship or aircraft; or

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

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

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

6

OTHER AMENDMENTS IN THE CHAPTER OF PGBP

The business income of a bank is computed normally as per section 28 to 44D. However, the banks are allowed a deduction of **provision made for bad and doubtful debts under section 36(1)(viia) which is discussed below:**

SECTION 36(1)(viia): PROVISION FOR BAD AND DOUBTFUL DEBTS RELATING TO BANKS

The amount of deduction in respect of provision for bad and doubtful debts is given below

Amount deductible in respect of provision for bad and doubtful debts		
In the case of an Indian Bank	**In case of a Public Financial, State Financial Corporation, State Industrial Investment Corporation**	**In the case of a Foreign Bank**
7.5% of total income computed before deduction under this section and before deduction under chapter VI-A ***plus*** 10% of **Aggregate Average Advances** made by **rural branches**	5% of total income computed before deduction under this section and before deduction under chapter VI-A __	5% of total income computed before deduction under this section and before deduction under chapter VI-A __

POINTS TO BE NOTED:

1. **The deduction for provision for bad and doubtful debt is allowed under section 36(1)(viia) provided the provision is debited to the Profit & Loss A/c.**

2. ***Meaning of Rural Branch –*** "Rural branch" means a branch of Indian bank situated in a place which has a population of a not more than 10,000 according to the last preceding census.

3. ***Meaning of Aggregate Average Advances***– The **Aggregate Average Advances** qualifying for the deduction are to be computed as under:

a) The amount of advances, made by each rural branch, as outstanding at the end of the last day of each month of the previous year, is aggregated separately:

b) The sum so arrived at in the case of each such branch is to be divided by the number of months for which the outstanding advances have been taken into account ;

c) The aggregate of the sums so arrived at in respect of each of the rural branches is the aggregate advances made by the rural branches of the bank.

DEDUCTION FOR ACTUAL BAD DEBTS

(i) No deduction is allowed under section 36(1)(vii) in respect of actual bad debts.

(ii) The actual bad debts should be debited to the provision for bad and doubtful debts made under section 36(1)(viia).

(iii) Where the actual bad debts exceeds the credits balance in the provision for bad and doubtful debt account, then deduction under section 36(1)(vii) shall be allowed for such excess.

SECTION 36(1)(vii): AMENDMENT BY FINANCE ACT, 2013

If an Indian Bank makes provision for bad and doubtful debts as under:

7.5% of Total Income	=	₹ 10 crores
10% of advances made by Rural Branches	=	₹ 20 crores

Bank makes provision as under:

Profit & Loss A/c	Dr.	₹ 30 crores	
To Provision for Bad debts for Urban Advances			₹ 10 crores
To Provision for Bad debts for Rural Advances			₹ 20 crores

Now ₹ 30 crores shall be allowed as deduction u/s 36(1)(viia). Now Bank in next previous year has actual bad debts as under:

(i)	Bad debts for urban advances	₹ 23 crores
(ii)	Bad debts for rural advances	₹ 6 crores

Now Supreme Court held in Catholic Syrian Bank Ltd. held that actual bad debts of ₹ 23 crores – ₹ 10 crores = ₹ 13 crores shall be allowed under section 36(1)(vii). The balance in provision for bad debts for rural advances shall become 20 crores – 6 crores = ₹ 14 crores. As per Supreme Court, the provision of bad debts for urban advances and rural advances has to be seen separately.

AMENDMENT BY FINANCE ACT, 2013

The Finance Act, 2013 provides that provision for bad and doubtful debts referred to in section 36(1)(vii) means only one account in respect of provision for bad and doubtful debts and such account shall relate to all types of advances including advances made by rural and urban branches.

Therefore, as per the amendment, the provision for bad and doubtful debts shall be taken to be ₹30 crores. Actual bad debts are ₹ 29 crores. ₹ 29 crores shall be subtracted from provision for bad and doubtful debts and its balance become ₹ 1 crores. Therefore, no deduction for bad debts shall be allowed in this case.

Example 1:

XYZ Bank Ltd., an Indian Bank, submits the following information for computation of its income for financial year ended 31.3.2014:

Profit as per Profit & Loss A/c ₹ 1,000 Lakhs

The above profit has been computed after debiting the following items:

(i)	Actual bad debts written off	₹ 50 Lakhs
(ii)	Provision for bad and doubtful debts	₹ 160 Lakhs
(iii)	Expenses disallowable under section 28 to 44D	₹ 20 Lakhs

You are given that as on 1.4.2013, the credit balance in Provision for bad & doubtful debt is ₹40 Lakhs. You are also given that the Aggregate Average Advances made by the rural branches of XYZ Bank Ltd. are ₹ 500 Lakhs.

Answer:

The Income of the Bank shall be computed as under:

	Amount (₹ In Lakhs)
Profit as per Profit & Loss A/c	1,000
Add: Expenses disallowable under section 28 to 44D	20
Add: Actual bad debts written off	50
Add: Provision for bad and doubtful debts	160
Gross Total Income	**1,230**
Less: Deduction under section 36(1)(viia)	
(i) 7.5% of Gross Total Income (i.e. 7.5% of 1,230 Lakhs)	92.25
(ii) 10% of Aggregate Average Advances made by the Rural Branches (i.e. 10% of ₹ 500 Lakhs)	50
Deduction under section 36(1)(viia)	**142.25**
Total Income	**1087.75**

Example 2:

The bank has an opening balance as on 1-4-2013 of ₹ 40 Lakhs in the provision for bad & doubtful debts. The Provision for bad & doubtful debts allowable under section 36(1)(viia) for the year ended 31.3.2014 is ₹ 200 Lakhs. The Bank has actually incurred bad debts of ₹ 70 Lakhs during the year ended 31.3.2014.

Answer:

Provision for Bad & Doubtful Debts A/c

Particulars	Amount (₹ in Lakhs)	Particulars	Amount (₹ in Lakhs)
To Actual Bad debts	70	By Balance b/d	40
To Balance c/d	170	By Profit & Loss A/c	200
Total	**240**	**Total**	**240**

The bank will be allowed deduction for provision of bad & doubtful debts of ₹ 200 Lakhs. Deduction for bad debts shall not be allowed.

Example 3:

Suppose in Example 2 above, the bad debts amount to ₹ 270 Lakhs.

Answer:

Provision for Bad & Doubtful Debts A/c

Particulars	Amount (₹ in Lakhs)	Particulars	Amount (₹ in Lakhs)
To Actual Bad debts	240	By Balance b/d	40
To Balance c/d	NIL	By Profit & Loss A/c	200
Total	**240**	**Total**	**240**

Bank shall be allowed deduction as under:

(i) 200 Lakhs under section 36(1)(viia) for provision for bad & doubtful debts.

(ii) Actual bad debts of ₹ 30 Lakhs under section 36(1)(vii).

SECTION 36(1)(xvi): COMMODITY TRANSACTION TAX

The following deduction is allowable under section 36:

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, 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".

Explanation.—For the purposes of this clause, the expressions "commodities transaction tax" and "taxable commodities transaction" shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2013.

(Inserted by Finance Act, 2013)

SECTION 40(a)(iib): DISALLOWANCE OF STATE GOVERNMENT LEVY ON STATE GOVERNMENT UNDERTAKINGS

Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession", in the case of any assessee—

Any amount—

(A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from,

a State Government undertaking by the State Government.

Explanation.—For the purposes of this sub-clause, a State Government undertaking includes—

(i) a corporation established by or under any Act of the State Government;

(ii) a company in which more than 50% of the paid-up equity share capital is held by the State Government;

(iii) a company in which more than 50% of the paid-up equity share capital is held by the entity referred to in clause (i) or clause (ii) (whether singly or taken together);

(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;

(Inserted by Finance Act, 2013)

ANALYSIS

State Government undertakings are liable to Income Tax. If they pay dividends to the State Government then, such dividend is not deductable as an expense and such dividend is also liable to Dividend Distribution Tax. State Governments instead of taking dividends, started taking out money from these undertakings in

form of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, which were exclusive levies on such undertakings. This was done so that such payments were allowed as deduction and State Government gets the money without any payment of dividend distribution tax by such undertakings.

In order to levy tax on such withdrawals by State Governments from such undertakings, the amendment has been bought by Finance Act, 2013, wherein any exclusive payments in form of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge to State Government by such undertakings has been specifically disallowed.

It may be noted that disallowance will be attracted if:

(i) Levy is by State Government. No disallowance shall be attracted if levy is by Central Government.
(ii) It should be exclusive on the State Government undertakings. If levy is non-exclusive, i.e., applicable to others also, disallowance shall not be attracted.

WHETHER REMUNERATION PAID TO THE PARTNER CAN BE DISALLOWED UNDER SECTION 40A(2)

Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2) even though the same is within the statutory limit prescribed under section 40(b)(v)?

CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)

In this case, the Assessing Officer contended that the remuneration paid by the firm to its working partners was highly excessive and unreasonable, on the ground that the remuneration to partners (₹ 39.31 lakh) was many times more than the total payment of salary to all the employees (₹ 4.87 lakh). Therefore, he disallowed the excessive portion of the remuneration to partners by invoking the provisions of section 40A(2).

On this issue, the High Court observed that section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided under section 40(b)(v), then, recourse to provisions of section 40A(2) cannot be taken.

The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed under section 40(b)(v). If these conditions are complied with, then the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive.

The Allahabad High Court, therefore, held that the question of disallowance of remuneration under section 40A(2) does not arise in this case, since the all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2).

7

WEALTH TAX

SECTION 3: CHARGE OF WEALTH TAX

Wealth tax shall be charged for every assessment year in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate of one percent of the amount by which net wealth exceeds ₹ **30 lakhs. For assessment year 2014-15, the valuation date is 31.3.2014.**

POINT TO BE NOTED:

1. Trust is assessable as an individual and is therefore liable to pay wealth tax.
2. There is no surcharge and education cess on wealth tax.

SECTION 45: WEALTH TAX ACT NOT TO APPLY IN CERTAIN CASES

No wealth tax shall be levied under the Act in respect of net wealth of

(a) any company registered under section 25 of the Companies Act, 1956.
(b) any co-operative society.
(c) any social club.
(d) any political party.
(e) any mutual fund specified in section 10(23D) of the Income-tax Act.
(f) Reserve Bank of India

COMPUTATION OF NET WEALTH

Net Wealth shall be computed as under:

Particulars	Amount
Aggregate value of all assets wherever located belonging to the assessee on the valuation date computed as per Schedule III of the Wealth tax Act.	(a)
Add: Deemed Assets - Aggregate value of all assets required to be included in the net wealth of the assessee on the valuation date under section 4 of the Wealth tax Act computed as per Schedule III of the Wealth tax Act.	(b)
Less: Exempted Assets - Exemption under section 5 of the Wealth tax Act.	(c)
Less: Debts owed by the assessee on the valuation date which have been incurred in relation to the assets included in his net wealth.	(d)
Net Wealth	(a) + (b) - (c) - (d)

Assets and debts located outside India are excluded from net wealth in certain cases as discussed under section 6.

Example: Gold of the assessee was confiscated by the Customs Department on:

Case I: 29.03.2014
Case II: 31.03.2014
Case III: 02.04.2014

Whether this Gold shall be included in the net wealth of the assessee as on valuation date 31.03.2014?

Solution:

Case I: Gold confiscated by the Customs Department shall not be included in the net wealth of the assessee as on 31.03.2014 since it does not belong to the assessee on 31.03.2014.

Case II: The asset must belong to the assessee **on the last moment of the valuation date** so as to be included in the net wealth of the assessee. Therefore, in the present case the gold which has been confiscated by the Customs Department, ceases to be the property of the assessee on the last moment of 31.03.2014 and hence, is not to be included in the net wealth of the assessee as on 31.03.2014.

Case III: As on 31.03.2014, Gold belongs to the assessee and thus, is to be included in the net wealth of the assessee.

POINT TO BE NOTED:
In case the gold is seized but not confiscated then, in all the three cases above, it shall be included in the net wealth of the assessee as on 31.03.2014 since the gold belongs to the assessee as on 31.03.2014.

SECTION 2(ea): DEFINITION OF ASSET

Wealth tax is not levied on productive assets, hence, investment in shares, mutual funds, Bank balance, etc. are not chargeable to wealth tax. Following are the assets liable to wealth-tax under the Wealth tax Act:

(i) Any building or land appurtenant thereto
(ii) Motor cars
(iii) Jewellery, bullion, etc.
(iv) Yachts, boats and aircrafts
(v) Urban Land
(vi) Cash-in-hand.

Definition of asset as given in section 2(ea) is exhaustive, therefore, only above-mentioned 6 assets are chargeable to wealth tax. These are discussed in detail as under:

ASSET means -

(i) Any building or land appurtenant thereto **(hereinafter referred to as "house"), whether used for**

- **residential purposes or**
- **commercial purposes or**
- **for the purpose of maintaining a Guest House or**
- **otherwise.**

POINT TO BE NOTED:

"House" shall include a farm house situated within 25 kilometers from the local limits of any municipality (whether known as a municipality, municipal corporation or by any other name) or a cantonment board.

NOT TO INCLUDE

(i) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or director who is in whole time employment, having a gross annual salary of less than ten lakh rupees.

(ii) any house for residential or commercial purposes which forms part of stock in trade.

(iii) any house which the assessee may occupy for the purposes of any business or profession carried on by him.

Note: **As per the Memorandum explaining the Finance Bill, 1996, the objective of including a house for commercial purpose in the definition of asset is to cover those houses which are let out. The letting out is not considered "as occupied for carrying on the business".**

(iv) any residential property that has been let out for a minimum period of 300 days in the previous year.

(v) any property in the nature of commercial establishments or complexes.

ANALYSIS OF SECTION 2(ea)(i)

1. Whether a house is meant for residential purposes or commercial purposes has to be ascertained from the Government Records e.g. Municipal Corporation

2. House meant for commercial purposes is an asset except:

   (i) If it is held as stock-in-trade.

   (ii) If it is used for the purposes of business or profession carried on by the assessee.

POINT TO BE NOTED:

House meant for commercial purposes is an asset if it is let out or is lying vacant.

3. House meant for residential purposes is an asset except:

   (i) If it is allotted by a company to its employee/ officer/ director who is in whole time employment and whose gross annual salary is less than ₹ 10,00,000 [Gross annual salary is not defined and its meaning shall be taken as per the common parlance. Accordingly, gross annual salary means basic salary, bonus, commission, dearness allowance and other allowances (whether taxable or not). It shall not include perquisites.

(ii) If it is held as stock-in-trade.

(iii) If it is let out for 300 days or more during the previous year.

(iv) If it is used for the purposes of business or profession carried on by the assessee.

4. Guest house is an asset

5. Farm house is an asset if it is situated within 25 kilometers from the local limits of any municipality.

6. ***RABINDRANATH DHAL***: In this case the High Court held that if a building owned by a person is made available to the partnership firm in which such person is a partner and the partnership firm uses the building for the purposes of its business or profession, then it can be said that the building is being used by the partner for the purposes of his business or profession and consequently such building is not an asset. Under the general law partnership firm is not a legal entity and the partners collectively constitute a partnership firm. The said building shall not be included in wealth of the partner since it is not an asset.

7. A doctor owns a house with ground and first floor. He uses ground floor as his clinic and first floor as his residence. Ground floor is not an asset since it is used for business purposes. And first floor is an asset under section 2(ea).

8. Guest house situated 25 kms away from the local limits of municipality is an asset.

(ii) Motor cars

<u>NOT TO INCLUDE</u>

(i) Motor cars used by the assessee in the business of running them on hire.
(ii) Motor cars held as stock in trade.

<u>ANALYSIS OF SECTION 2(ea)(ii)</u>

1. Motor car, whether Indian or imported, constitute an asset.

2. Motor cars leased out by a leasing company constitutes assets in the hands of leasing company.

3. In case of hire purchase, the motor cars shall be included in the wealth of hire purchaser.

4. Motor cars used for the purposes of business or for personal use are assets. Motor cars shall not be treated as an asset:
   (i) If such motor cars are used in the business of running them on hire.
   (ii) If such motor cars are held as stock-in-trade

5. Buses and Trucks are not motor cars. Jeep and Jonga constitute motor cars. Delivery Vans, ambulances, two wheelers and three wheelers are not motor cars.

6. Display vans, tractors and lorries are not motor cars.

(iii) ***Jewellery, bullion, furniture, utensils, or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals.***

NOT TO INCLUDE

Jewellery, bullion, etc. held as stock in trade.

POINT TO BE NOTED:

"Jewellery" includes -

(1) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel.

(2) precious or semi-precious stones, whether or not set in any furniture, utensils, or other article or worked or sewn into any wearing apparel.

The Finance Act, 1999 has provided that for removal of doubts, it is hereby declared that "jewellery" does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

(iv) ***Yachts, boats and aircrafts***

NOT TO INCLUDE

Those used by the assessee for commercial purposes.

ANALYSIS OF SECTION 2(ea)(iv)

1. "Helicopter" is an aircraft and is therefore an asset.

2. "Ship" is neither a boat nor a yacht and is therefore not an asset.

3. Whether yacht, boat or aircraft is used for commercial purposes or not is to be ascertained from the license given by the concerned ministry/ authority e.g. Ministry of Civil Aviation. If the licence has been given for commercial purposes, then it is not an asset.

4. As per the study material issued by ICAI, if yachts, boats and aircrafts are held as stock-in-trade, then it can be said that they are used for commercial purposes and is therefore, not an asset.

(v) ***Urban Land***

NOT TO INCLUDE

1) Land classified as agricultural land in the records of the Government and used for agricultural purposes.

(Added by Finance Act, 2013)

2) **Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated.**

3) **Land occupied by any building which has been constructed with the approval of the appropriate authority.**

4) **Any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him.**

5) **Land held as stock in trade by the assessee for a period of ten years from the date of its acquisition by him.**

POINT TO BE NOTED:

1. **"Urban land" means land situated**

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(ii) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten lakh,

Explanation.— "Population" means the population according to the last preceding census of which the relevant figures have been published before the date of valuation.

Analysis

- Finance Act, 2013, has amended, with effect from Assessment year 2014-15, the definition of "Urban land". With effect from Assessment year 2014-15 urban land means land situated in India-

(a) In any area within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than 10,000

(b) measured aerially (shortest aerial distance),

I. upto 2 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10,000 but not exceeding 1 lakh; or

II. upto 6 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 1 lakh but not exceeding 10 lakh; or

III. upto 8 kilometres, from the local limits of any municipality or cantonment board and which has a population of more than 10 lakh.

The expression 'population' shall mean population according to the last preceding census of which the relevant figures have been published before the date of valuation.

- The effect of amendment is that the distance to be seen from municipality / cantonment board for land to be considered as urban land has been changed from uniformly 8 kms to within 8 kms depending on population of municipality or cantonment board. Secondly, distance is to be measured straight line aerially as bird flies and not by road method which was used by Courts in various decisions.

- The shortest aerial distance i.e. distance as the bird flies means:
  "A straight line distance between two places. A human would have to travel further to get from one point to another due to obstacles or lack of roads or trails, but a bird can go in a straight line between them."

  "The 'distance as the bird flies' is a way to describe the distance between two locations without considering all the variable factors. As an example traveling from Delhi to Agra involves multiple options of routes. The driving distance might be about 200 kms, but the distance "as the bird files' is about 170 kms approx.

- AS PER AMENDMENT BY FINANCE ACT, 2013 LAND CLASSIFIED AS AGRICULTURAL LAND IN RECORDS OF THE GOVERNMENT AND USED FOR AGRICULTURAL PURPOSES IS NOT AN ASSET IN ANY CASE REGARDLESS OF ITS LOCATION. SUCH A LAND IS NOT AN ASSET EVEN IF IT IS LOCATED IN MUNICIPALITY OF DELHI / JAIPUR / KOLKATA WHERE POPULATION EXCEEDS ₹ 10 LAKHS.

2. Is wealth-tax leviable on the value of house under construction, where the construction was still incomplete on the relevant valuation date?

CIT v. Smt. Neena Jain (2011) (P & H)

Incomplete building neither falls within the definition of a building, as contemplated under section 2(ea) of the Act, nor within the purview of 'urban land'. Hence, in such a case, the value of house under construction including investment on construction is not liable to wealth-tax. **Once construction activity starts on urban land, it loses its character of urban land and is outside the purview of definition of asset. Therefore, land and incomplete building thereon is not an asset.**

3. Apollo Tyres Ltd. Vs. ACIT [2010] (Ker.)

Once land is utilized for construction purposes with approval of prescribed authority, it ceases to have its identity as vacant land and it cannot be independently valued. The land on which construction is started is not an asset and incomplete building is also not an asset.

Example 1:
Assessee has a land on which construction is not permissible under the law in force in the area in which such land is situated. However, assessee constructs a building illegally on the said land. The building and the land appurtenant thereto is an asset as per section 2(ea)(i).

Example 2:
Mr. X owns a land and he gives the land on lease to Mr. Y for 25 years. Mr. Y constructs a building on the said land with the approval of appropriate authority. Now, in hands of Mr. Y building is an asset and the land is not an asset since he is not the owner of the land. By virtue of exception (2) provided in section 2(ea)(v) the land is not an asset in hands of Mr. X.

***(vi) cash in hand,* in excess of ₹50,000 in case of individuals and Hindu Undivided families and in the case of other persons any amount not recorded in books of account.**

ANALYSIS OF SECTION 2(ea)(vi)

1. Bank balances and cheques in hand are not assets.

2. In case of a company, if during search and seizure any unaccounted cash in found, then the amount of unaccounted cash not recorded in books of account as on the valuation date and which is not adjusted by the Department against any tax liability upto the valuation date shall be treated as an asset in the hands of the Company.

SECTION 2(ea)(i) AND SECTION 2(ea)(v)

A. LAND SITUATED UPTO 2 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10,000 BUT UPTO 1 LAKH.

(i) ***Vacant Land:*** Is an asset as per section 2(ea)(v). However, it is not an asset if it is classified as agricultural land in Govt. records and is used for agricultural purposes.

(ii) ***Land on which farmhouse is constructed:***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

B. LAND SITUATED BEYOND 2 KMS. BUT WITHIN 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10,000 BUT UPTO 1 LAKH.

(i) ***Vacant Land :*** Not an asset (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed :***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

C. LAND SITUATED BEYOND 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10,000 BUT UPTO 1 LAKH.

(i) ***Vacant Land:*** Not an asset. (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed:*** Farm house and land appurtenant thereto is not an asset.

D. LAND SITUATED UPTO 6 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 1 LAKH BUT UPTO 10 LAKH.

(i) ***Vacant Land:*** Is an asset as per section 2(ea)(v). However, it is not an asset if it is classified as agricultural land in Govt. records and is used for agricultural purposes.

(ii) ***Land on which farmhouse is constructed:***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

E. LAND SITUATED BEYOND 6 KMS. BUT WITHIN 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 1 LAKH BUT UPTO 10 LAKH.

(i) ***Vacant Land :*** Not an asset (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed :***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

F. LAND SITUATED BEYOND 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 1 LAKH BUT UPTO 10 LAKH.

(i) ***Vacant Land:*** Not an asset. (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed:*** Not an asset.

G. LAND SITUATED UPTO 8 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10 LAKH.

(i) ***Vacant Land:*** Is an asset as per section 2(ea)(v). However, it is not an asset if it is classified as agricultural land in Govt. records and is used for agricultural purposes.

(ii) ***Land on which farmhouse is constructed:***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

H. LAND SITUATED BEYOND 8 KMS. BUT WITHIN 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10 LAKH.

(i) ***Vacant Land :*** Not an asset (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed :***

Farm house: Is an asset as per section 2(ea)(i)

Land appurtenant thereto: Is an asset as per section 2(ea)(i).

I. LAND SITUATED BEYOND 25 KMS. FROM THE LOCAL LIMITS OF MUNICIPALITY WHOSE POPULATION IS MORE THAN 10 LAKH.

(i) ***Vacant Land:*** Not an asset. (Whether agricultural land or non-agricultural land)

(ii) ***Land on which farmhouse is constructed:*** Not an asset.

SECTION 14A: POWER OF BOARD TO DISPENSE WITH FURNISHING DOCUMENTS, ETC., WITH RETURN OF WEALTH

The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which are otherwise under any other provisions of this Act, except section 14B, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

(Inserted by Finance Act, 2013)

SECTION 14B: FILING OF RETURN IN ELECTRONIC FORM

The Board may make rules providing for—

(a) the class or classes of persons who shall be required to furnish the return in electronic form;
(b) the form and the manner in which the return in electronic form may be furnished;
(c) the documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;
(d) the computer resource or the electronic record to which the return in electronic form may be transmitted.

(Inserted by Finance Act, 2013)

MEMORANDUM EXPLAINING THE PROVISIONS OF FINANCE BILL, 2013

ENABLING PROVISIONS FOR FACILITATING ELECTRONIC FILING OF ANNEXURE-LESS RETURN OF NET WEALTH

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.

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

These amendments will take effect from 1st June, 2013.

8

MINIMUM ALTERNATE TAX

(WORDS IN BOLD ARE FROM THE BARE ACT)

SPECIAL PROVISION FOR PAYMENT OF TAX BY CERTAIN COMPANIES

It was observed by the law makers that many companies were showing huge profits in the profit and loss account as laid in the Annual General Meeting of the shareholders and distributing huge dividends. At the same time, these companies were not declaring any income under the Income-tax Act since their taxable profits as per Income-tax Act were NIL. This variance in the profits as computed as per Companies Act and the profits as computed under the Income-tax Act was mainly because of rates of depreciation under the two Acts. The companies provided lesser depreciation under the Companies Act (by following lower rates of depreciation as per Companies Act and by following Straight Line Method of Depreciation). At the same time, while computing the total income under the Income-tax Act, the depreciation was claimed as per the Income Tax Act and the taxable income was computed as NIL.

The law makers felt that such companies which show book profits under the Companies Act and no income under the Income-tax Act must be made to pay a Minimum Tax. Hence, Minimum Alternate Tax.

SECTION 115JB(1): CHARGING SECTION

Notwithstanding anything contained in any other provisions of the Income-tax Act, where in the case of a company, the income-tax, payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to assessment year 2014-15 or subsequent assessment years, is less than 18.5% of its book profits, such book profits shall be deemed to be the total income of the assessee and the tax payable on such total income shall be the amount of income-tax at the rate of 18.5%.

In other words, in case of a company, the income tax payable shall be the higher of the following amounts:

(i) Tax on Total Income computed as per the normal provisions of the Income-tax Act. [Surcharge of 5% where Total Income exceeds ₹ 1 crore *minus* marginal relief *plus* education cess @ 3%]. [Surcharge of 10% where Total Income exceeds ₹ 10 crore *minus* marginal relief *plus* education cess @ 3%]

(ii) 18.5% of the Book profits [plus 5% surcharge where book profits exceed ₹ 1 crore *minus* marginal relief *plus* 3% education cess]. [Surcharge of 10% where Book Profits exceeds ₹ 10 crore *minus* marginal relief *plus* education cess @ 3%]

POINT TO BE NOTED:

All companies, including foreign companies, are liable to pay Minimum Alternate Tax.

In case of foreign companies, the income tax payable shall be higher of the following amounts:

(i) Tax on Total Income computed as per the normal provisions of the Income-tax Act. [Surcharge of 2% where Total Income exceeds ₹ 1 crore *minus* marginal relief *plus* education cess of 3%]. [Surcharge of 5% where Total Income exceeds ₹ 10 crore *minus* marginal relief *plus* education cess @ 3%].

(ii) 18.5% of the Book profits [plus 2% surcharge where book profits exceed ₹ 1 crore *minus* marginal relief *plus* 3% education cess]. [Surcharge of 5% where Book Profits exceeds ₹ 10 crore *minus* marginal relief *plus* education cess @ 3%].

EXAMPLES ON MARGINAL RELIEF

Example 1:

X Ltd. calculated its income as under:

	Case-1 ₹	**Case-2** ₹
(i) Taxable Income as per Income-tax Act	50,00,000	30,00,000
(ii) Book Profits as per section 115JB	1,01,00,000	1,04,00,000

Compute the tax liability of X Ltd.

Solution:

	Case-1 ₹		**Case-2** ₹	
(i) Tax on taxable profits as per IT Act @ 30% plus education cess @ 3%		15,45,000		9,27,000
(ii) Tax on Book Profits @ 18.5% under section 115JB	18,68,500		19,24,000	
Add: 5% Surcharge since Book Profits exceeds ₹ 1 crore	93,425	19,61,925	96,200	20,20,200
Marginal Relief				
Restricted to:				
Tax on ₹ 1 crore + (1,01,00,000 – 1,00,00,000)	19,50,000		***Not Available***	
Add: 3% Education Cess	58,500	20,08,500	60,606	20,80,806
Tax payable by company is higher of:				
Normal tax	15,45,000		9,27,000	
Tax as per 115JB	20,08,500		20,80,806	
Hence, Tax Payable by Company		**20,08,500**		**20,80,806**

Example 2:

Y Ltd. calculated its income as under: ₹

(i) Taxable Income as per Income-tax Act 1,02,00,000

(ii) Book Profits as per section 115JB 1,50,00,000

Compute the tax liability of Y Ltd.

Solution:

(i) Tax on ₹ 1,02,00,000 @ 30%	30,60,000
Add: 5 % Surcharge	1,53,000
	32,13,000
Marginal Relief	
Tax & Surcharge restricted to:	
Tax on ₹ 1 crore + (1,02,00,000 – 1,00,00,000)	32,00,000
Add: 3% Education Cess	96,000
	32,96,000
(ii) Tax on ₹ 1,50,00,000 @ 18.5% under section 115JB	27,75,000
Add: 5% Surcharge	1,38,750
	29,13,750
Add: 3% Education Cess	87,413
	30,01,163

Tax Payable ₹ 32,96,000

Example 3:

MKZ Inc., a Foreign Company, computed its profits from Indian operations as under:

(i) Taxable Income as per Income-tax Act	1,01,00,000
(ii) Book Profits as per section 115JB	4,00,00,000

Compute its tax liability.

Solution:

(i) Tax on ₹ 1,01,00,000 @ 40%	40,40,000
Add: 2% Surcharge	80,800
	41,20,800
Marginal Relief	
Tax & Surcharge restricted to:	
Tax on ₹ 1 crore + (1,01,00,000 – 1,00,00,000)	41,00,000
Add: 3% Education Cess	1,23,000
	42,23,000
(ii) Tax on ₹ 4,00,00,000 @ 18.5% under section 115JB	74,00,000
Add: 2% Surcharge	1,48,000
	75,48,000
Add: 3% Education Cess	2,26,440
	77,74,440

Tax Payable ₹ 77,74,440.

Example 4:

An Indian Company submits the following details:

	Case-1 ₹	**Case-2** ₹
(i) Taxable Income as per Income-tax Act	6,00,00,000	10,05,00,000
(ii) Book Profits as per section 115JB	10,10,00,000	20,00,00,000

Compute the tax liability of the Company.

Answer:

	Case-1 ₹	Case-2 ₹
(i) Tax on taxable profits as per IT Act @ 30%	1,80,00,000	3,01,50,000
Add: Surcharge	@ 5% 9,00,000	@ 10% 30,15,000
	1,89,00,000	3,31,65,000
Marginal Relief		
Restricted to tax and 5% surcharge on 10 crores + (10,05,00,000 – 10,00,00,000)	N.A.	3,20,00,000
	1,89,00,000	3,20,00,000
Add: 3% Education Cess	5,67,000	9,60,000
Tax Payable under normal provision	**1,94,67,000**	**3,29,60,000**
(ii) Tax on Book profits @ 18.5%	1,86,85,000	3,70,00,000
Add: Surcharge @ 10%	18,68,500	37,00,000
	2,05,53,500	4,07,00,000
Marginal Relief		
Tax on Book profit of ₹ 10 crores with 5% surcharge + (10,10,00,000 – 10,00,00,000)	2,04,25,000	N.A.
Add: 3% Education Cess	6,12,750	12,21,000
Tax Payable as per section 115JB	**2,10,37,750**	**4,19,21,000**
Tax Payable higher of:		
(i) Normal tax	**2,10,37,750**	**4,19,21,000**
(ii) Tax as per section 115JB		

9

TAX ON DIVIDEND RECEIVED FROM FOREIGN COMPANY (INTRODUCED BY FINANCE ACT, 2011)

SECTION 115BBD: TAX ON CERTAIN DIVIDENDS RECEIVED FROM FOREIGN COMPANIES

(1) Where the **total income** of an assessee, being an **Indian company**, for the previous year relevant to the assessment year 2012-13 to 2014-15 **includes any income by way of dividends declared, distributed or paid by a specified foreign company**, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends, at the rate of 15%; and

(b) the amount of income-tax with which the assessee would have been chargeable had its total income been reduced by the aforesaid income by way of dividends.

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1).

(3) In this section,—

(i) ***"dividends"*** shall have the same meaning as is given to "dividend" in clause (22) of section 2 but shall not include sub-clause (e) thereof;

(ii) ***"specified foreign company"*** means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.'.

(Amended by Finance Act, 2012, further amended by Finance Act, 2013)

ANALYSIS

Prior to insertion of section 115BBD, dividend received from foreign companies was taxable in the hands of Indian Company @ 30% plus applicable surcharge and cess. It may be noted that dividend received from Indian Company is exempt from income tax under section 10(34).

Section 115BBD has been introduced to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 to 2014-15 includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable @ 15% (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.

Following conditions must be fulfilled for application of Section 115BBD:

1. Benefit of Section 115BBD is available only to the Indian Company.
2. Indian Company must hold at least **26%** in nominal value of the **equity share capital** of the foreign company.
3. Dividend received under section 2(22)(e) shall not be covered.
4. No other expense shall be claimed by the Indian Company in respect of dividend received.
5. Dividend declared, distributed or paid should be on or after 1.4.2011 but upto 31.3.2014.

Example:
ABC Ltd., an Indian Company, engaged in the business of manufacturing, shows a total income of ₹ 260 lacs for the financial year ended 31.03.2014. ABC Ltd. received dividend of ₹ 40 lacs from XYZ LLC., company incorporated in USA, in the month of October, 2013 in which ABC Ltd. holds 30% of the shares, which is included in the total income.

Compute tax liability of ABC Ltd.

Position Prior to introduction of Section 115BBD

Particulars	₹ in lacs
Total Income (Including dividend received from XYZ LLC.)	260.000
Tax on above @ 30%	**78.000**
Add: Surcharge @ 5%	3.900
Total	81.900
Add: Education cess @ 3%	2.457
Total Tax liability	**84.357**

Point to be noted:
Dividend received from foreign company is not exempt under section 10(34). Only dividend received from domestic companies are covered.

Position after introduction of Section 115BBD

Particulars	₹ in lacs	₹ in lacs
Total Income (Excluding dividend received from XYZ LLC.)		220.000
Dividend received from XYZ LLC.		40.000
Total Income		**260.000**

Tax on dividend received from foreign company @ 15% (₹ 40 lacs @ 15%)	**6.000**	
Tax on balance income at normal rate (₹ 220 lacs @ 30%)	**66.000**	
Total Tax		**72.000**
Add: Surcharge @ 5%		3.600
Total		75.600
Add: Education cess @ 3%		2.268
Total Tax liability		**77.868**

After introduction of Section 115BBD, there is tax saving of ₹ 6.489 lacs in the hands of ABC Ltd.

10

TAXATION OF DIVIDENDS

SECTION 1034: DIVIDEND INCOME EXEMPT FROM TAX

Any income by way of dividends referred to in section 115-O shall be exempt from income tax.

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

SECTION 115-O1 : TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

- Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section,
- in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year,
- any amount declared, distributed or paid by such company
- by way of dividends whether interim or otherwise,
- whether out of current or accumulated profits
- shall be charged to additional income-tax hereaf ter referred to as tax on distributed profits at the rate of **fifteen percent**. 1 6.995% = tax @ 15% *plus* surcharge @ 10% *plus* 3% education cess).

POINTS TO BE NOTED:

1. Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under this section shall be payable by such company.
2. The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government **within 14 days** from the date of -

    a) declaration of any dividend; or

    b distribution of any dividend; or

    c payment of any dividend,

    whichever is earliest.

3. The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

4. No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount, which has been charged to tax under this section or the tax thereon.

   The interpretation of this clause is that no deduction shall be allowed to the shareholder under any provision of the Income-tax Act in respect of any expenditure which he has incurred on the collection or earning of the dividend. No deduction shall be allowed to the company under any provision of the Income-tax Act in respect of the dividend so paid or the tax thereon.

5. For the purposes of this Chapter, the expression "dividends" shall have the same meaning as is given to "dividend" in clause 22 of section 2 but shall not include sub -clause e thereof'.

   That means for the purpose of this Chapter, dividend shall include dividend under section 222a), 222b, 222c, 222d, interim dividend and final dividend and such dividends shall be exempt in the hands of shareholders and the company shall pay 16.995% tax on such dividends. ***However, dividend under section 222e is not covered by this Chapter and the same shall be taxable in the hands of the shareholder and the company shall not pay tax on such dividend.***

6. Dividend received from a foreign company is not covered by section 115-O and shall not be exempt in the hands of shareholder under section 1034. Such dividend is taxable in hands of shareholder at the normal tax rates. **However, dividend received by an Indian Company from specified foreign company shall be taxable @ 15% under section 115BBD.**

SECTION 115-O 1A : REDUCTION IN DIVIDEND DISTRIBUTION TAX

The amount referred to in sub-section 1 shall be reduced by :

i **the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—**
   - **a where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or**
   - **b where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend.**

   Provided that the same amount of dividend shall not be taken into account for reduction more than once.

   Amended by Finance Act, 2013

ii **the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in section 1044 .**

   Amended by Finance Act, 2009 to be discussed in the chapter of New Pension Scheme

Explanation— For the purpose of this sub-section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

Memorandum Explaining Finance Bill, 2013

Removal of the cascading effect of Dividend Distribution Tax DDT

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%. The tax is known as Dividend Distribution Tax DDT. Such distributed dividend is exempt in the hands of recipients.

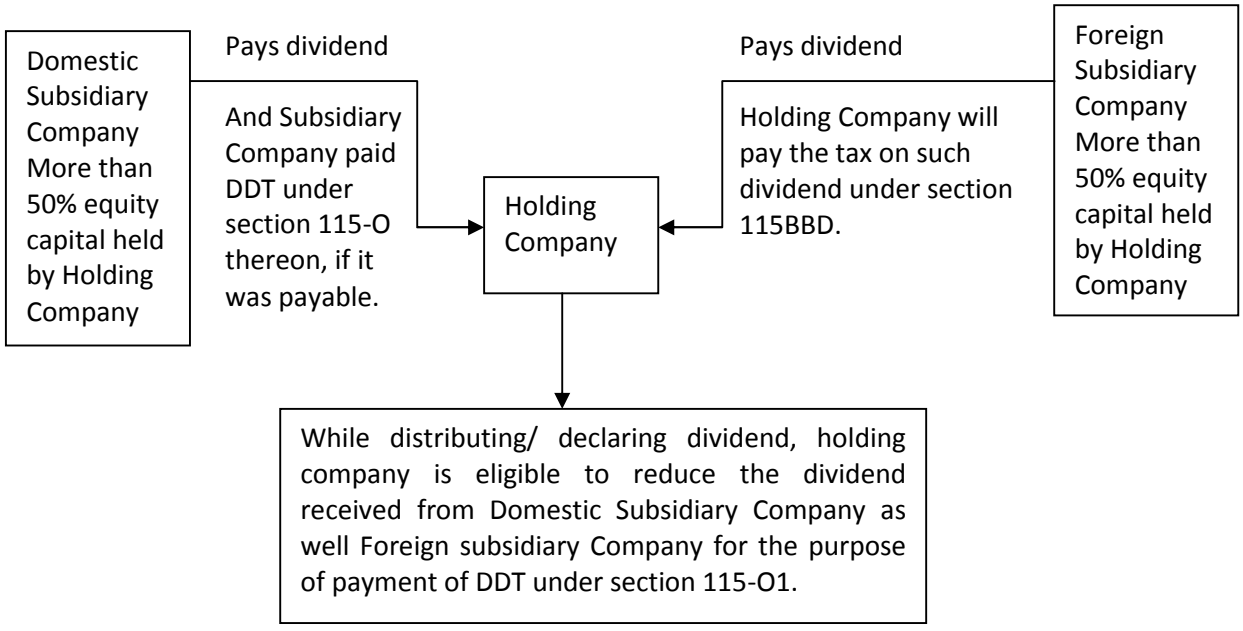
Section 115BBD of Income Tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company in which it has shar eholding of 26% or more at the rate of 15%.

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

It is proposed to amend section 115-O in order to remove the cascading effect in respect of dividends received by a domestic company from a similarly placed foreign subsidiary i .e. the foreign company in which domestic company holds more than 50% of equity share capital. It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act.

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

ANALYSIS OF AMENDMENT



ANALYSIS

1. **Prior to amendment, the holding company was not eligible to avail the benefit under section 115-O1A if it received dividend from foreign subsidiary company. However, as per amendment made by Finance Act, 2013 domestic holding company can claim the benefit under section 115-O1A in res pect of dividend received from foreign subsidiary company.**

Example 1:
Holding Company H holds 100% shares of subsidiary Company S1. Company S1 holds 100% shares of Company S2. Company S2 holds 100% shares of Company S3. Company S3 holds 100% shares of foreign Company S4.

	S4 → S3	**S3 → S2**	**S2 → S1**	**S1 → H**	**H → Public**
Dividend paid	500 cr.	600 cr.	700 cr.	800 cr.	1100 cr.
Amount on which CDT is to be paid	N.A.	100 cr.	100 cr.	100 cr.	300 cr.

It is assumed the S3 has paid/ will pay the tax under section 115BBD on 500 cr. received from S4.

Example 2:
Holding Company H holds 100% shares of subsidiary Company S1. Company S1 holds 100% shares of Company S2. Company S2 holds 100% shares of foreign Company S3. Company S3 holds 100% shares of Company S4.

	S4 → S3	**S3 → S2**	**S2 → S1**	**S1 → H**	**H → Public**
Dividend paid	500 cr.	600 cr.	700 cr.	800 cr.	1100 cr.
Amount on which CDT is to be paid	500 cr.	N.A.	100 cr.	100 cr.	300 cr.

It is assumed the S2 has paid / will pay the tax under section 115BBD on 600 cr. received from S3.

Example 3:
Holding Company H holds 100% shares of subsidiary Company S1. Company S1 holds 100% shares of Company S2. Company S2 holds 100% shares of Company S3. Company S3 holds 100% shares of foreign Company S4.

	S4 → S3	**S3 → S2**	**S2 → S1**	**S1 → H**	**H → Public**
Dividend paid	500 cr.	600 cr.	500 cr.	400 cr.	500 cr.
Amount on which CDT is to be paid	N.A.	100 cr.	NIL	NIL	100 cr.

It is assumed the S3 has paid/ will pay the tax under section 115BBD on 500 cr. received from S4.

2. In the following examples, Holding Company H holds 100% shares of subsidiary Company S1. Company S1 holds 100% shares of Company S2. Company S2 holds 100% shares of Company S3. Company S3 holds 100% shares of Company S4. All the companies namely H, S1, S2, S3, and S4 are domestic companies.

Example 1:

	S4 →	S3 →	S2 →	S1 →	H → Public
Dividend paid	500 cr.	600 cr.	700 cr.	800 cr.	1100 cr.
Amount on which CDT is to be paid	500 cr.	100 cr.	100 cr.	100 cr.	300 cr.

Example 2:

	S4 →	S3 →	S2 →	S1 →	H → Public
Dividend paid	500 cr.	600 cr.	500 cr.	400 cr.	500 cr.
Amount on which CDT is to be paid	500 cr.	100 cr.	NIL	NIL	100 cr.

Example 3:

	S4 →	S3 →	S2 →	S1 →	H → Public
Dividend paid	500 cr.	200 cr.	500 cr.	1100 cr.	1200 cr.
Amount on which CDT is to be paid	500 cr.	NIL	300 cr.	600cr.	100 cr.

Example 4:

	S4 →	S3 →	S2 →	S1 →	H → Public
Dividend paid	500 cr.	500 cr.	500 cr.	500 cr.	500 cr.
Amount on which CDT is to be paid	500 cr.	NIL	NIL	NIL	NIL

Example 5:

	S4 →	S3 →	S2 →	S1 →	H → Public
Dividend paid	500 cr.	NIL	600 cr.	1100 cr.	1200 cr.
Amount on which CDT is to be paid	500 cr.	NIL	600 cr.	500 cr.	100 cr.

3. Example:

Punjab National Bank holds 75% shares of PNB Gilts Ltd. and 60% shares of PNB Capital Services Ltd. and 40% shares of PNB Asset Management Ltd. Punjab National Bank has received the following dividends:

i ₹ 20 crores from PNB Gilts Ltd. on which CDT has been paid.

ii ₹ 10 crores from PNB Capital Services Ltd. on which CDT has been paid.

iii ₹ 7 crores from PNB Assets Management Ltd. on which CDT has been paid.

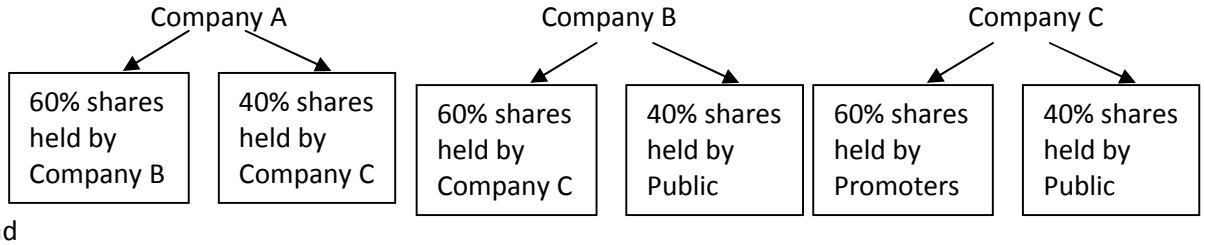
iv ₹ 7 crores from PNB Singapore Inc. in which Punjab National Bank holds 27% equity share capital.

Now Punjab National Bank declares interim dividend of ₹ 150 crores to its shareholders. Now Punjab National Bank Ltd. will pay CDT on ₹ 150 crores – ₹ 20 crores – ₹ 10 crores = ₹ 120 crores. Dividend received from PNB Singapore Inc. will not be reduced because PNB does not hold more than 50% equity share capital of PNB Singapore. However, Punjab National Bank shall pay tax under section 115BBD on the dividend so received of ₹ 7 crores.

Now if Punjab National Bank declares final dividend of ₹ 100 crores, then ₹ 30 crores shall not be reduced again from the dividend of ₹ 100 crores.

4. **Subsidiary company means only that subsidiary company in which parent company hold more than 50% in nominal value of equity share capital. Dividend received from other type of subsidiaries i.e., subsidiaries having Controlling Composition of Board, sub-subsidiaries, joint ventures, etc. shall not qualify for availing benefit under section 115-O 1A.**

Example:



Dividend paid	600 cr.	400 cr.	480 cr.	320 cr.	600 cr.	400 cr.
Amount on which CDT is to be paid	1000 cr.		200 cr.		520 cr.	

5. **Benefit of reduction of dividend is available on year to year basis, i.e., Dividend paid for one Financial Year can be claimed in the same Financial Year only. Carry forward of benefit is not allowed. Further, benefit can be availed irrespective of the fact that the dividend is paid for different Financial Year.**

Example:

Company "A" Subsidiary → Paid Dividend & CDT → Company "B"
Holding 60 % equity shares of Company "A"

Paid final dividend on 20.10.2013 for Financial Year 2012-13

Declare & paid interim dividend On 1.1.2014 for Financial Year 2013-14

Can claim the benefit under section 115-O(1A

6. **Deemed dividend under section 22 2a/b/c/d is also considered for taking the be nefit under section 115-O 1A.**

7. **Dividend on both preference shares and equity shares shall be considered.**

8. **Carry forward benefit is not allowed.**

Example:

	Subsidiary B →	**Subsidiary A** →	**Holding** →	**Public**
Dividend paid	1000 cr.	800 cr.	700 cr.	
Amount on which CDT is to be paid	1000 cr.	NIL c/f of 200 cr. not allowed	NIL c/f of 100 cr. not allowed	

9. **Section 115BBD applies where domestic company receives dividend from foreign subsidiary company in which domestic company hold 26% or more equity share capital. However, it may be noted that the holding company will get credit of dividend received from foreign company under section 115-O1A only if:**
   - **i Holding company holds more than 50% of equity share capital of foreign subsidiary company.**
   - **ii Holding Company will pay tax under section 115BBD on such dividend.**

SECTION 115P: INTEREST PAYABLE FOR NON-PAYMENT OF TAX BY DOMESTIC COMPANIES

Where the principal officer of a domestic company and the company fails to pay the whole or any part of the tax on distributed profits referred to in section 115-O, within the time allowed under that section, he or it shall be liable to pay simple interest at the rate of 1% for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

SECTION 115Q: WHEN COMPANY IS DEEMED TO BE IN DEFAULT

If any principal officer of a domestic company and the company does not pay tax on distributed profits in accordance with the provisions of section 115-O, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

SECTION 271C: PENALTY

If any person fails to pay the whole or any part of the tax as required under section 115-O, then such person shall be liable to pay a penalty of a sum equivalent to the amount of tax he has failed to pay as aforesaid.

SECTION 276B: PROSECUTION

If any person fails to pay the whole or any part of the tax as required under section 115-O, then such person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months, but which may extend to 7 years and with fine.

PROVISIONS ON BUY BACK OF SHARES

SECTION 46A: CAPITAL GAINS ON PURCHASE BY COMPANY OF ITS OWN SHARES OR OTHER SPECIFIED SECURITIES.

- Where a shareholder or a holder of other specified securities
- receives any consideration from any company for purchase of its own shares or other specified securities held by such shareholder or holder of other specified securities, then,
- subject to the provisions of section 48,
- the difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities, as the case may be,
- shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities, as the case may be,
- in the year in which such shares or other specified securities were purchased by the company.

NOTE:

AFTER INTRODUCTION OF SECTION 115QA AND SECTION 1034A BY F INANCE ACT, 2013, SECTION 46A SHALL NOT APPLY ON BUY BACK OF UNLISTED SHARES. SECTION 46A SHALL APPLY ONLY WHEN LISTED SHARES ARE BROUGHT BACK BY A COMPANY.

TAX IMPLICATION IN HANDS OF THE COMPANY WHEN LISTED SHARES ARE BROUGHT BACK BY THE COMPANY

1. There will be no deemed dividend on buy back of shares as per amendment made in section 222. Consequently section 115 -O shall not be attracted.
2. Section 115QA shall not be attracted since shares are listed.
3. No other tax implication in the hands of the company.

TAX IMPLICATION IN HANDS OF SHAREHOLDER OF A COMPANY WHEN LISTED SHARES ARE BROUGHT BACK BY THE COMPANY

- Amount received on buy back = sale price
- Amount paid for acquiring the shares = cost of acquisition
- Period of holding = date of acquisition to the date of buy back
- Benefit of first proviso or second proviso to section 48 is available.

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES INSERTED BY FINANCE ACT, 2013)

SECTION 115QA: TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS

1 - Notwithstanding anything contained in any other provision of this Act,

- in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year,
- any amount of distributed income by the company
- on buy-back of shares **not being shares listed on a recognised stock exchange**
- **from a shareholder**
- shall be charged to tax; and
- such company shall be liable to pay additional income-tax at the rate of 20% on the distributed income. [plus 10% surcharge and 3% education cess in all cases irrespective of income of the company]

Explanation.—For the purposes of this section,—

i **"buy-back"** means purchase by a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956;

ii **"distributed income"** means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

2 Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under sub-section 1 shall be payable by such company.

3 The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholder on buy-back of shares referred to in sub-section 1.

4 The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

5 No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax under sub-section 1 or the tax thereon.

SECTION 115QB: INTEREST PAYABLE FOR NON-PAYMENT OF TAX BY COMPANY

Where the principal officer of the domestic company and the company fails to pay the whole or any part of the tax on the distributed income referred to in sub-section 1 of section 115QA, within the time allowed under sub-section 3 of that section, he or it shall be liable to pay **simple interest at the rate of 1% for every month or part thereof** on the amount of such tax for the period beginning on the

date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

SECTION 115QC: WHEN COMPANY IS DEEMED TO BE ASSESSEE IN DEFAULT

If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

SECTION 1034A: EXE MPTION OF INCOME ON BUY BACK OF UNLISTED SHARES

In computing the total income of the previous year, any income arising to an assessee, being a shareholder, on account of buy back of shares not being listed on a recognised stock exchange by the company as referred to in section 115QA, shall be exempt from tax.

MEMORANDUM EXPLAINING THE FINANCE BILL, 2013

ADDITIONAL INCOME-TAX ON DISTRIBUTED INCOME BY COMPANY FOR BUY-BACK OF UNLISTED SHARES

Existing provisions of Section 222 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.

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

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

In order to curb such practice it is proposed to amend the Act, by insertion of new Chapter XII-DA, 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 @ 20% 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 where the company is liable to pay the additional income-tax on the buy-back of shares.

These amendments will take effect from 1st June, 2013.

ANALYSIS

1. Section 46A shall apply when a company listed on a recognized stock exchange buy backs its listed shares from shareholders. There will be no deemed divided under section 222. Section 115QA and section 1034 A introduced by Finance Act, 2013 shall not apply. Capital gains shall arise in hands of shareholder as per section 46A and there will be no tax implications on the company.

2. Section 115QA and section 1034A shall apply when a company buy backs unlisted shares from its shareholders. The company shall pay tax @ 22.66% under section 115QA on the amount of distributed income which shall be calculated as under:

Amount paid by the company to its shareholders on buy back of shares	*minus*	Amount received by the company for issue of shares including share premium, if any.

3. Where a shareholder receives any amount on buy back of unlisted shares of company referred in section 115QA, the amount received by shareholder shall be exempt under section 1034A. No capital gains shall be computed in hands of shareholders.

4. Section 115QA and Section 1034A appli es to preference shares as well as equity shares. Therefore, the judgment of *Anarkali Sarabhai SC)* shall not be applicable where an company redeems its unlisted preference shares as redemption of preference shares is buy back of preference shares.

5. Section 115QA has been inserted from 01.06.2013. Therefore if an company buy backs its unlisted equity or preference shares from 01.04.2013 to 31.05.2013 then section 115QA and section 1034A shall not apply. Section 46A shall be applicable and capital gains shall arise in the hands of shareholders.

6. As per section 222, no deemed dividend shall arise on buy back of shares and consequently section 115-O and section 1034 are not applicable.

Example 1:
A company buys back 10,000 unlisted equity shares of face value of ₹ 10 each at a price of ₹ 100 per share on 01.01.2014. These shares are held by four shareholders equally i.e., 2,500 shares each who has subscribed to these shares on 01.01.2011 for ₹ 10 each by paying a premium of ₹ 20 per share.

There is no deemed dividend under section 222 on buy back of shares.

Now in hands of the company distributed income shall be as under:

10,000 equity shares X ₹ 100 [Buy back price]		minus		10,000 equity shares X ₹ 30 [Amount received by company for issue of shares]
10,00,000	–	3,00,000	=	7,00,000

Company shall pay tax under section 115QA @ 22.66% on ₹ 7, 00,000.

The amount received by shareholders shall be exempt under section 1034A. No Capital Gains shall arise in hand of shareholders on buyback of shares. If suppose shareholders have shown a profit of ₹ 100 minus ₹ 30 X 2500 shares = ₹ 1,75,000 in their profit and loss account as profit on buy back of shares, then ₹ 1,75,000 shall be subtracted from net profit since the amount received by shareholders is exempt under section 1034A.

Example 2:
An unlisted company issued 10,00,000 preference shares at the face value of ₹ 10 each on 01.01.2011. The company redeems these preference shares on 01.01.2014 for ₹ 12 each.

There is no deemed dividend under section 222 on redemption of preference shares.

Now, distributed income on which company shall pay 22.66% tax under section 115QA shall be:

1,20,00,000 – 1,00,00,000
= ₹ 20,00,000

There will be no capital gains in hands of preference shareholders. The amount received by them is exempt from tax under section 1034A.

11

TAXATION OF INCOME ON UNITS

SECTION 10(23D): EXEMPTION OF ALL INCOMES OF ALL MUTUAL FUNDS

All incomes of all mutual funds are exempt from tax.

EXEMPTION OF ALL INCOME OF "ADMINISTRATOR" AND "SPECIFIED COMPANY"

All incomes of "Administrator" and "Specified Company" are exempt from tax by virtue of Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002

SECTION 10(35): MUTUAL FUNDS DIVIDEND INCOME EXEMPT FROM TAX

Any income by way of,-

a) Income received in respect of the units of a Mutual Fund specified under clause (23D); or

b) Income received in respect of units from the Administrator of the specified undertaking; or

c) Income received in respect of units from the specified company

shall be exempt from income tax.

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be.

Explanation –

a) "Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

b) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME

SECTION 115R: TAX ON DISTRIBUTED INCOME TO UNIT HOLDERS

(1) Notwithstanding anything contained in any other provisions of this Act, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate of:

(i) 25% on income distributed to a person being an individual or HUF; [25% plus 10% surcharge plus 3% education cess]

(ii) 30% on income distributed to any person (other than an individual or HUF); [30% plus 10% surcharge plus 3% education cess]

Provided that where any income is distributed by a mutual fund under an infrastructure debt fund scheme to a non-resident or a foreign company, the mutual fund shall be liable to pay additional income-tax at the rate of 5% on income so distributed.

(Proviso inserted by Finance Act, 2013)

Provided further *that nothing contained in this sub-section shall apply in respect of any income distributed:*

a. by the Administrator of the specified undertaking, to the unit holders; or

b. to a unit holder of equity oriented funds in respect of any distribution made from such fund.

Explanation – *For the purposes of this sub-section,*

*(i) **"administrator"** and **"specified company"** shall have the meanings respectively assigned to them in the Explanation to section 10(35);*

*(ii) **"infrastructure debt fund scheme"** shall have the same meaning as assigned to it in Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992.*

(2) The person responsible for making payment of the income distributed by the specified company or a Mutual Fund **and** the specified company or the Mutual Fund, as the case may be, shall be liable to pay tax to the credit of the Central Government within **fourteen days** from the date of distribution or payment of such income, whichever is earlier.

(3) The person responsible for making payment of the income distributed by the specified company or a Mutual Fund **and** the specified company or the Mutual Fund, as the case may be, shall on or before the **15th day of September in each year**, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to unit holders during the previous year, the tax paid thereon and such other relevant details as may be prescribed.

(4) No deduction under any other provision of this Act shall be allowed to the specified company or to a Mutual Fund in respect of the income which has been charged to tax under this section.

MEMORANDUM EXPLAINING FINANCE ACT, 2013

RATIONALISATION OF TAX ON DISTRIBUTED INCOME BY THE MUTUAL FUNDS

Under the existing provisions of section 115R 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% whereas in case of distribution to an individual or an HUF it is 12.5% or 25% depending on the nature of the fund.

In order to provide uniform taxation for all types of funds, other than equity oriented fund, it is proposed to increase the rate of tax on distributed income from 12.5% to 25% in all cases where distribution is made to an individual or a HUF.

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%. 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.

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-MF, it is proposed to amend section 115R to provide that tax @ 5% on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

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

ANALYSIS OF AMENDMENT BY FINANCE ACT, 2013

Proviso added to Section 115R by Finance Act, 2013

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% under section 115A(1). However, in case of distribution of income by an IDF set up as a mutual fund the distribution tax is levied at the rates given in section 115R in the case of a mutual fund.

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-MF), section 115R has been amended with effect from June 1, 2013. The amended provisions provide that tax at the rate of 5% (+SC+EC+SHEC) on income distributed shall be payable in respect of income distributed by a mutual fund under an IDF scheme to a non-resident investor.

12

SET-OFF, OR CARRY FORWARD AND SET-OFF OF LOSSES

SECTION 73: LOSSES IN SPECULATION BUSINESS

Section 28: Where the speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business.

POINTS TO BE NOTED:

1. Even a single speculative transaction constitutes a business.

2. If the assessee is maintaining same books of account for both speculative and non-speculative transactions, then the speculative transactions shall be segregated and treated as a separate business.

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

However, hedging contracts are not speculative transactions. **The following are not speculative transactions:**

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in ordinary course of his business as such member.

(d) an eligible transaction in respect of trading in derivatives referred to in section 2 of the Securities Contracts (Regulation) Act, 1956, carried out in a recognised stock exchange.

(Clause (d) added by Finance Act, 2005)

(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association.

(Clause (e) added by Finance Act, 2013)

shall not be deemed to be a speculative transaction.

Explanation 1.— For the purposes of clause(d), the expressions—

(i) "eligible transaction" means any transaction,—

(A) carried out electronically on screen-based systems through a stock broker or sub-broker on a recognised stock exchange ; and

(B) which is supported by a time stamped contract note issued by such stock broker or sub-broker to every client indicating in the contract note the unique client identity number allotted under any Act and permanent account number allotted under this Act ;

(ii) "recognised stock exchange" means a recognised stock exchange as notified by the Central Government for this purpose. (NSE Ltd., BSE Ltd., MCX Stock Exchange Ltd. and United Stock Exchange of India Ltd. have been notified as recognised stock exchange).

Explanation 2.— For the purposes of clause (e), the expressions—

(i) "eligible transaction" means any transaction,—

(A) carried out electronically on screen-based systems through member or an intermediary, registered under the bye-laws of the recognised association for trading in commodity derivative in accordance with the provisions of the Forward Contracts (Regulation) Act, 1952; and

(B) which is supported by a time stamped contract note issued by such member or intermediary to every client indicating in the contract note, the unique client identity number allotted under the Act, unique trade number and permanent account number allotted under this Act;

(ii) "recognised association" means a recognised association is notified by the Central Government for this purpose. [National Commodity and Derivative Exchange Limited, Bombay and Universal Commodity Exchange Limited, Bombay, Multi Commodity Exchange of India Limited, Mumbai have been notified as recognised associations]

(Explanation 2 Added by Finance Act, 2013)

<u>Analysis of Amendment made by Finance Act, 2005</u>

The Explanatory Memorandum to the Finance Bill, 2005 explains the rationale of introduction of the provisions as follows:

"Under the existing provisions [clause (5) of section 43], a transaction for the purchase and sale of any commodity including stocks and shares is deemed to be a 'speculative transaction', if it settled otherwise than by actual delivery. However, certain categories of transactions are excluded from the purview of the said provision. Further, the unabsorbed speculation losses are allowed to be carried forward for four

years for set-off against speculation profits in subsequent years. These restrictions were essentially designed as an anti- evasion measure to prevent claims of artificially generated losses in the absence of an appropriate institutional infrastructure. Recent systemetic and technological changes introduced by stock markets have resulted in sufficient transparency to prevent generating fictitious losses through artificial transactions or shifting of incidence of loss from one person to another. The screen based computerized trading provides for an excellent audit trail. Therefore, the present distinction between speculative and non-speculative transactions particularly relating to derivatives is no more required.

The proposed amendment, therefore, seeks to provide that an eligible transaction carried out in respect of trading in derivatives in a recognized stock exchange shall not be deemed to be a speculative transaction.''

A transaction shall be regarded as eligible transaction in derivatives [Derivative in securities and currency futures] and thus not being considered as speculative transaction only if following conditions are satisfied:

- it is carried out electronically on screen based system
- it is carried out through a duly registered stock-broker or sub-broker.
- it is carried out on a recognized stock exchange
- it is supported by a duly stamped contract note issued by such stock broker or sub-broker or intermediary to its client
- the contract note indicates the unique client identity number
- the contract note indicates the PAN.

Once a derivative transaction is regarded as a part of non-speculative business income, it will form part of profits and gains of business or profession. Some of the consequences of this are:

a. Interest on margin money will be allowable as a deduction for computation of business income.
b. Business loss on derivative transactions can be set off against other business profits (but not against salary income).

Analysis of Amendment made by Finance Act, 2013

The amendment, seeks to provide that an eligible transaction carried out in respect of trading in derivatives in commodities in a recognized association shall not be deemed to be a speculative transaction.''

A transaction shall be regarded as eligible transaction in derivatives in commodity and thus not being considered as speculative transaction only if following conditions are satisfied:

- it is carried out electronically on screen based system
- it is carried out through a duly registered member or intermediary.
- it is carried out on a recognized association

- it is supported by a duly stamped contract note issued by such member of intermediary to its client
- the contract note indicates the unique client identity number
- the contract note indicates the unique trade number
- the contract note indicates the PAN.

Once a commodity derivative transaction is regarded as a part of non-speculative business income, it will form part of profits and gains of business or profession. Some of the consequences of this are:

a. Interest on margin money will be allowable as a deduction for computation of business income.

b. Business loss on commodity derivative transactions can be set off against other business profits (but not against salary income).

STOCK MARKET & COMMODITY MARKET

1. **Purchase and sale of shares where deliveries have been effected**
   - The profit / loss is assessable as Capital Gains if shares are held as capital assets i.e., investments.
   - The profit / loss is assessable as Business Income if shares are held as stock-in-trade.

2. **Purchase and sale of shares where deliveries have not been effected i.e., INTRA-DAY-TRADING i.e, the transaction of purchase / sale is squared off in the same day [Cash Segment of Share Market]**
   - The profit / loss is assessable as Speculation Income.

3. **Purchase and sale of securities Derivatives / Futures & Options i.e. without delivery**
   - The profit / loss is assessable as Business Income.

4. **Purchase and sale of commodities derivatives in Futures Markets i.e., without delivery**
   - The profit / loss is assessable as Business income/ loss.

5. **Purchase and sale of commodities in Cash Market i.e., with delivery**
   - The profit / loss is assessable as Business Income if commodities are held as stock-in-trade.
   - The profit / loss is assessable as Capital Gains if commodities are held as capital assets i.e., investments.

6. **Purchase and sale of currency futures at Recognised Stock Exchange**
   - The profit / loss is assessable as Business Income.

Example 1:

	Case I	Case II
STCG	-5,00,000	+6,00,000
F&O Shares	+6,00,000	-5,00,000
Total Income	+6,00,000	+1,00,000
	Set off not possible	Set off possible since F&O is treated is normal business.

Example 2:

	Case I	Case II
Profit from manufacturing business	-5,00,000	+6,00,000
F&O Shares	+6,00,000	-5,00,000
	+1,00,000	+1,00,000
	Set off possible since F&O is treated is normal business.	Set off possible since F&O is treated is normal business.

Example 3:

	Case I	Case II
Intraday Trading	-5,00,000	+6,00,000
F&O Shares	+6,00,000	-5,00,000
	6,00,000	1,00,000
	Set off not possible since intraday trading is speculation business	Set off possible since F&O is treated is normal business.

Example 4:

	Case I	Case II
F&O currency futures at NSE	-5,00,000	+6,00,000
F&O Shares	+6,00,000	-5,00,000
	1,00,000	1,00,000
	Set off possible since F&O is treated is normal business.	Set off possible since F&O is treated is normal business.

Example 5:

	Case I	Case II
STCG	-5,00,000	+6,00,000
Intraday Trading	+6,00,000	-5,00,000
	+6,00,000	+6,00,000
	Set off not possible since STCL cannot be set off against speculation income.	Set off not possible since intraday trading is speculation.

Example 6:

	Case I	**Case II**
F & O Commodities derivatives	-5,00,000	+6,00,000
Manufacturing Business	+6,00,000	-5,00,000
	+1,00,000	+1,00,000
	Set off possible since F & O commodities derivative is treated as normal business income	Set off possible since F & O commodities derivative is treated as normal business income

Example 7:

	Case I	**Case II**
F & O Commodities derivatives	-5,00,000	+6,00,000
F & O shares	+6,00,000	-5,00,000
	+1,00,000	+1,00,000
	Set off possible since F & O commodities derivatives and F & O shares are treated as normal business income	Set off possible since F & O commodities derivatives and F & O shares are treated as normal business income

Example 8:

	Case I	**Case II**
F & O Commodities derivatives	-6,00,000	+7,00,000
STCG	+7,00,000	-6,00,000
	+1,00,000	+7,00,000
	Set off possible since F & O commodities derivative is treated as normal business income	Set off not possible since loss under the Head capital gains cannot be set-off against business income

13

ANNUAL INFORMATION RETURN

SECTION 285BA: OBLIGATION TO FURNISH ANNUAL INFORMATION RETURN

1 Any person, being –

a) an assessee; or

b the prescribed person in the case of an office of Government; or

c a local authority or other public body or association; or

d the Registrar or Sub-Registrar under the Registration Act, 1908; or

e the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or

f) the Post Master General; or

g the Collector referred to in the Land Acquisition Act, 1894; or

h the recognized stock exchange; or

i an officer of the Reserve Bank of India; or

j) a depository referred to in the Depositories Act, 1996,

who is responsible

- for registering, or maintaining books of account or other document
- containing a record of any specified financial transaction, under any law for the time being in force,
- shall furnish an annual information return,
- in respect of such specified financial transaction which is registered or recorded by him during any financial year
- and information relating to which is relevant and required for the purposes of this Act,
- to the prescribed income-tax authority or specified agency as may be prescribed.

2 The annual information return referred to in sub-section 1 shall be furnished within the prescribed time after the end of such financial year, in such form and manner including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

3 For the purposes of sub-section 1, " **specified financial transaction**" means any-

a) transaction of purchase, sale or exchange of goods or property or right or right or interest in a property; or

b transaction for rendering any service; or

c transaction under a works contract; or

d transaction by way of an investment made or an expenditure incurred; or

e transaction for taking or accepting any loan or deposit,

which may be prescribed.

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction;

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than ₹ 50,000.

4 Where the prescribed income-tax authority considers that the annual information return furnished under sub-section 1 is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

5 Where a person who is required to furnish an annual information return under sub-section 1 has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.

SECTION 271FA: PENALTY FOR FAILURE TO FURNISH ANNUAL INFORMATION RETURN

If a person who is required to furnish an annual information return under sub-section 1 of section 285BA, fails to furnish such return within the time prescribed under sub-section 2 thereof, the income-tax authority prescribed under said sub-section 1 may direct that such person shall pay, by way of penalty, a sum of ₹ 100 for every day during which such failure continues:

Provided that where such person fails to furnish the return within the period specified in the notice issued under sub-section 5 of section 285BA, he shall pay, by way of penalty, a sum of ₹ 500 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.

Substituted by Finance Act, 2013

RULE 114E: FURNISHING OF ANNUAL INFORMATION RETURN

1 The annual information return required to be furnished under sub-section 1 of section 285BA shall be furnished in Form 61A and shall be verified in the manner indicated therein.

2. The return referred to in sub-rule 1 shall be furnished by every person mentioned in column 2 of the Table below in respect of all transactions of the nature and value specified in the corresponding entry in column 3 of the said Table, which are registered or recorded by him during a financial year:-

TABLE

S. No.	Class of Person	Nature and value of transaction
1	**2**	**3**
1.	A Banking company including any bank or banking institution	Cash deposits aggregating to **ten lakh** rupees or more in a year in any savings account of a person maintained in that bank.
2.	A Banking company including any bank or banking institution or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to **two lakh** rupees or more in the year.
3.	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorized by the trustee in this behalf.	Receipt from any person of an amount of **two lakh** rupees or more for acquiring units of that Fund.
4.	A company or institution issuing bonds or debentures.	Receipts from any person of an amount of **five lakh** rupees or more for acquiring bonds or debentures issued by the company or institution.
5.	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of **one lakh** rupees or more for acquiring shares issued by the company.
6.	Registrar or Sub-Registrar appointed under the Registration Act, 1908	Purchase or sale by any person of immoveable property valued at **thirty lakh** rupees or more.
7.	A person being an officer of the Reserve Bank of India	Receipt from any person of an amount or amounts aggregating to **five lakh** rupees or more in a year for bonds issued by the Reserve Bank of India.

3 The return referred to in sub-rule 1 shall be furnished to the **Director of Income-tax** Central Information Branch,

Provided that where the Board has authorized an agency to receive such return on behalf of the **Director of Income-tax** Central Information Branch, the return shall be furnished to that agency.

4 The return in Form NO. 61A referred to in sub-rule 1 shall be furnished on computer readable media being a floppy 3.5 inch and 1.44 MB capacity or CD -ROM 650 MB or higher capacity or Digital Video Disc DVD.

5 The return referred to in sub-rule 1 shall be furnished on or before 31 st August, immediately following the financial year in which the transaction is registered or recorded.

6 The Annual information Return is to be signed by a person referred to in Section 140 of the Income-tax Act.

7 **The Board has appointed Director General of Income tax System New Delhi, for the purposes of day-to-day administration of furnishing of the Annual Information Return including specification of the procedures, data structure, formats and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.**

Note: THE ANNUAL INFORMATION RETURN AT THE MOMENT SHALL BE SENT ONLY BY THE PERSONS REFERRED TO IN RULE 114E AND ONLY FOR THE TRANSATIONS REFERRED TO IN RULE 114E. THE BOARD WILL SPECIFY IN FUTURE OTHER PERSONS AND TRANSACTIONS FOR WHICH ANNUAL INFORMATION RETURN HAS TO BE FURNISHED.

14

OTHER DEDUCTIONS UNDER CHAPTER VI-A

INTRODUCTION

In computing the total income of the assessee, deductions specified under section 80C to 80U will be allowed from his Gross Total Income in accordance with the provisions of this chapter. However, the aggregate amount of deductions under this chapter shall not, in any case, exceed the Gross total Income of the assessee.

SECTION 80C: DEDUCTION IN RESPECT OF LIFE INSURANCE PREMIA, DEFERRED ANNUITY, CONTRIBUTIONS TO PROVIDENT FUND, SUBSCRIPTION TO CERTAIN EQUITY SHARES OR DEBENTURES, ETC

<table>
<tr><td>Persons Covered:</td><td>Deduction under this section shall be allowed only to Individual or HUF.</td></tr>
<tr><td>Eligible Amount:</td><td>Any sums paid or deposited in the previous year by the assessee —
1. As Life Insurance premium to effect or keep in force insurance on life of (a) self, spouse and any child in case of individual and (b) any member, in case of HUF.
In case of Insurance Policy other than contract for a deferred annuity the amount of any premium or other payment made is restricted to:
<table>
<tr><td>Policy issued before 1st April 2012</td><td>20% of the actual capital sum assured</td></tr>
<tr><td>Policy issued on or after 1st April 2012</td><td>10% of the actual capital sum assured</td></tr>
<tr><td>Policy issued on or after 1st April 2013 - In cases of persons with disability or person with severe disability as per Section 80U or suffering from disease or ailment as specified in Section 80DDB</td><td>15% of the actual capital sum assured
(Added by Finance Act, 2013)</td></tr>
</table>
Actual capital sum assured in relation to a life insurance policy means the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account –</td></tr>
</table>

	i. the value of any premium agreed to be returned, or **ii. any benefit by way of bonus or otherwise over and above the sum actually assured which may be received under the policy by any person.** 2. To effect or keep in force a ***deferred annuity contract*** on life of self, spouse and any child in case of individual. Such contract should not contain a provision for cash payment option in lieu of payment of annuity. 3. By way of ***deduction from salary payable by or on behalf of the Government*** to any individual for the purpose of securing to him a ***deferred annuity*** or making provision for his spouse or children. The sum so deducted does not exceed 1/5th of the salary. 4. As contribution (not being repayment of loan) by an individual to ***Statutory Provident Fund;*** i.e., any provident fund to which the Provident Funds Act, 1925, applies. 5. As contribution to ***Public Provident Fund*** scheme, 1968, in the name of self, spouse and any child in case of individual and any member in case of HUF. 6. As contribution by an employee to a ***recognised provident fund.*** 7. As contribution by an employee to an ***approved superannuation fund.*** 8. Any sum deposited in a ***10 year or 15 year account under the Post Office Savings Bank (CTD) Rules, 1959,*** in the name of self and as a guardian of minor in case of individual and in the name of any member in case of HUF. 9. Subscription to the NSC. 10. As a contribution to Unit-linked Insurance Plan (ULIP) of UTI or LIC Mutual Fund (Dhanraksha plan) in the name of self, spouse and child in case of individual and any member in case of HUF. 11. To effect or to keep in force a contract for such annuity plan of the LIC (i.e., Jeevan Dhara, Jeevan Akshay and their upgradations) or any other insurer as referred to in by the Central Government. ***12.*** As subscription to any units of ***any Mutual Fund referred u/s. 10(23D) (Equity Linked Saving Schemes).*** 13. As a contribution by an individual to any ***pension fund*** set up by any Mutual Fund referred u/s 10(23D). 14. As subscription to any such deposit scheme of ***National Housing Bank (NHB),*** or as a contribution to any such pension fund set up by NHB as notified by Central Government. 15. As subscription to ***notified deposit schemes*** of (a) Public sector company providing long-term finance for purchase/construction of residential houses in India or (b) Any authority constituted in India for the purposes of housing or planning, development or improvement of cities, towns and villages. 16. As **tuition fees** (excluding any payment towards any development fees or donation or payment of similar nature), to any university, college, school or other educational institution situated within India for the purpose of full-time education of any two children of individual.

	17. Towards the cost of ***purchase or construction of a residential house property*** (including the repayment of loans taken from Government, bank, LIC, NHB, specified assessee's employer etc., and also the stamp duty, registration fees and other expenses for transfer of such house property to the assessee). The income from such house property should be chargeable to tax under the head "Income from house property". 18. As subscription to ***equity shares or debentures*** forming part of any eligible issue of capital of public company or any public financial institution ***approved by Board.*** 19. As Term Deposit (Fixed Deposit) ***for 5 years or more with Scheduled Bank*** in accordance with a scheme framed and notified by the Central Government. 20. As subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD). 21. In an account under the ***Senior Citizen Savings Schemes Rules, 2004.*** 22. As **five year term deposit** in an account under the **Post Office Time deposit Rules, 1981.**
Relative Conditions:	***No deduction shall be allowed to assessee in the previous year of happening of following events*** (referred henceforth as "such previous year") and the ***aggregate amount of*** deductions of income so allowed in respect of the previous years preceding such previous year shall be ***deemed to be the income*** of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year; i.e., If the assessee:— (a) **Terminates the contract of insurance (referred in item 1 above),** by notice to that effect or if the contract ceases to be in force by reason of failure to pay any premium, by not reviving the contract of insurance, in case of any single premium policy, within 2 years or in any other case before the premiums have been paid for 2 years. (b) **Terminates the participation in any ULIP plan (referred in item 10 above)** by notice to that effect or ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation has been paid for **5 years.** (c) **Transfers his house property (referred in item 17 above) before** the expiry of **5 years** from the end of the financial year in which possession of such property is obtained or receives back, whether by way of refund or otherwise any sum specified in that clause. (d) **Sales or transfers any equity shares or debentures (referred in item 18 above)** to any person at any time within a period of 3 years from the date of their acquisition (i.e., date on which assessee's name is entered in the register of members or debenture holders). (e) **Withdraw any amount (referred in item 21 and 22 above) before the expiry of the period of five years from the date of deposit.**

Extent of Deduction:	**100% of the amount invested or ₹ 1,00,000 whichever is less.** However, as per Section 80CCE, the total deduction the assessee can claim under sections 80C, 80CCC and 80CCD shall be restricted in aggregate to ₹ 1,00,000.

Amendment in Section 10(10D) by Finance Act, 2012 further Amended by Finance Act, 2013

Section 10(10D) provides that any sum received under a Life Insurance Policy including the sum allocated by way of bonus on such policy, shall be exempt from tax.

However, the following are **not exempt and therefore shall be taxable:**

(i) Any sum received under **keyman Insurance Policy**.

For the purposes of this clause, "Keyman insurance policy" means 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 and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration.

(ii) Any sum received under an Insurance Policy:

	If premium payable for any of the years during the term of policy exceeds:
Policy issued before 1st April 2012	**20% of the actual capital sum assured**
Policy issued on or after 1st April 2012	**10% of the actual capital sum assured**
Policy issued on or after 1st April 2013 - In cases of persons with disability or person with severe disability as per Section 80U or suffering from disease or ailment as specified in Section 80DDB	**15% of the actual capital sum assured** **(Added by Finance Act, 2013)**

However, the amount received on such policy on death of the insured shall not be taxable.

Explanation to Section 80C - Added by Finance Act, 2012

For the purposes of this sub-section, "actual capital sum assured" in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account—

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

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

(Explanation Added by Finance Act, 2012)

Example:

An Insurance Policy is taken for 20 years and premium to be paid every year is ₹ 90,000. The policy provides that following shall be paid on death:

(i) If death happens in first 5 years of policy ₹ 8 Lakhs

(ii) If death happens after 5 years but upto 10 years of the policy ₹ 20 Lakhs
(iii) If death taken place after 10 years of policy ₹ 50 Lakhs.

The policy also provides that the premium paid shall also be returned back and a bonus of 6% every year is guaranteed. Therefore, for determining the "actual capital sum assured".

- Minimum amount assured under the policy on happening of insured event at any time during the term of policy shall be taken i.e. ₹ 8,00,000.
- The value of premium agreed to be returned shall not be taken.
- The benefit by way of bonus or otherwise above the sum actually assured shall not be taken.

Therefore, capital sum assured is ₹ 8,00,000. If policy is taken:

(i) **Before 01-4-2012:** Since premium payable does not exceed 20% capital sum assured, any amount received on surrender of this policy is not taxable.

(ii) **On or after 01-4-2012:** Since premium payable exceeds 10% of capitals sum assured, any amount received on surrender of this policy shall be taxable. If however, any amount is received on death on this policy, then the amount is not taxable.

Amendment in 80C by Finance Act, 2012

1. For Life Insurance Policies issued upto 31-3-2012, the premium eligible for deduction under section 80C shall be restricted to 20% of actual capital sum assured.

2. For Life Insurance Policies issued on or after 1-4-2012, the premium eligible for deduction under section 80C shall be restricted to 10% of actual capital sum assured.

3. **Policy issued on or after 1st April 2013 - In cases of persons with disability or person with severe disability as per Section 80U or suffering from disease or ailment as specified in Section 80DDB shall be restricted to 15% of the actual capital sum assured. (Added by Finance Act, 2013)**

In the example given above:

(i) If policy is issued upto 31-3-2012, premium of ₹ 90,000 (since it is not in excess of 20% of ₹ 8,00,000) shall be allowed as deduction under section 80C.

(ii) If policy is issued after 31.3.2012 the premium eligible for deduction under section 80C shall be only ₹ 80,000 being 10% of capital sum assured.

SECTION 80CCG: DEDUCTION IN RESPECT OF INVESTMENT MADE UNDER AN EQUITY SAVINGS SCHEME

(1) Where an assessee, being a resident individual, has, in a previous year, acquired listed equity shares or listed units of an equity oriented fund in accordance with a scheme, as may be notified by the Central Government in this behalf, he shall, subject to the provisions of sub-section (3), be allowed a deduction, in the computation of his total income of the assessment year relevant to such previous year, of 50% of the amount invested in such equity shares or units to the extent such deduction does not exceed ₹ 25,000.

(2) The deduction under sub-section (1) shall be allowed in accordance with, and subject to, the provisions of this section for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.

(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—

(i) the gross total income of the assessee for the relevant assessment year shall not exceed ₹ 12 lakh;

(ii) the assessee is a new retail investor as may be specified under the scheme referred to in sub-section (1);

(iii) the investment is made in such listed equity shares or listed units of equity oriented fund as may be specified under the scheme referred to in sub-section (1);

(iv) the investment is locked-in for a period of 3 years from the date of acquisition in accordance with the scheme referred to in sub-section (1); and

(v) such other condition as may be prescribed.

(4) If the assessee, in any previous year, fails to comply with any condition specified in sub-section (3), the deduction originally allowed shall be deemed to be the income of the assessee of such previous year and shall be liable to tax for the assessment year relevant to such previous year.

Explanation.—For the purposes of this section, "equity oriented fund" shall have the meaning assigned to it in the Explanation to clause (38) of section 10.

(Inserted by Finance Act, 2012 further Amended by Finance Act, 2013)

ANALYSIS

Newly inserted Section 80CCG provides deduction w.e.f. assessment year 2013-14 in respect of investment made under notified equity saving scheme. Rajiv Gandhi Equity Savings Scheme 2012 has been notified as a scheme under this section.

Conditions for deductions - The deduction under this section is available if following conditions are satisfied:

(a) The assessee is a resident individual
(b) His gross total income does not exceed ₹ 12 lakhs;
(c) He has acquired listed shares in accordance with a notified scheme or listed units of an equity oriented fund as defined in section 10(38);
(d) The assessee is a new retail investor;
(e) The investment is locked-in for a period of 3 years from the date of acquisition in accordance with the above scheme;
(f) The assessee satisfies any other condition as may be prescribed.

Amount of deduction -The amount of deduction is at 50% of amount invested in equity shares/units. However, the amount of deduction under this provision cannot exceed ₹ 25,000.

Withdrawal of deduction - If the assessee, after claiming the aforesaid deduction, fails to satisfy the above conditions, the deduction originally allowed shall be deemed to be the income of the assessee of the year in which default is committed.

This deduction is now allowed for three consecutive assessment years beginning with the Assessment Year in which the listed equity shares or units were first acquired. If any deduction is claimed by a taxpayer under this section in any year, he shall not be entitled to any deduction under this section for any other year.

MEMORANDUM EXPLAINING FINANCE BILL, 2013

EXPANDING THE SCOPE OF DEDUCTION AND ITS ELIGIBILITY UNDER SECTION 80CCG

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

With a view to liberalize the incentive available for investment in capital markets by the new retail investors, it is proposed to amend the provisions of section 80CCG so as to provide that investment in listed units of an equity oriented fund shall also be eligible for deduction in accordance with the provisions of section 80CCG. It is proposed to provide that "equity oriented fund" shall have the meaning assigned to it in clause (38) of section 10.

It is further proposed to provide that the deduction under this section 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.

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

SECTION 80EE: DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR RESIDENTIAL HOUSE PROPERTY (INSERTED BY FINANCE ACT, 2013)

(1) In computing the total income of an assessee, being an **individual**, there shall be deducted, in accordance with and subject to the provisions of this section, **interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.**

(2) The deduction under sub-section (1) shall not exceed ₹ 1 lakh and shall be allowed in computing the total income of the individual for the assessment year beginning on the 1st day of April, 2014 and in a

case where the interest payable for the previous year relevant to the said assessment year is less than ₹ 1 lakh, the balance amount shall be allowed in the assessment year beginning on the 1st day of April, 2015.

(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—

(i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2013 and ending on the 31st day of March, 2014;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed ₹ 25 lakh;

(iii) the value of the residential house property does not exceed ₹ 40 lakhs;

(iv) the assessee does not own any residential house property on the date of sanction of the loan.

(4) Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

(5) For the purposes of this section,—

(a) **"financial institution"** means 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;

(b) **"housing finance company"** means 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.

ANALYSIS

As per amendment by Finance Act 2013, an individual is allowed a deduction upto a limit of ₹ 1,00,000 being payable as interest on a loan taken from a Financial Institution, sanctioned during the period 01-04-2013 to 31-03-2014 (loan not to exceed ₹ 25 lakhs) for acquisition of a residential house whose value does not exceed ₹ 40 lakhs. However, the deduction is available if the assessee does not own any residential house property on the date of sanction of the loan.

Example:
Mr. A has purchased his first house on 1-6-2013. Cost of the house was ₹ 35 lakh. He has borrowed the loan of ₹ 23 lakh from State Bank of India for this purpose. During the previous year 2013-14, he paid the interest of ₹ 2,30,000. He used the house as his own residence.

Now for Assessment Year 2014-15, deduction under section 24 shall be ₹ 1,50,000. And deduction under section 80EE shall be ₹ 80,000.

Further during the financial year 2014-15, Mr. A paid the interest on housing loan of ₹ 2,00,000.

Now for the Assessment Year 2015-16, deduction under section 24 shall be ₹ 1,50,000. And deduction under section 80EE shall be ₹ 20,000.

Deduction under section 80EE for Assessment Year 2014-15 and 2015-16 cannot exceed ₹ 1,00,000.

MEMORANDUM EXPLAINING FINANCE BILL, 2013

DEDUCTION IN RESPECT OF INTEREST ON LOAN SANCTIONED DURING FINANCIAL YEAR 2013-14 FOR ACQUIRING RESIDENTIAL HOUSE PROPERTY

Under the existing provisions of section 24 of the Income-tax 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.

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

The proposed new section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

It is further provided that the deduction under the proposed 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 1st 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 1st April, 2015.

It is also provided that the deduction shall be subject to the following conditions:-

(i) the loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed ₹ 25 lakh;

(iii) the value of the residential house property does not exceed ₹ 40 lakh;

(iv) the assessee does not own any residential house property on the date of sanction of the loan.

It is also provided that where a deduction under this section 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.

It is also proposed to define the term "financial institution".

This amendment will take effect from 1st April, 2014 and accordingly apply in relation to the assessment year 2014-15 and subsequent assessment year.

SECTION 80GGB: DEDUCTION IN RESPECT OF CONTRIBUTIONS GIVEN BY COMPANIES TO POLITICAL PARTIES OR ELECTORAL TRUST

In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any **political party or an electoral trust.**

Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.

(Proviso inserted by Finance Act, 2013)

SECTION 80GGC: DEDUCTION IN RESPECT OF CONTRIBUTIONS GIVEN BY ANY PERSON TO POLITICAL PARTIES OR ELECTORAL TRUST

In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a **political party or an electoral trust.**

Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.

(Proviso inserted by Finance Act, 2013)

SECTION 80JJAA: DEDUCTION IN RESPECT OF EMPLOYMENT OF NEW WORKMEN

(1) Where the gross total income of an assessee, being an Indian company, includes any profits and gains derived from the manufacture of goods in a factory, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under sub-section (1) shall be allowed—

(a) 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;

(b) unless the assessee furnishes along with the return of income the report of the chartered Accountant giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section, the expressions,—

(i) **"additional wages"** means the wages paid to the new regular workmen in excess of 100 workmen employed during the previous year.

Provided that in the case of an existing undertaking, the additional wages shall be nil if the increase in the number of regular workmen employed during the year is less than 10% of existing number of workmen employed in such undertaking as on the last day of the preceding year.

(ii) **"regular workman",** does not include—

(a) a casual workman; or

(b) a workman employed through contract labour; or

(c) any other workman employed for a period of less than 300 days during the previous year;

(iii) **"workman"** shall have the meaning assigned to it in clause (s) of section 257 of the Industrial Disputes Act, 1947

(iv) **"factory"** shall have the same meaning as assigned to it in clause (m) of section 2 of the Factories Act, 1948

ANALYSIS

Eligible Assessee: Indian Company

Essential Conditions: Following conditions must be fulfilled to avail the deduction:

(i) The factory is not hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company.

(ii) Company employs new regular workmen during the previous year.

(iii) Company should furnish the report of the chartered accountant in the prescribed format.

Quantum of Deduction: Deduction shall be allowed of an amount equal to **30% of the additional wages** paid to the new regular workmen employed by the assessee in the Previous Year.

Period of Deduction: Deduction shall be allowed for **3 assessment years** including the assessment year relevant to the previous year in which such employment is provided.

Example 1: A new industrial undertaking commences business on 05.04.2013 and has employed w.e.f. that date:

(a) 90 regular workmen
(b) 105 regular workmen
(c) 105 regular workmen on 05.04.2013, 10 regular workmen on 10.05.2013 and 20 workmen on 15.10.2013.

What shall be the deduction allowable under Section 80JJAA?

Solution:

(a) No deduction under section 80JJAA, as workmen employed are less than 100.

(b) Deduction under section 80JJAA will be allowed @ 30% of the wages paid during the previous year to 5 regular workmen employed after the initial 100 regular workmen.

(c) Deduction under section 80JJAA will be allowed @ 30% of the wages paid during the previous year to 15 regular workmen employed after the initial 100 regular workmen. No deduction under this section will be allowable in respect of 20 workers employed w.e.f. 15.10.2013 as they are employed during the previous year for less than 300 days and hence are not regular workmen for the previous year 2013-14.

Example 2: As on 31.3.2013, the regular workers employed by an industrial undertaking were 120. During the previous year the following workers were employed:

1.	Casual workmen on 5.4.2013	10
2.	Workmen employed through contract labour from 10.05.2013	20
3.	Workmen employed by the company	
	(a) w.e.f. 1.5.2013	15
	(b) w.e.f. 1.6.2013	5
	(c) w.e.f. 15.7.2013	10
	(d) w.e.f. 15.10.2013	4

Compute the deduction under section 80JJAA if the salary of each new workmen is ₹ 2,000 p.m.

Solution: New regular workmen employed for which deduction is allowed:

(a) Casual workers	(Not regular workmen)
(b) Contract Labour	(Not regular workmen)
(c) Workers employed from:	
01.05.2013	15
01.06.2013	5
15.07.2013	Nil (as employed for less than 300 days)
15.10.2013	Nil (as employed for less than 300 days)
Total new regular workmen employed	**20**

Wages regular workmen employed	
(2000*11*15)	3, 30,000
(2000*10*5)	1, 00,000
	4, 30,000

So deduction under section 80JJAA @ 30% of ₹ 4, 30,000 = ₹ 1,29,000

Example 3: As on 31.3.2013, the regular workers employed by an industrial undertaking were 80. During the previous year the following workers were employed by the company.

(a) 7 new regular during the year
(b) 9 new regular workmen during the year
(c) 25 new regular workmen during the year

Solution:

(a) There is neither an increase of 10% of the existing workmen employed as on 31.3.2014 nor the total strength of regular workmen employed during the year is 100. Therefore, no deduction under section 80JJAA will be allowed.

(b) Although the increase in the number of regular workmen is more than 10% of the existing strength of 80, but the total strength of regular workmen employed in the previous year is less than 100. Therefore, no deduction is allowable under section 80JJAA.

(c)

Workmen employed on 31.3.2013	80
New workmen employed during the year	25
Total workmen employed during the year	**105**

Deduction allowable @ 30% of the wages paid to 5 workers employed after initial 100.

Example 4:

A company setup an industrial undertaking in previous year 31.3.2009. The following data is given to you.

	In factory		**In other Departments**
	As workmen	**As Manager or Administrator**	
Number of employees as on 31.3.2013	1800	20	200
The following employees have been recruited in previous year 31.3.2014:			
Casual workers in factory	100		30
Workmen employed contract labour	200		10
Regular Workers	300		60

[Salary of each worker is ₹ 10,000 per month]

* Out of these 50 employees joined in December, 2013 and 50 employees joined in June 2013.

New Regular Workmen

(i) Casual workers — not included
(ii) Workmen employed through contract labour — not included
(iii) Regular worker — 250
[50 workmen, who joined in December, 2013 shall not be included since they are employed for less than 300 days in previous year 31.3.2014.]
(iv) Factory Manager & Administrator — Not workmen

(v) Regular worker in other Department NA included

NEW REGUALR WORKMEN **250**

Therefore, deduction under section 80JJAA is available:

Additional Wages = 10,000*12*200 = ₹ 2,40,00,000

= 10,000*10*50 = ₹ 50,00,000

₹ 2,90,00,000

Deduction Under Section 80JJAA = 30% of 2,90,00,000 = 87,00,000

15

DEDUCTION AND COLLECTION OF TAX AT SOURCE

TAX DEDUCTION AT SOURCE

SURCHARGE AND EDUCATION CESS ON RATES OF TDS PRESCRIBED

IN CASE OF RESIDENT PAYEE/ DEDUCTEE:

Payee/ Deductee i.e. to whom payment is made	*Applicability of Surcharge and Education cess*
1. Companies	*No surcharge or education cess shall be added.*
2. Any other assessee	*No surcharge or education cess shall be added to the prescribed rate of TDS. However, surcharge and education cess shall be added on the TDS on the salary. surcharge @ 10 % where taxable salary exceeds ₹1 crore*

IN CASE OF NON-RESIDENT PAYEE/ DEDUCTEE:

Payee/ Deductee i.e. to whom payment is made	*Applicability of Surcharge and Education cess*
1. Foreign Companies	*The rates of TDS shall be increased by:* *a surcharge of 2% where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹1 crore but does not exceeds ₹10 crores; or* *b surcharge of 5% where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹10 crores; and* *c education cess of 3% in all cases.*
2. Any other assessee	*The rates of TDS shall be increased by:* *a surcharge of 10% where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹1 crore; and* *b education cess of 3% in all cases.*

CHAPTER XVII-B OF THE INCOME-TAX ACT, 1961 - COLLECTION AND RECOVERY OF TAX - DEDUCTION AT SOURCE - CLARIFICATION REGARDING TDS UNDER CHAPTER XVII-B ON SERVICE TAX COMPONENT COMPRISED OF PAYMENTS MADE TO RESIDENTS

CIRCULAR NO. 1/2014 [F.NO.275/59/2012-ITB)], DATED 13 -1-2014

The Board had issued a Circular No.4/2008 dated 28-04-2008 wherein it was clarified that tax is to be deducted at source under section 194-I of the Income-tax Act, 1961 hereafter referred to as 'the Act', on the amount of rent paid/payable without including the service tax component. Representations/letters has been received seeking clarification whether such principle can be extended to other provisions of the Act also.

2. Attention of CBDT has also been drawn to the judgement of the Hon'ble Rajasthan High Court dated 1-7-2013, in the case of CIT TDS Jaipur v. Rajasthan Urban Infrastructure Income -tax Appeal No.235, 222, 238 and 239/2011, holding that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act.

3. The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.

4. This circular may be brought to the notice of all officer for compliance.

SECTION 206AA: REQUIREMENT TO FURNISH PERMANENT ACCOUNT NUMBER- TAX DEDUCTION AT HIGHER RATE FOR FAILURE TO FURNISH PAN

1 Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB hereafter referred to as deductee shall furnish his Permanent Account Number to the person responsible for deducting such tax hereaf ter referred to as deductor, failing which tax shall be deducted at the higher of the following rates, namely:—

i) at the rate specified in the relevant provision of this Act; or
ii) at the rate or rates in force; or
iii) at the rate of 20%.

2 No declaration under sub-section 1A or sub-section 1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.

3 In case any declaration becomes invalid under sub-section 2, the deductor shall deduct the tax at source in accordance with the provisions of sub-section 1.

4 No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

5 The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

6 Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section 1 shall apply accordingly.

7 **The provisions of this section shall not apply in respect of payment of interest, on long-term infrastructure bonds, as referred to in section 194LC, to a non-resident or to a foreign company.**
Amended by Finance Act, 2013 To be discussed in section 194LC

POINT TO BE NOTED:
Where the amount paid is below the limit on which tax is required to be deducted at source and therefore, not liable for deduction of tax, and PAN is not furnished, then section 206AA has no applicability.

SECTION 194-IA: PAYMENT ON TRANSFER OF CERTAIN IMMOVABLE PROPERTY OTHER THAN AGRICULTURAL LAND INSERTED BY FINANCE ACT, 2013 W.E.F. 1.6.2013

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

2 No deduction under sub-section 1 shall be made where the consideration for the transfer of an immovable property is less than ₹ 50 lakh.

3 The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation— For the purposes of this section,—

a "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items a and b of sub -clause iii of clause 14 of section 2;

b "immovable property" means any land other than agricultural land or any b uilding or part of a building.

ANALYSIS

1. Every person is liable to deduct tax at source @ 1% on payment made for purchase of immovable property to a person resident in India, except for:
   i rural agricultural land which is not coming in definition of capital asset, and
   ii where the sale consideration for the property is less than ₹ 50 lakh.

Therefore, if the immovable property is purchased from a non-resident person for any value, no TDS is required to be deducted under this section. However, TDS shall be deducted under section 195.

2. **It is not necessary that the land or building should be situated in India. If any person is purchasing property outside India from a person resident in India, he is liable to deduct tax at source on sale consideration @ 1%.**

3. **In case section 194-IA is attracted then the purchaser isn't required to obtain TAN, i.e., Tax Deduction Account Number i.e., section 203A is not applicable.**

4. **Every person who is purchasing property of ₹ 50 lakhs or more would have to deduct TDS @ 1% of the payments made to the seller on or after 1-6-2013. No TDS on payments made before 1.6.2013.**

5. **In case the seller does not have PAN, then instead of 1%, TDS will be applicable @ 20% because of section 206AA of the Income-tax Act, 1961.**

6. **In the case of property whose sale price is ₹ 50 lakhs or more and in the event part payment is being made for the purchase, then such TDS would be required to be deducted on every part payment of consideration and not at the time of final tranche of payment. Payment made on or after 1.6.2013**

7. **If agreement to sell is entered say on 1.1.2013 for the total consideration of ₹ 70 lakh and ₹ 25 lakh is paid a 1.1.2013 and ₹ 25 lakh is paid on 1.5.2013 and balance ₹ 20 lakh is paid on 1.8.2013. In this case, there is no requirement to deduct tax at source on payments made before 1.6.2013. However, TDS @ 1% shall be attracted on ₹ 20 lakhs i.e. payment made on or after 1.6.2013.**

8. **If sellers jointly own a property and sells for a total consideration of ₹ 50 lakh or more, then section 194-IA is attracted even if each co-owner's consideration is less than ₹ 50 lakhs.**

9. **TDS is required to be deducted irrespective of the fact that immovable property is held as capital asset or stock-in trade by the buyer and seller.**

10. **In case immovable property other than agricultural land which is not capital asset is acquired under any law in force, the provisions of section 194LA shall apply and provisions of section 194-IA is not applicable.**

Example 1:
Mr. A and Mr. B are the joint holders of a building situated at Rajouri Garden, Delhi having equal share in the building. They sold the house to Mr. X on 5-8-2013 for a consideration of ₹ 55 Lakh. It has been decided that Mr. X will pay ₹ 27.5 lakhs to each seller i.e., Mr. A and Mr. B.

Now, Mr. X while making the payment to Mr. A and Mr. B is required to deduct tax under section 194-IA @ 1% since the total consideration for transfer of an immovable property is ₹ 50 lakh or more.

Example 2:
Mr. Abhay and Mr. Kushal purchased a building situated in Ludhiana jointly. They bought it from Mr. Kumar for a total consideration of ₹ 60 lakhs. Mr. Abhay and Mr. Kushal are required to pay ₹ 30 lakh each.

Now Mr. Abhay and Mr. Kushal both are required to deduct TDS @ 1% on the amount paid by them since the total consideration is ₹ 50 lakh or more for transfer of an immovable property.

Example 3:
BKC Pvt. Ltd. acquired the land situated at Yamuna expressway from Raheja Builders and issued 10,00,000 equity shares having face value of ₹ 10 each at a premium of ₹ 15 each in consideration of the land.

BKC Pvt. Ltd. is required to deduct TDS @ 1% on ₹ 2,50,00,000 at the time of issue of shares. Grossing up shall be done if the agreement specifies that the burden of TDS shall be borne by the buyer.

Example 4:
Mr. P, non-resident, sold his building situated at Mumbai to Mr. Z for a total consideration of ₹ 1.25 crore. Mr. Z will make the payment to Mr. P after deduction of tax @ 20% plus surcharge and education cess on the LTCG computed under section 195. Section 194-IA does not apply where the payment is made to a non-resident.

Example 5:
Mr. Akash, resident in India, sold his house situated in Kolkatta, to Mr. Rahul who is the resident of USA for a total consideration of ₹ 2 crores.

Mr. Rahul is required to deduct TDS @ 1% under section 194-IA while making payment to Mr. Akash.

Example 6:
Mr. Deepak, resident in India, owned a house in Jaipur. He sold the house to Mr. Anand, resident of Jaipur for a total consideration of ₹ 48 lakhs. However, the stamp duty value of the said property is ₹ 55 lakhs.

Now, Mr. Anand is not required to deduct TDS under section 194-IA since the total consideration does not exceeds ₹ 50 lakh.

MEMORANDUM EXPLAINING FINANCE ACT, 2013

TAX DEDUCTION AT SOURCE TDS ON TRANSFE R OF CERTAIN IMMOVABLE PROPERTIES OTHER THAN AGRICULTURAL LAND

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 ₹5 lakh or more. However, the information furnished to the 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 ₹30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of the property.

Under the existing provisions of the Income-tax 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.

In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property other than agricultural land to a resident transferor, shall deduct tax, at the rate of 1% of such sum.
In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakh rupees.

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

SECTION 194LB: INCOME BY WAY OF INTEREST FROM INFRASTRUCTURE DEBT FUND PAID TO NON-RESIDENT ONLY

Where any income by way of interest is payable to a non-resident, or to a foreign company, by an infrastructure debt fund referred to in section 1047 , the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.

Inserted by Finance Act, 2011 w.e.f. 1.6.2011

SECTION 194LC: INCOME BY WAY OF INTEREST FROM INDIAN COMPANY

1 Where any income by way of interest referred to in sub-section 2 is payable to a non -resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of 5%.

2 The interest referred to in sub-section 1 shall be the income by way of interest payable by the specified company,—

i in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India,—

a under a loan agreement; or

b by way of issue of long-term infrastructure bonds,

as approved by the Central Government in this behalf; and

ii to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

Explanation.—For the purpose of this section—

a "foreign currency" shall have the meaning assigned to it in clause m of section 2 of the Foreign Exchange Management Act, 1999;

b "specified company" means an Indian company.

NOTE:
Section 206AA is not applicable even if foreigner does not give PAN. Finance Act, 2013

SECTION 194LD: INCOME BY WAY OF INTEREST ON CERTAIN BONDS AND GOVERNMENT SECURITIES INSERTED BY FINANCE ACT, 2013

1 Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section 2, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.

2 The income by way of interest referred to in sub-section 1 shall be the interest payable on or after the 1st day of June, 2013 but before the 1st day of June, 2015 in respect of investment made by the payee in—

i a rupee denominated bond of an Indian company ; or

ii a Government security:

Provided that the rate of interest in respect of bond referred to in clause i shall not exceed the rate as may be notified by the Central Government in this behalf.

Explanation.—For the purpose of this section,—

a "Foreign Institutional Investor" shall have the meaning assigned to it in clause a of the Explanation to section 115AD;

b "Government security" shall have the meaning assigned to it in clause b of section 2 of the Securities Contracts Re gulation Act, 1956 ;

c "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.

MEMORANDUM EXPLAINING FINANCE ACT, 2013

CONCESSIONAL RATE OF WITHHOLDING TAX ON INTEREST IN CASE OF CERTAIN RUPEE DENOMINATED LONG-TERM INFRASTRUCTURE BONDS

The existing provisions of section 194LC provide that if an Indian company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the Central Government, then the interest payment to a non-resident person would be subject to a concessional rate of tax @ 5%.

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

The designated bank account should be solely for the purpose of deposit of money in foreign currency and such money is to be used, after conversion, for subscription to a rupee denominated long-term infrastructure bond issue of an Indian company.

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

SECTION 206C: TAX COLLECTION AT SOURCE

SECTION 206C: PROFIT AND GAINS FROM BUSINESS OF TRADING IN ALCOHOLIC LIQUOR, FOREST PRODUCE, SCRAP, ETC.

1 Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer, or at the time of receipt of such amount from the said buyer, whichever is earlier, **collect from the buyer**, a sum equal to the following percentage of the purchase price, as income-tax:

	Nature of goods	***% of Purchase Price***
i)	Alcoholic liquor for human consumption	1 %
ii)	Tendu leaves	5 %
iii)	Timber obtained under a forest lease	2.5 %
iv	Timber obtained by any mode other than under a forest lease	2.5 %
v	Any other forest produce not being timber or tendu leaves	2.5 %
vi)	Scrap	1 %
vii	**Minerals, being coal or lignite or iron ore**	**1%**

Amendment by Finance Act, 2012

1C Every person, who grants a lease or a licence or enters into a contract or otherwise transfers

- **any right or interest in any parking lot or toll plaza or mine or quarry**
- **to another person, other than a public sector company herein after called as "Licencee or Lessee")**
- **for the use of such parking lot or toll plaza or mine or quarry for the purposes of business**
- **shall,**
- **at the time of debiting of the amount payable by the licencee or lessee to the account of the licencee or lessee**
- **or at the time of receipt of such amount from the licencee or lessee,**
- **whichever is earlier,**
- **collect from the licencee or lessee,**
- **a sum equal to following percentage of such amount as income-tax.**

	Nature of contract/licence /lease, etc.	***Percentage to be collected***
i	**Parking lot**	**2 %**
ii	**Toll plaza**	**2 %**
iii	**Mining and quarrying**	**2 %**

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

i for bullion, exceeds ₹ 2,00,000; or

ii for jewellery, exceeds ₹ 5,00,000.

Added by Finance Act, 2012
F urther amended by Finance Act, 2013 w.e.f. 1.6.2013

Example 1:
P. C. Jewelers sells jewelry to Mr. A on 1.1.2014. He paid cash to P. C. Jewelers:

a) ₹ 3,00,000 - No TCS shall be collected since the amount paid in cash for purchase of jewelry does not exceed ₹ 5,00,000.
b ₹ 8,00,000 - P. C. Jeweler shall collect TCS @ 1% of ₹ 8,00,000 since the amount paid in cash for purchase of jewelry exceed ₹ 5,00,000.

Example 2:
If in example 1 above, Mr. A paid the amount by cheque or credit card, what will be the amount of TCS.

If Mr. A purchased jewelry by cheque or credit card, no TCS shall be collected since TCS shall be collected only if the payment is made in cash.

Example 3:
What will be the responsibility of P. C. Jewelers for collection of TCS, if a person purchased bullion from P. C. Jewelers in cash for ₹ 3,00,000?

P. C. Jeweler shall collect TCS @ 1% of ₹ 3,00,000 since the amount paid in cash for purchase of bullion exceeds ₹ 2,00,000.

Example 4:
Government grants lease of coal mine to Lalu Yadav and charged ₹ 1 crore for lease of coal mine. Lalu Yadav sold coal of ₹ 10 lakh to Sadhu Yadav. Sadhu Yadav sold coal of ₹ 15 lakh to Tata Steel.

Answer:
Government will collect TCS @ 2% on ₹ 1 crore from Lalu Yadav. Lalu Yadav shall pay ₹1,02,00,000 to Government.

Lalu Yadav will collect TCS of 1% from Sadhu Yadav. Sadhu Yadav will pay ₹ 10,10,000 to Lalu Yadav.

Sadhu Yadav shall not collect TCS from Tata Steel since it will be using coal in production of steel.

Explanation:

a For the purpose of this section, "mining and quarrying" shall not include mining and quarrying of mineral oil. "Mineral Oil" includes petroleum and natural gas.

b The above percentages referred to in section 206C(1, 206C(1C and 206C(1D shall be increased by a surcharge and education cess for assessment year 2014-15 as under:

Where buyer is:	*Applicability of Surcharge and Education cess*
1. Foreign Company	***The rates of TCS shall be increased by:*** ***a surcharge of 2% where the payment collected or to be collected from buyer and which is subject to tax collection during the Financial Year exceeds ₹ 1 crore but does not exceeds ₹10 crores; or*** ***b surcharge of 5% where the payment collected or to be collected from buyer and which is subject to tax collection during the Financial Year exceeds ₹ 10 crores; and*** ***c education cess of 3% in all cases.***
2. Non-resident other than foreign company	***The rates of TCS shall be increased by:*** ***a surcharge of 10% where the payment collected or to be collected from buyer and which is subject to tax collection during the Financial Year exceeds ₹ 1 crore; a nd*** ***b education cess of 3% in all cases.***

Note: Surcharge and Education Cess shall not be added in case of resident buyer.

c **"Seller"** means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under section 44AB(a or section 44ABb during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table above are sold.

d **"buyer"** with respect to—

i) **sub-section 1** means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section 1 or the right to receive any such goods but does not include,—

A a public sector company, the Central Government, a State G overnment, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

B) a buyer in the retail sale of such goods purchased by him for personal consumption;

ii sub -section 1D me ans a person who obtains in any sale, goods of the nature specified in the said sub-section;

e **"Scrap"** means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

2 This section shall not apply where the buyer, who is a resident in India, furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to above are to be utilized for the purposes of manufacturing, processing or producing articles or things **or for the purposes of generation of power** and not for trading purposes. The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration, referred to above, on or before the 7th day of the month next following the month in which the declaration is furnished to him.

Amended by Finance Act, 2012

3 Where the Assessing Officer is satisfied that the total income of the buyer or licencee or lessee justifies the collection of tax at any lower rate than specified in the section, then the Assessing Officer shall, on an application made by the buyer or licencee or lessee in this behalf, give him a certificate for collection of tax at such a lower rate. Where a certificate is given, the person responsible for collecting tax, shall until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

4 Every person collecting the above tax shall pay the same to the Government within the prescribed time the amount so collected to the credit of Central Government.

5 Tax collected shall be deemed to be the tax paid by the buyer or licencee or lessee and credit shall be given for the TCS to the buyer or licencee or lessee without production of certificate of TCS.

6 The person collecting the above tax shall furnish to the buyer or licencee or lessee the certificate of TCS within such period as may be prescribed from the date of debit or receipt of the amount from the buyer/ licencee/ lessee.

7 If a person fails to collect the tax, then he shall be liable to pay such tax to the Government.

8 Provisions similar to section 201 are contained in section 206C. The similar amendments which are carried out in section 201 have been carried out in section 206C.

Memorandum Explaining Finance Bill, 2012

TAX COLLECTION AT SOURCE TCS ON CA SH SALE OF BULLION AND JEWELLERY

Under the existing provisions of the Income-tax Act, tax is required to be collected at source by the seller at the specified rate on certain goods like alcoholic liquor, tendu leaves, scrap etc. at the time of sale.

In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, it is proposed to provide that the seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of

bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash. **This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.**

Memorandum Explaining Finance Bill, 2012

TCS ON SALE OF CERTAIN MINERALS

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or under-reporting of trading in minerals trading transactions for the taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, it is proposed that tax at the rate of 1% shall be collected by the seller from the buyer of the following minerals:

a) Coal;

b Lignite; and

c Iron ore.

However, the seller shall also not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilized for the purposes of manufacturing, processing or producing articles or things.

16

TAXATION OF NON-RESIDENTS AND FOREIGN COMPANIES

- Foreign company means a company which is not a domestic company.

- Domestic company means an Indian company or any other company which, in respect of its income liable to tax under this Act, has made prescribed arrangements for the declaration and payment, within India, of dividends payable out of such income.

EXPLANATION TO SECTION 9: INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident, whether or not,—

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

(Inserted by Finance Act, 2010 w.r.e.f. 1.6.1976)

MEMORANDUM EXPLAINING FINANCE BILL, 2010

INCOME DEEMED TO ACCRUE OR ARISE IN INDIA TO A NON-RESIDENT

Section 9 provides for situations where income is deemed to accrue or arise in India. Vide Finance Act, 1976, a **source rule** was provided in section 9 through insertion of clauses (v), (vi) and (vii) in sub-section (1) for income by way of interest, royalty or fees for technical services respectively. It was provided, inter alia, that in case of payments as mentioned under these clauses, income would be deemed to accrue or arise in India to the non-resident under the circumstances specified therein.

The intention of introducing the source rule was to bring to tax interest, royalty and fees for technical services, by creating a legal fiction in section 9, even in cases where services are provided outside India as long as they are utilized in India. The source rule, therefore, means that the situs of the rendering of services is not relevant. It is the situs of the payer and the situs of the utilization of services which will determine the taxability of such services in India.

In order to remove any doubt about the legislative intent of the aforesaid source rule, it is proposed to add Explanation to section 9 to specifically state that the income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) of section 9 and shall be included in his total income, whether or not:

(a) the non-resident has a residence or place of business or business connection in India; or
(b) the non-resident has rendered services in India.

ANALYSIS

Royalty and fees for technical services paid to a non-resident / foreign company for acquiring know-how shall be taxable in India in hands of Non-resident / Foreign Company if the know-how has to be utilized in India. It is irrespective whether

- know-how is delivered outside India; or
- payment is made to Non-resident/ Foreign Company outside India; or
- non-resident / foreign company has a place of business in India/ residence in India/ business connection in India or not; or
- know-how is made available in India or outside India.

WHAT IS RELEVANT IS THAT KNOW-HOW SHOULD BE UTILISED IN INDIA and in that case the royalty / fees for technical services paid to Non-Resident/ foreign company is taxable in India in hands of Non-resident / Foreign Company.

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

SECTION 115A: TAX ON INTEREST IN CASE OF NON-RESIDENTS & FOREIGN COMPANIES

Where the total income of a foreign company OR A NON-RESIDENT includes any income by way of –	***Applicable Rate of Tax***
(1) Interest received from Government or an Indian concern on moneys borrowed by the Government/ Indian concern ***in foreign currency***, other than referred to in (2), (3) & (4) below.	***20% of such interest***
(2) ***Interest referred to in section 194LB received from an infrastructure debt fund referred to in section 10(47) on money borrowed by infrastructure debt fund in foreign currency***	***5% of such interest***

(3) ***Interest referred to in section 194LC received from the specified company,—*** **(i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India,—** **(a) under a loan agreement; or** **(b) by way of issue of long-term infrastructure bonds,** **as approved by the Central Government in this behalf; and** **(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.** **(Clause (3) inserted by Finance Act, 2012)**	***5% of such interest***
(4) ***Interest referred to in section 194LD received by Foreign Institutional Investor or Qualified Foreign Investor from an Indian company or Indian Government where such interest is payable on or after 1-6-2013 but before 1-6-2015 on investment made by Foreign Institutional Investor or Qualified Foreign Investor in foreign currency in:*** **(a) Rupee denominated bond of an Indian Company; or** **(b) Government security.** **Provided that the rate of interest in respect of bond referred to in (a) shall not exceed the rate notified by the Central Government.** **(Inserted by Finance Act, 2013)**	***5% of such interest***

POINTS TO BE NOTED:

1. The Planning Commission had suggested the setting up of multiple infrastructure debt funds to finance part of the funding requirement of infrastructure and has asked the finance ministry to create a framework for such funds. In order to attract the long-term, low cost finance from abroad for the infrastructure sector, infrastructure debt funds are proposed to be set-up and section 115A has been amended to provide a lower rate of tax on interest on such funds.

2. In order to augment long term low cost funds from abroad for the companies in the infrastructure sector, Finance Act, 2012 has provided tax incentives for investors abroad.

3. Specified companies referred to in (3) above means an Indian company engaged in the business of-

   a. construction of dam,

   b. operation of Aircraft,

   c. manufacture or production of fertilizers,

   d. construction of port including inland port,

e. construction of road, toll road or bridge;

f. generation, distribution of transmission of power

g. construction of ships in a shipyard; or

h. developing and building an affordable housing project as is presently referred to in section 35AD(8)(c)(vii).

4. Special rate of tax is applicable on the above mentioned incomes only. **Balance income** of the assessee will be chargeable to **tax at normal rates** applicable to assessee.

5. **No deduction in respect of any expenditure** or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing the above income.

6. Deduction under Chapter VI-A is not available on the above mentioned income. Therefore, if gross total income of the assessee consists of above income only, then **no deduction shall be allowed to him/it under chapter VI-A.** However, if other incomes are also included in the gross total income**, the deduction under Chapter VI-A is limited to other incomes only.**

Example:
Mr. X, a non-resident, has earned the following incomes in India:

Interest Income referred to in section 115A	₹ 4,00,000
Other Incomes	₹ 2,50,000

He has also contributed ₹ 3,00,000 to Prime Minster Relief Fund eligible for deduction under section 80G. Compute his total Income.

Answer:

Interest Income referred to in section 115A	₹ 4,00,000
Other Incomes	₹ 2,50,000
Total Income	**₹ 6,50,000**
Less: Deduction under Chapter VI-A (Limited to other incomes since deduction under chapter VI-A is not available on interest referred to in section 115A)	₹ 2,50,000
Total Taxable Income	**₹ 4,00,000**

7. It shall not be necessary for the assessee to furnish a return of income under section 139(1) if the following conditions are satisfied:
   (a) The total income consists of only the interest income referred above; and
   (b) Tax deductible at source has been deducted from such incomes.

8. The provisions of Chapter VI, i.e., Set-off, Carry forward and set off of losses, are applicable. Therefore, the losses of the current year as well as brought forward losses can be set off against the income referred to in section 115A, subject to the provisions of Chapter VI.

9. The unabsorbed depreciation, current year as well as brought forward, of any business cannot be set off against the income referred to in section 115A since the set off and carry forward of depreciation is governed by section 32.

SECTION 115A: TAX ON ROYALTY AND TECHNICAL SERVICES FEE IN CASE OF NON-RESIDENTS & FOREIGN COMPANIES

Where the total income of a foreign company OR A NON-RESIDENT includes any income by way of royalty or fees for technical services OTHER THAN THE INCOME REFERRED TO IN SECTION 44DA.	***Applicable Rate of Tax***
(A) received from the Government in pursuance of an agreement made by the non-resident/ foreign company with the Government, or (B) received from the Indian concern in pursuance of an agreement made by the non-resident/ foreign company with the Indian concern and the agreement is approved by the Central Government,	*25% of such royalty or fee for technical services* However, if DTAA provides for a rate lower than 25%, then the provisions of DTAA or section 115A, whichever are more beneficial to the assessee shall apply i.e., the lower rate of DTAA shall apply instead of 25%.

POINTS TO BE NOTED:

1. Special rate of tax is applicable on the above mentioned incomes only. Balance income of the assessee will be chargeable to tax at normal rates applicable to assessee.

2. No approval of Central Government is required in case of an agreement referred to in (B) above if the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India and the agreement is in accordance with that policy.

3. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under section 28 to 44C and section 57 in computing the incomes at (A) and (B) above.

4. The provisions of Chapter VI, i.e., Set-off, Carry forward and set off of losses, are applicable. Therefore, the losses of the current year as well as brought forward losses can be set off against the incomes referred to in (A) and (B) above, subject to the provisions of Chapter VI.

5. The unabsorbed depreciation, current year as well as brought forward, of any business cannot be set off against the incomes referred to in (A) and (B) above, since the set off and carry forward of depreciation is governed by section 32.

6. Deductions under Chapter VI-A, if any, are available in respect of the incomes referred to in (A) and (B) above.

7. If the total income of Non-resident/ Foreign Company consists of only royalty/ fees for technical services and TDS has been deducted, then also there is an obligation to file ROI in India.

8. **The definition of " *fees for technical services* " and *"royalty" shall be same as given in section 9 which is reproduced below:***

(a) **"fees for technical services"** means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

(b) **"royalty"** means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital Gains") for –

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematography films; or

(vi) the rendering of any services in connection with the activities referred to in (i) to (v).

The Finance Act, 2012 has added following three Explanations to the definition of Royalty under section 9:

Explanation 4.—For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Explanation 5.—For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—

(a) the possession or control of such right, property or information is with the payer;

(b) such right, property or information is used directly by the payer;

(c) the location of such right, property or information is in India.

Explanation 6.—For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

ANALYSIS OF AMENDMENTS MADE BY FINANCE ACT, 2012

A. Explanation 4 to section 9 added by Finance Act, 2012 clarifies that payment received for transfer of:

- **All or any right to use a computer software**
- **Including granting of a license for computer software**
- **is royalty.**

Therefore, if a resident imports a software from abroad/get a license to use the software from abroad, then the payment received by foreigner shall be treated as royalty. Since the software is to be used in India, the royalty shall be taxable in hands of foreigner in India and the Indian making the payment shall deduct TDS under section 195 @ 25% as given in section 115A. [If rate as per DTAA is lower, TDS will be on such lower rate]

***For example,* Reliance imports a software of ₹ 10 lakhs from Microsoft U.S.A. Reliance has to deduct TDS @ 25% under section 195. [If rate as per DTAA is lower, TDS will be on such lower rate]**

TAX TREATMENT IN HANDS OF PAYER OF ROYALTY

Section 40(a)(i) and section 40 (a)(ia) provides that deduction for any expenditure by way of royalty paid to non-resident and resident respectively, shall be allowed if TDS is deducted/paid as per the conditions specified therein.

Section 40(a)(i) and 40(a)(ia) provide that royalty shall have the same meaning as given in section 9. Now after the amendment by Finance Act, 2012, royalty includes payment for computer software. Therefore, amount paid for purchase of computer software is royalty and shall be allowed as deduction under section 37(1).

Income tax Rules, 1962 provides that computer software will be included in block of assets of computer and will be eligible for 60% depreciation but Income tax Act, 1961 provides that payment made for computer software is royalty. Income Tax Rules cannot override the Income Tax Act. Therefore, after the amendment by Finance Act 2012, amount paid to obtain the computer software will be treated as Revenue Expenditure under section 37(1) subject to section 40(a)(i) and section 40(a)(ia) and shall not be added to block of assets of computers.

B. ***Explanation 5 to section 9:*** Indian Banks make use of servers of foreigners for credit card transactions. For any credit card transaction where a swipe is made, the swipe transaction is verified

by a server of foreigner which is located outside India. Indian banks make payment to this foreigner for all such swipes. Now, the foreigner argues that this income received by him is not taxable in India, because:

(i) Possession of server is not with Indian bank.
(ii) Server is not used directly by Indian bank.
(iii) The location of server is outside India.

Finance Act, 2012 clarifies the payment made to foreigner shall be treated as royalty even if:

(i) Possession of server is not within India.
(ii) Server is not used directly by Indian bank.
(iii) The location of server is outside India.

Therefore, on such payments, TDS shall be deducted under section 195.

C. ***Explanation 6 to section 9(i):*** Indian T.V. channels make use of satellite of foreigner to transmit their programs. Now the payment made to foreigner for transmission of programs by satellite is treated as royalty liable to tax deduction under section 195.

Example 1: A foreign company furnishes the following data for the previous year ended 31.3.2014

(a)	- Royalty from Indian concerns under an agreement falling in Industrial Policy. Agreement entered on 3.06.1996	:	₹ 20 lakhs
	- Depreciation	:	₹ 4 lakhs
	- Salaries	:	₹ 2 lakhs
	- Other expenditures as per limit laid in sections 28 to 44C	:	₹ 3 lakhs
(b)	- Royalty from Indian concerns under an agreement falling in Industrial Policy. Agreement entered on 30.06.2010	:	₹10 lakhs
	- Depreciation	:	₹ 1 lakhs
	- Salaries	:	₹ 2 lakhs
	- Other expenditures as per limit laid in sections 28 to 44C	:	₹ 4 lakhs
(c)	- Dividends (Declared on 4.08.2013)	:	₹ 5 lakhs
	- Collection charges paid	:	₹ 50,000
(d)	- Interest received from Indian concern on moneys lent in Indian currency	:	₹ 7 lakhs
	- Collection charges paid	:	₹ 80,000
(e)	- Interest received from Government on moneys lent in foreign currency	:	₹ 4 lakhs
	- Expenditure on earning the interest	:	₹ 1 lakh
(f)	- Income from units of Mutual funds purchased in foreign currency	:	₹ 2 lakhs
	- Expenditure on earning the income	:	₹ 25,000

(g) - Other Business Income Receipts : ₹25 lakhs
- Expenditure as per sections 28 to 44C : ₹10 lakhs

(h) - Long term capital gains
Sale price of listed securities ₹ 3 lakhs
Cost of acquisition (3.06.1997) ₹ 1.7 lakhs

(i) - Short term capital gains ₹ 3 lakhs

Compute the total income of the foreign company and tax payable by it.

Answer: ***COMPUTATION OF TOTAL INCOME OF FOREIGN CO.***
Assessment Year 2013-14

P/G/B/P

(i)	Royalty under agreement dated 03-06-1996	20 Lakhs	
	Less: Depreciation, Salaries & Expenses not allowed as per section 115A	NIL	20 Lakhs
(ii)	Royalty under agreement dated 30-06-2010	10 Lakhs	
	Less: Depreciation & Expenses not allowed as per section 115A	NIL	10 Lakhs
(iii)	Other Business Receipts	25 Lakhs	
	Less: Expenditures	10 Lakhs	15 Lakhs
	P/G/B/P		**45 Lakhs**

Income from Other Sources

(i)	Dividends	5,00,000	
	Less: Exempt under section 10(34)	5,00,000	NIL
(ii)	Interest on money lent in Indian Currency	7,00,000	
	Less: Expenses (Section 115A does not apply)	80,000	6,20,000
(iii)	Interest on money lent in foreign currency	4,00,000	
	Less: Expenses not allowed as per section 115A	NIL	4,00,000
(iv)	Units of Mutual Funds purchased in foreign currency	2,00,000	
	Less: Exempt under section 10(35)	2,00,000	NIL
	Income from Other Sources		**10,20,000**

CAPITAL GAINS

Assuming that Securities Transaction tax has been paid on sale of shares, the Long term gains are exempt under section 10(38).

	Long Term Capital Gains	**Nil**
	Short Term Capital Gains (Assuming securities transaction tax has been paid)	**3,00,000**
	Total Capital Gains	**3,00,000**
	TOTAL INCOME	**58,20,000**

COMPUTATION OF TAX PAYABLE

(i)	On Royalty of ₹ 20,00,000 @ 25% under section 115A[1]	5,00,000
(ii)	On Royalty of ₹ 10,00,000 @ 25% under section 115A[1]	2,50,000
(iii)	Interest on Loan in foreign currency of ₹ 4,00,000 @ 20% under section 115A[2]	80,000
(iv)	On STCG of 3,00,000 @ 15% under section 111A	45,000
(v)	On ₹ 21,20,000 @ 40%	8,48,000
	Total Tax	17,23,000
Add:	2% Surcharge (Surcharge shall not apply since total income does not exceed ₹ 1 crore)	NIL
	Total tax & Surcharge	17,23,000
Add:	3% Education cess	51,690
	Total Tax Liability	**17,74,690**
	Round Off	**17,23,190**

Example 2: An Indian Company has to pay a royalty of ₹ 10,00,000 to foreign company and the applicable tax rate as per section 115A is 25% and as per DTAA is 10%.

Case 1: As per Agreement tax has to be borne by Foreign Company

Indian Company will deduct TDS of 10% i.e., ₹ 1,00,000 and remit ₹ 9,00,000 to foreign company. DTAA or section 115A whichever is beneficial shall apply. Foreign company shall file ROI as under:

Royalty Income	₹ 10,00,000
Tax as per DTAA @ 10%	₹ 1,00,000
TDS	₹ 1,00,000
Tax payable	NIL

[1] DTAA or section 115A whichever is beneficial shall apply.

[2] In absence of information it is presumed that the interest is not covered by (2), (3) and (4) of section 115A.

Case 2: As per Agreement tax has to be borne by Indian Company

Indian Company shall pay following TDS from its own pocket:

(₹ 10,00,000 + TDS) x $\frac{10}{100}$ = TDS

TDS = 1,11,111

Foreign Company shall file ROI as under:

Royalty	₹ 11,11,111
Tax @ 10%	₹ 1,11,111
TDS	₹ 1,11,111
Tax payable/ (Refundable)	NIL

SECTION 10(48): INCOME EXEMPT FROM TAX

Any income received in India in Indian currency by a foreign company on account of sale of crude oil, any other goods or rending of services as may be notified by Central Government in this behalf, to any person in India shall be exempt from tax.

Provided that—

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

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

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

MEMORANDUM EXPLAINING FINANCE BILL, 2012

EXEMPTION IN RESPECT OF INCOME RECEIVED BY CERTAIN FOREIGN COMPANIES

Section 10 of the Income-tax Act provides for certain incomes which are not included in the total income of a person subject to the conditions specified in the relevant clauses of the section.

In the national interest, a mechanism has been devised to make payment to certain foreign companies in India in Indian currency for import of crude oil. The current provisions of the Income-tax Act would render such payment taxable in India because payment is being received by these foreign companies in India in Indian currency. This would not be justified when such payment is based on national interest and particularly when no other activity is being carried out in India by these foreign companies except receipt of payment in Indian currency.

It is therefore proposed to insert a new clause (48) in section 10 of the Income-tax Act to provide for exemption in respect of any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to the following conditions:

(i) The receipt of money is under an agreement or an arrangement which is either entered into by the Central Government or approved by it.
(ii) The foreign company, and the arrangement or agreement has been notified by the Central Government having regard to the national interest in this behalf.
(iii) The receipt of the money is the only activity carried out by the foreign company in India.

These amendments will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years once such arrangement or agreement is notified.

17

FILING OF RETURN OF INCOME & ASSESSMENT PROCEDURES

SECTION 1399: DEFECTIVE RETURN

A return shall be considered as a defective return unless it is accompanied by all the following documents:

i) A return in the prescribed form with all annexure, columns and statements duly filled in.

ii) A statement showing computation of tax payable.

iii) Proofs of tax, if any, claimed to have been deducted **or collected** at source **and** the advance tax and self-assessment tax, ***if any, claimed to have been paid***.

iv **Finance Act, 2013 provides that a return shall be considered as defective unless the tax together with interest, if any, payable in accordance with section 140A, has been paid on or before the date of furnishing of return of income.**

v Report of audit under section 44AB or where the report has been furnished prior to the furnishing of the return, a copy of such report together with the proof of furnishing of the report.

vi) In a case where regular books of accounts are maintained by the assessee, then copies of:

a) Manufacturing Account, Trading Account, Profit & Loss Account or Income & Expenditure Account and Balance Sheet.

b In case of a partnership firm, the personal accounts of the partners.

c In case of AOP/BOI, the personal accounts of the members.

d In case of a proprietary concern, the personal account of the proprietor.

e In case of a partner of a firm, his personal account in the firm.

f) In case of a member of AOP/BOI, his personal account in the AOP/BOI.

vii) Where the accounts of the assessee have been audited, then copies of audited profit & loss account, balance sheet and the auditors' report.

viii) In a case where cost-audit under section 233B of the Companies Act has been conducted, then the copy of such cost audit report.

ix Where regular books of account are not maintained by the assessee, then a statement showing the amount of turnover, gross receipts, gross profit, expenses and net profit **of the business or profession carried on by the assessee** and the basis on which such amounts have been computed and also disclosing the amount of total Sundry Debtors, Sundry Creditors, stock-in-hand, cash and bank balances at the end of the year.

POINT TO BE NOTED:

If the Assessing Officer considers that the return is defective, then he **may** intimate the defect to the assessee and give him an opportunity to rectify the defect within 15 days from the date of such intimation. He can also extend this time period on an application made by the assessee. If the assessee does not rectify the defect within the said period of 15 days or the extended time period, then the return shall be treated as void-ab-initio and it shall be deemed that the assessee has not filed the return of income.

Provided that where the assessee rectifies the defect after the said period of 15 days or the extended time period but before the completion of assessment, then the Assessing Officer **may** condone the delay and treat the return as a valid return.

SECTIONS 1422A TO 1422D): SPECIAL AUDIT

1. If **at any stage of the proceedings before the Assessing Officer**, he is of the opinion that 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 specialised nature of business activity of the assessee,** and having regard to the **interest of the Revenue**, it is necessary to get the accounts of the assessee audited, then he may direct the assessee to get the accounts audited. **[Direction under section 1422A]**

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Underlined words are added by Finance Act, 2013 w.e.f. 1 st June, 2013

POINTS TO BE NOTED:

a The direction under section 1422A can be issued o nly when the case is pending before the Assessing Officer in an assessment/ reassessment. The direction under section 1422A cannot be issued after the completion of assessment/ reassessment.

b The direction under section 1422A can be given if the assess ment is reopened under section 147. However, direction under section 1422A cannot be given after the completion of assessment in order to determine whether the case should be reopened under section 147 or not.

c If Assessing Officer issues direction under section 1422A without giving a show cause notice to the assessee, then assessee can file a WRIT PETITION in High Court against such direction and High Court shall quash such direction issued under section 1422A.

d Direction under section 1422A can be issued if Assessing Officer is of the opinion that it is necessary to get the accounts audited having regard to:

i) complexities involved in accounts; or
ii) volume of the accounts; or
iii) doubts about the correctness of the accounts; or
iv multiplicity of transactions in the accounts; or
v specialised nature of business activity of the assessee; **AND**
vi) it is in the interest of the revenue to get the special audit done.

The Assessing Officer shall give a show cause notice to the assessee to show cause as to why direction under section 1422A should not be issued to him. If the assessee proves that no complexities, etc. are involved in the accounts and interest of revenue is not affected adversely, then Assessing Officer cannot issue direction under section 1422A. If Assessing Officer issues direction under section 1422A in such a case, then assessee can file a WRIT PETITOIN in High Court and High Court shall quash such direction issued under section 1422A.

2. This direction can be issued with the previous approval of Chief Commissioner or Commissioner.

3. The accounts shall be audited by a Chartered Accountant nominated by the Chief Commissioner or Commissioner and the audit fees and expenses relating to audit shall also be fixed by the Chief Commissioner or Commissioner.

Provided that where any direction for audit under sub-section 2A is issued by the Assessing Officer, the expenses of, and incidental to, such audit including the remuneration of the Accountant shall be determined by the Chief Commissione r or Commissioner in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government.

4. The direction under section 1422A can be given even if the accounts of the assessee have been audited under the Income-tax Act or under any other law.

5. The assessee is to furnish the report of such audit in the prescribed form to the Assessing Officer within the time period specified in the direction.

Provided that the Assessing Officer may, **suo motu,** or on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit, so, however, that the aggregate of the time period originally fixed and the time period so extended shall not exceed 180 days from the date the direction is received by the assessee. ***[Words in Bold are added by Finance Act, 2008]***

Note: Before the amendment, the period of furnishing the audit report originally fixed could be extended on application by the assessee only. The time for audit could not be extended on request of the auditors. Now after amendment, the Assessing Officer may extend the time limit suo moto for furnishing the Audit Report.

6. The assessee shall be given an opportunity of being heard except where an assessment is made under section 144 in case any material gathered on the basis of audit under section 1422A is proposed to be utilised for the purposes of assessment.

Example: For Assessment Year 2013-14, the assessee filed a return of income under section 1391 and his case was picked up for scrutiny under section 1433. He was accordingly issued a notice under section 1432. During the assessment proceedings, the Assessing Officer directed the as sessee to get his accounts audited under section 1422A. The report of the special audit is received by the Assessing Officer within the prescribed time. The Assessing Officer requires further information from the assessee through a notice under section 1432. The assessee is not able to furnish the information as required by the notice within the time given in the notice.

The Assessing Officer issues a show cause notice to the assessee under section 144 to show cause as to why a best judgment assessment should not be made on him for non-compliance with the notice under section 1432.

CASE-I: Assessee replies to the show cause notice under section 144 and the Assessing Officer considers that the reply is satisfactory.

CASE-II: Assessee does not reply to the show cause notice or the reply given to the show cause notice by the assessee is not considered satisfactory by the Assessing Officer.

COMMENT.

Answer: ***CASE I:*** Since the reply to the show cause notice under section 144 is satisfactory, the Assessing Officer shall drop the proceedings under section 144 and will complete the assessment under section 1433. If the Assessing Officer wants to use any material gathered from the report of Chartered Accountant under section 1422A, then the assessee sha ll be given an opportunity of being heard as to show cause why the material in the audit report should not be used against him.

CASE II: Since the reply to show cause notice under section 144 is not given or is not satisfactory, the Assessing Officer shall proceed to make a best judgment assessment under section 144. The Assessing Officer may utilise for the purposes of assessment under section 144, any material gathered on the basis of audit under section 1422A. In this case the assessee shall not be g iven an opportunity of being heard as to show cause why the material in the audit report should not be used against him.

Note: No appeal can be filed against direction issued under section 1422A or any notice issued by Assessing Officer under the Income tax Act. The assessee has a constitutional remedy in case he wants to challenge the direction under section 1422A or any other notice of Assessing Officer. The assessee can file a WRIT PETITION in the High Court challenging the validity of the direction under section 1422A or any other notice issued by Assessing Officer. Thereafter the assessee can file a Special Leave Petition SLP to the Supreme Court.

WRIT PETITION & SLP can be filed only if there is no remedy in law.

MEMORANDUM EXPLAINING THE FINANCE ACT, 2013

DIRECTION FOR SPECIAL AUDIT UNDER SUB-SECTION 2A OF SECT ION 142

The existing provisions contained in sub-section 2A of section 142 of the Income -tax Act, inter alia, provide that if at any stage of the proceeding, the Assessing Officer having regard to the nature and

complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts.

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

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

EXPLANATION 1 TO SECTION 153:

The following time periods are to be excluded while computing the period of limitation relating to assessment or reassessment referred to in section 153.

i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under proviso to section 129. ***[Discussed in Chapter of Penalties***]

ii) the period during which the assessment proceeding is stayed by an order or injunction of any court.

iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of section 10, under clause i of the proviso to sub -section 3 of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification is received by the Assessing Officer;

iv the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 1422A and

a) ending with the last date on which assessee is required to furnish a report of audit under section 1422A; or

b 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 of Income-tax.

Amendment by Finance Act, 2013

v the period not exceeding sixty days) commencing fro m the date on which the Assessing Officer received the declaration under section 158A and ending with the date on which order under sub-section 3 of section 158A is made by him order of accepting or rejecting the declaration.

vi the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section 1 of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section 3 of section 245R. ***[Discussed in the Chapter of Advance Rulings]***

vii the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section 1 of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section 7 of section 245R. ***[Discussed in the Chapter of Advance Rulings]***

viii **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 and ending with the date on which the information so requested is last received by the Commissioner or a period of 1 year, whichever is less.**

Amendment by Finance Act, 2013

POINT TO BE NOTED:

In all the above cases, where immediately after excluding the above time periods, the period of limitation available to the Assessing Officer for making an assessment or reassessment is less than 60 days, then such remaining period shall be extended to sixty days and the above said periods shall be deemed to be extended accordingly.

Example 1:

The assessee filed a return of income of ₹ 70,00,000 and ₹ 22,00,000 for Assessment Years 2004-05 and 2005-06 respectively. The Assessing Officer was of the view that the income of ₹ 12,00,000 of Assessment Year 2005-06 was the income of Assessment Year 2004-05 and he alleged that the assessee has diverted the income to the next Assessment Year. The Assessing Officer assessed the income of Assessment Year 2004-05 and 2005-06 at ₹ 82,00,000 and at ₹ 10,00,000 respectively on 31.12.2006 under section 1433. The assessee filed An appeal to the CITAand then to the ITAT for Assessment Year 2004-05. The ITAT by its order under section 254 dated 30.06.2013 deletes the addition of ₹ 8,00,000 from assessment of Assessment Year 2004-05 and gave a direction that the said income of ₹ 8,00,000 belongs to Assessment Year 2005-06. Discuss.

Answer:

As per the provisions of section 150, for Assessment Year 2005-06 notice under section 148 can be issued at any time to tax the income escaping of ₹ 8,00,000. Similarly, there is no time limit for completion of reassessment under section 147 for Assessment Year 2005-06 and the same can be made at any time, as provided under section 1533.

Example 2:

A partnership firm M/s Delta filed a return of income of Assessment Year 2004-05 declaring an income of ₹20,00,000. One of the partners of the firm Mr. Alfred is carrying on the same business as that of the firm in his individual name. He has returned an income of ₹ 28,00,000 for Assessment Year 2004-05 from the said business in his personal return. The Assessing Officer is of the view that the income of Mr. Alfred of ₹28,00,000 was infact the income of the firm and the firm has diverted the income to Mr. Alfred. The Assessing Officer by his order under section 1433 dated 31.12. 2006 assessed the income of partnership firm at ₹ 48,00,000 and deleted the said sum from the assessment of Mr. Alfred. The assessee firm M/s Delta filed an appeal to CITAppeals) and thereafter to ITAT. The ITAT by its order under section 254 dated

23.09.2013 deleted the addition of ₹ 22,00,000 from the income of the firm and held that the income of ₹22,00,000 belongs to Mr. Alfred. Discuss.

Answer:

As per the provisions of section 150, for Assessment Year 2004-05 notice under section 148 can be issued to Mr. Alfred at any time and as per the provisions of section 1533, reassessment under section 147 can also be made at any time to tax the escaped income of ₹ 22,00,000.

Example 3:

For Assessment Year 2011-12 assessee filed return on 30.11.2012 and Assessing Officer issued a notice under section 1432 on 1. 1.2013. The assessee challenges the notice issued under Section 1432 in a writ petition before the High Court on 20.1.2013. The High Court granted a stay on 20.01.2013 against the assessment proceedings. The writ petition of the assessee is dismissed on 30.06.2013 and the stay is vacated on that date. What is the time period for completion of assessment under section 1433.

Answer:

Time period for completion of assessment under section 1433:

= 31.3.2014 + 20.01. 2013 to 30.06.2013 i.e. 162 days)

= 9.9.2014

The assessment under section 1433 can be made upto 9.09 .2014.

Example 4:

For Assessment Year 2011-12, assessment proceedings were going on under Section 1433. The assessee challenges the assessment proceedings in a writ petition before the High Court on 1.3.2014. The High Court granted a stay on 1.3.2014 against the assessment proceedings. The writ petition of the assessee is dismissed on 20.4.2014 and the stay is vacated on that date. What is the time period for completion of assessment under Section 1433?

Answer:

Time period for completion of assessment under section 1433:

= 31.3.2014 + 01.3 .2014 to 20.04.2014 i.e. 51 days

= 21.05.2014

Since, the time period for making assessment under section 1433, as on 20.04 .2014 is less than 60 days, the assessment under section 1433 can be made upto 19.06 .2014.

Example 5:

Suppose in example 4 above the stay is vacated on 20.5.2014, then what is the time period for completion of assessment under Section 1433?

Answer:

Time period for completion of assessment under section 1433:

= 31.3.2014 + 01.3 .2014 to 20.05.2014 i.e. 81 days

= 20.06.2014

Since, the time period for making assessment under section 1433, as on 20.05 .2014 is less than 60 days, the assessment under section 1433 can be made upto 19 .07.2014.

Example 6:

For Assessment Year 2012-13, the due date of filing of return was 30.9.2012. The return of income was filed on 30.09.2012. Notice under Section 1432 was served on the assessee on 30.11.2012. Direction for special audit under Section 1422A was issued on 1.1. 2013 which is received by the assessee on 4.1.2013. The assessee is directed to submit the report of special audit by 26.4.2013.

Case I : Assessee does not furnish audit report under Section 1422A.

Case II: Assessee takes extension of the time period to furnish the report by 15.5.2013 and submits the report on 10.5.2013.

Answer:

Case I: Time period for completion of assessment under section 1433:

= 31.3.2015 + 01.01. 2013 to 26.04.2013 i.e. 116 days)

= 25.07.2015

The assessment under section 1433 can be made upto 2 5.07.2015.

Case II: Time period for completion of assessment under section 1433:

= 31.3.2015 + 01.01. 2013 to 15.05.2013 i.e. 135 days)

= 13.08.2015

The assessment under section 1433 can be made upto 1 3.08.2015.

Example 7:

Suppose in Example 6 above, assessee on 1-2-2013 challenged the Direction for special audit in a Writ Petition in the High Court. The High Court decides on 30-11-2014 that Direction under section 1422A was invalid and sets aside the said Direction. The said order of the High Court is received by the Commissioner of Income-tax on 31-12-2014.

Now, time period for completion of assessment under section 1433 is:

= 31.3.2015 + 01.01. 2013 to 31.12.2014

= 31.3.2017

The assessment under section 1433 can be made upto 31.3.2017.

Example 8:

Suppose in Example 7 above, the High Court decides on 30-11-2014 that Direction under section 1422A was valid and ask the assessee to furnish the report to Assessing Officer by 31-3-2015.

Now, time period for completion of assessment under section 1433:

= 31.3.2015 + 01.01. 2013 to 31.3.2015 i.e., 820 days

= 29.6.2017

The assessment under section 1433 can be made upto 29.6.2017.

Example 9:

For Assessment Year 2012-13, an institution claiming exemption under section 1023Civ filed a return on 30.9.2012 declaring NIL income. The institution has claimed exemption of ₹ 2 crores under section 1023Civ. The Assessing Officer serves a no tice under section 1432 on 28.02.2013 and finds in the course of assessment proceedings that the institution has violated the conditions of section 1023Civ

and is not entitled to exemption. The Assessing Officer intimates the violations to the prescribed authority on 01.04.2013 and the prescribed authority rescinds the notification of approval under section 1023C)iv for assessment year 2012-13 on 30.06.2015. The said order rescinding the notification is received by Assessing Officer on 31.07.2015. By what time can the Assessing Officer complete the assessment under sections 1433?

Answer:

The Assessing Officer can complete the assessment under section 1433 and disallow the exemption under section 1023Civ by 31.3.2015 + 01.04. 2013 to 31.07.2015 = 31.07 .2017.

Example 10:

The assessment of M/s XYZ for Assessment Year 2012-13 is going on under section 1433. The Joint Commissioner has evidence that assessee has received commission in Hong Kong in Previous Year 31.3.2012 which has not been disclosed by him. The Joint Commissioner under the Tax Information Exchange Agreement TIEA entered with Hong Kong under section 90 writes to th e Hong Kong Government to furnish the details of Bank account of assessee in Hong Kong. The request was made on 1.1.2013. The information is received by the Commissioner of Income-tax on 30.6.2013.

The Joint commissioner on 1-4-2013 under TIEA with Macau writes to Macau Government to furnish the details of Bank account in Macau and the said information is received by Commissioner of Income-tax on 31.3.2014.

The time period of completion of assessment under section 1433 i.e. 31.3.2015 shall be increased by:

i 1st January 2013 to 31st March, 2014; or

ii 1 year,

whichever is less.

Therefore, assessment period shall be increased to 31.3.2016.

SECTION 132B: APPLICATION OF SEIZED OR REQUISITIONED ASSETS

1 The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely: —

i)
- The amount of **existing liability** under the Income-tax Act, the Wealth-tax Act and the Gift-tax Act
- The amount of liability determined on completion of assessment or reassessment ***under section 153A and the assessment of the assessment year relevant to the previous year in which search is initiated or requisition is made*** including any penalty levied or interest payable in connection with such assessment or reassessment and
- The amount of any liability in respect of which such person is in default or is deemed to be in default.

MAY BE RECOVERED OUT OF SUCH ASSETS

Provided that where ***the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained*** to the satisfaction of the Assessing Officer, the amount of any ***existing liability*** referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized: [For example, out of the cash seized of ₹ 200 Lakhs, the assessee explains to the satisfaction of Assessing Officer that ₹ 50 Lakhs is explained cash and existing income tax liabilities are ₹ 35 Lakhs, then the Assessing Officer shall release 15 Lakhs after paying the existing liabilities of ₹ 35 Lakhs]

Provided further that such asset or any portion thereof as is referred to in the first proviso **shall be released** within a period of **120 days** from the date on which the search was completed or the assets/ books of accounts were delivered to the requisitioning officer under section 132A.

ii) If the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause i) and the assessee shall be dis charged of such liability to the extent of the money so applied;

iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause i) as remains undischarged and for this purpose Assessing Officer may recover the amount of such liabilities by the sale of such assets.

2 *Nothing contained in sub-section 1 shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.*

3 *Any assets or proceeds thereof which remain after the liabilities referred to in clause i) of sub - section 1 are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.*

4 a *The Central Government shall pay simple interest at the rate of* **0.5% per month or part of month** *on the following amount:*

	Amount of money seized under section 132 or requisitioned under section 132A	-
Add:	*Proceeds of any asset sold towards the discharge of the liabilities referred to in clause i) of of sub-section 1*	-
Less:	*Money released under the First Proviso to clause i) of sub -section 1*	-
Less:	*Aggregate amount required to meet the liabilities referred to in clause i) of sub -section 1*	-
		-

b Such interest shall run from the date immediately followin g the expiry of the period of one hundred and twenty days from the date on which the search was completed to the date of completion of assessment under section 153A.

Explanation— For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.

Explanation Inserted by Finance Act, 2013

ANALYSIS

Prior to the insertion of the Explanation to section 132B, there used to be a controversy as to whether 'existing tax liability' would include the advance tax payable by the assessee relating to the year of search? In several judicial decisions rendered by the Courts, it was held that cash seized could be adjusted towards the advance tax payable by the assessee on request to this effect to be made by the assessee. In such cases, it was further held that interest under sections 234B and 234C shall not be charged from the assessee from the date, such request for adjustment of the seized cash towards advance tax liability was made by the assessee.

Finance Act, 2013 has inserted the above referred Explanation to section 132B, to nullify the effect of the above judicial decisions consistently rendered by different High Courts.

The impact of the above amendment as inserted by the said Explanation shall, be harsh on the assessees who have been searched under section 132 of the Act since they have to pay advance tax from their own funds and not from seized funds.

After the insertion of the above Explanation, even in a case, say when cash of ₹ 10 crores is found and seized during the course of search which is declared by assessee as his undisclosed income of current Previous Year which is yet to end, during the statement recorded under section 1324, the searche d person shall be required to pay advance tax separately on the above amount of undisclosed income of ₹10 crores. The cash seized during search shall not be permitted to be adjusted towards advance tax liability relating to such undisclosed income declared during the course of search. It would imply that cash seized shall remain as an additional security with the income-tax department to be adjusted against any other tax demand which may be created on completion of assessments of search cases.

Memorandum Explaining the Finance Act, 2013

Application of seized assets under section 132B

The existing provisions contained in section 132B of the Income-tax Act, inter-alia, provide that seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default.

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.

Accordingly, it is proposed to amend the aforesaid section so as 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 Act.

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

Example:

A search was initiated on 30.06.2013 and search was completed on 03.07.2013. The search party seized the following assets in the search as on 03.07.2013.

Cash		1,70,00,000
Jewellery		80,00,000
	Total	**2,50,00,000**

The existing liabilities under the Income-tax Act amount to ₹ 35 lakhs. The assessee files an application to the Assessing Officer under First Proviso to section 132B1i) by 30.8.2013 and explains that out of the cash seized of ₹ 170 lakhs, cash of ₹ 50 lakhs is accounted cash. The Assessing Officer releases cash of ₹ 15 lakhs ₹ 50 lakhs minus ₹ 35 lakhs) by 31st October, 2013.

The Assessing Officer under section 153A determines the tax, interest and penalty to be ₹ 1,30,00,000. The assessment under section 153A is completed on 03.03.2015. The Assessing Officer sells jewellery of ₹50,00,000 on 10.3.2015. The balance cash and jewellery is refunded to the assessee on 29.3.2015. Now as per the provisions of section 132B4, the Central Government shall pay interest to the assessee @ 0.5% per month on the following amount:

	Amount of money seized	-	1,70,00,000
Add:	Proceeds of jewellery	-	50,00,000
Less:	Money released under First Proviso to section 132B(1i)	-	15,00,000
Less:	Aggregate of Liabilities		1,65,00,000
			40,00,000

Interest shall be for the period: 1.11.2013 to 3.3.2015 = 17 months

Interest = 40,00,000 X 0.5% X 17 months = ₹ 3,40,000

18

TRANSFER PRICING

SECTION 92CB: POWER OF BOARD TO MAKE SAFE HARBOUR RULES

(1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.
Explanation.— For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

(Inserted by Finance Act, 2009)

Memorandum Explaining Finance Bill, 2009

Determination of arm's length price in cases of international transactions

Section 92C of the Income-tax Act provides for adjustment in the transfer price of an international transaction with an associated enterprise if the transfer price is not equal to the arm's length price. As a result, a large number of such transactions are being subjected to adjustment giving rise to considerable dispute. Therefore, it is proposed to empower the Board to formulate safe harbour rules i.e. to provide the circumstances in which the Income-tax authorities shall accept the transfer price declared by the assessee.

This amendment will take effect from 1st April, 2009.

SAFE HARBOUR RULES

RULE 10TA: DEFINITIONS

For the purposes of this rule and rule 10TB to rule 10TG,—

(a) **"contract research and development services wholly or partly relating to software development"** means the following, namely:—
  (i) research and development producing new theorems and algorithms in the field of theoretical computer science;
  (ii) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools;
  (iii) development of Internet technology;
  (iv) research into methods of designing, developing, deploying or maintaining software;

(v) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information;
(vi) experimental development aimed at filling technology knowledge gaps as necessary to develop a software programme or system;
(vii) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas);or
(viii) upgradation of existing products where source code has been made available by the principal;

(b) **"core auto components"** means,—
(i) engine and engine parts, including piston and piston rings, engine valves and parts cooling systems and parts and power train components;
(ii) transmission and steering parts, including gears, wheels, steering systems, axles and clutches;
(iii) suspension and braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs;

(c) **"corporate guarantee"** means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing.

Explanation- For the purposes of this clause, explicit corporate guarantee does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature;

(d) **"generic pharmaceutical drug"** means a drug that is comparable to a drug already approved by the regulatory authority in dosage form, strength, route of administration, quality and performance characteristics, and intended use;

(e) **"information technology enabled services"** means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—
(i) back office operations;
(ii) call centres or contact centre services;
(iii) data processing and data mining;
(iv) insurance claim processing;
(v) legal databases;
(vi) creation and maintenance of medical transcription excluding medical advice;
(vii) translation services;
(viii) payroll;
(ix) remote maintenance;
(x) revenue accounting;
(xi) support centres;
(xii) website services;
(xiii) data search integration and analysis;
(xiv) remote education excluding education content development; or
(xv) clinical database management services excluding clinical trials,

but does not include any research and development services whether or not in the nature of contract research and development services;

(f) **"intra-group loan"** means loan advanced to wholly owned subsidiary being a non-resident, where the loan—

(i) is sourced in Indian rupees;

(ii) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and

(iii) does not include credit line or any other loan facility which has no fixed term for repayment;

(g) **"knowledge process outsourcing services"** means the following business process outsourcing services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills, namely:—

(i) geographic information system;

(ii) human resources services;

(iii) engineering and design services;

(iv) animation or content development and management;

(v) business analytics;

(vi) financial analytics; or

(vii) market research,

but does not include any research and development services whether or not in the nature of contract research and development services;

(h) **"non-core auto components"** mean auto components other than core auto components;

(i) **"no tax or low tax country or territory"** means a country or territory in which the maximum rate of income-tax is less than fifteen per cent.;

(j) **"operating expense"** means the costs incurred in the previous year by the assessee in relation to the international transaction during the course of its normal operations including depreciation and amortisation expenses relating to the assets used by the assessee, but not including the following, namely:—

(i) interest expense;

(ii) provision for unascertained liabilities;

(iii) pre-operating expenses;

(iv) loss arising on account of foreign currency fluctuations;

(v) extra-ordinary expenses;

(vi) loss on transfer of assets or investments;

(vii) expense on account of income-tax; and

(viii) other expenses not relating to normal operations of the assessee;

(k) **"operating revenue"** means the revenue earned by the assessee in the previous year in relation to the international transaction during the course of its normal operations but not including the following, namely:—

(i) interest income;

(ii) income arising on account of foreign currency fluctuations;

(iii) income on transfer of assets or investments;

(iv) refunds relating to income-tax;

(v) provisions written back;

(vi) extraordinary incomes; and

(vii) other incomes not relating to normal operations of the assessee;

(l) **"operating profit margin"** in relation to operating expense means the ratio of operating profit, being the operating revenue in excess of operating expense, to the operating expense expressed in terms of percentage;

(m) **"software development services"** means,—

(i) business application software and information system development using known methods and existing software tools;
(ii) support for existing systems;
(iii) converting or translating computer languages;
(iv) adding user functionality to application programmes;
(v) debugging of systems;
(vi) adaptation of existing software; or
(vii) preparation of user documentation,

but does not include any research and development services whether or not in the nature of contract research and development services.

RULE 10TB: ELIGIBLE ASSESSEE

(1) Subject to the provisions of sub-rules (2) and (3), the 'eligible assessee' means a person who has exercised a valid option for application of safe harbour rules in accordance with rule 10TE, and—

(i) is engaged in providing software development services or information technology enabled services or knowledge process outsourcing services, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal);
(ii) has made any intra-group loan;
(iii) has provided a corporate guarantee;
(iv) is engaged in providing contract research and development services wholly or partly relating to software development, with insignificant risk, to a foreign principal;
(v) is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a foreign principal; or
(vi) is engaged in the manufacture and export of core or non-core auto components and where 90% or more of total turnover during the relevant previous year is in the nature of original equipment manufacturer sales.

(2) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in item (i) of sub-rule (1), the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors, namely:—

(a) the foreign principal performs most of the economically significant functions involved, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises, while the eligible assessee carries out the work assigned to it by the foreign principal;
(b) the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal or its other associated enterprises, and the eligible assessee is only provided a remuneration for the work carried out by it;

(c) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which not only has the capability to control or supervise but also actually controls or supervises the activities carried out through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;
(d) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;
(e) the eligible assessee has no ownership right, legal or economic, on any intangible generated or on the outcome of any intangible generated or arising during the course of rendering of services, which vests with the foreign principal as evident from the contract and the conduct of the parties.

(3) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in items (iv) and (v) of sub-rule (1), the Assessing Officer or the Transfer Pricing Officer, as

(a) the case may be, shall have regard to the following factors, namely:—(a) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including the critical functions such as conceptualisation and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises while the eligible assessee carries out the work assigned to it by the foreign principal;
(b) the foreign principal or its other associated enterprises provides the funds or capital and other economically significant assets including intangibles required for research or product development and also provides a remuneration to the eligible assessee for the work carried out by it;
(c) the eligible assessee works under the direct supervision of the foreign principal or its other associated enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development, through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;
(d) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;
(e) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and is evident from the contract as well as the conduct of the parties.

RULE 10TC: ELIGIBLE INTERNATIONAL TRANSACTION

'Eligible international transaction' means an international transaction between the eligible assessee and its associated enterprise, either or both of whom are non-resident, and which comprises of:

(i) provision of software development services;
(ii) provision of information technology enabled services;
(iii) provision of knowledge process outsourcing services;
(iv) advance of intra-group loan;
(v) provision of corporate guarantee, where the amount guaranteed,—
(a) does not exceed one hundred crore rupees; or

(b) exceeds one hundred crore rupees, and the credit rating of the associated enterprise, done by an agency registered with the Securities and Exchange Board of India, is of the adequate to highest safety;

(vi) provision of contract research and development services wholly or partly relating to software development;

(vii) provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs;

(viii) manufacture and export of core auto components; or

(ix) manufacture and export of non-core auto components,

by the eligible assessee.

RULE 10TD: SAFE HARBOUR

(1) Where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid under rule 10TE, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

S.No. (1)	Eligible International Transaction (2)	Circumstances (3)
1.	Provision of software development services referred to in clause (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 20% or more.
2.	Provision of information technology enabled services referred to in clause (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 20% or more.
3.	Provision of knowledge process outsourcing services referred to in clause (iii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 30% or more.
4.	Advancing of intra-group loans referred to in clause (iv) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is equal to or greater than the base rate of State Bank of India (SBI) as on 30th June of the relevant previous year plus 150 basis points.
5.	Advancing of intra-group loans referred to in clause (iv) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is equal to or greater than the base rate of SBI as on 30th June of the relevant previous year plus 300 basis points.
6.	Providing corporate guarantee referred to in clause (v) of rule 10TC where the amount guaranteed does	The commission or fee declared in relation to the eligible international transaction is at the rate of 2% or more per annum on the amount guaranteed.

	not exceed one hundred crore rupees.	
7.	Provision of contract research and development services wholly or partly relating to software development referred to in clause (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 30% or more.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to clause (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 29% or more.
9.	Manufacture and export of core auto components	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 12% or more.
10.	Manufacture and export of noncore auto components.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 8.5% or more.

(3) The provisions of sub-rules (1) and (2) shall apply for the assessment year 2013-14 and four assessment years immediately following that assessment year.

(4) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2) above.

(5) The provisions of sections 92D and 92E in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

RULE 10TE: PROCEDURE

(1) For the purposes of exercise of the option for safe harbour , the assessee shall furnish a Form 3CEFA, complete in all respects, to the Assessing Officer on or before the due date specified in Explanation 2 below sub-section (1) of section 139 for furnishing the return of income for—

(i) the relevant assessment year, in case the option is exercised only for that assessment year; or
(ii) the first of the assessment years, in case the option is exercised for more than one assessment year:

Provided that the return of income for the relevant assessment year or the first of the relevant assessment years, as the case may be, is furnished by the assessee on or before the date of furnishing of Form 3CEFA.

(2) The option for safe harbour validly exercised shall continue to remain in force for the period specified in Form 3CEFA or a period of five years whichever is less:

Provided that the assessee shall, in respect of the assessment year or years following the initial assessment year, furnish a statement to the Assessing Officer before furnishing return of income of

that year, providing details of eligible transactions, their quantum and the profit margins or the rate of interest or commission shown:

Provided further that an option for safe harbour shall not remain in force in respect of any assessment year following the initial assessment year, if -

(i) the option is held to be invalid for the relevant assessment year by the Transfer Pricing Officer under sub-rule (11) or by the Commissioner under sub-rule (8) in respect of an objection filed by the assessee against the order of the Transfer Pricing Officer under sub-rule (11), as the case may be; or
(ii) the eligible assessee opts out of the safe harbour , for the relevant assessment year, by furnishing a declaration to that effect, to the Assessing Officer.

(3) On receipt of Form 3CEFA, the Assessing Officer shall verify whether-

(i) the assessee exercising the option is an eligible assessee; and
(ii) the transaction in respect of which the option is exercised is an eligible international transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(4) Where the Assessing officer doubts the valid exercise of the option for the safe harbour by an assessee, he shall make a reference to the Transfer Pricing Officer for determination of the eligibility of the assessee or the international transaction or both for the purposes of the safe harbour .

(5) For the purposes of sub-rule (4) and sub-rule (10), the Transfer Pricing Officer may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(6) Where-

(a) the assessee does not furnish the information or documents or other evidence required by the Transfer Pricing Officer; or
(b) the Transfer Pricing Officer finds that the assessee is not an eligible assessee; or
(c) the Transfer Pricing Officer finds that the international transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible international transaction,

the Transfer Pricing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee and the Assessing Officer:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(7) If the assessee objects to the order of the Transfer Pricing Officer under sub-rule (6) or sub-rule (11) declaring the option to be invalid, he may file his objections with the Commissioner, to whom the Transfer Pricing Officer is subordinate, within fifteen days of receipt of the order of the Transfer Pricing Officer.

(8) On receipt of the objection referred to in sub-rule (7), the Commissioner shall after providing an opportunity of being heard to the assessee pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(9) In a case where option exercised by the assessee has been held to be valid, the Assessing officer shall proceed to verify whether the transfer price declared by the assessee in respect of the relevant eligible international transactions is in accordance with the circumstances specified in sub-rule (2) of rule 10 TD and, if it is not in accordance with the said circumstances, the Assessing Officer shall adopt the operating profit margin or rate of interest or commission specified in sub-rule (2) of rule 10TD.

(10) Where the facts and circumstances on the basis of which the option exercised by the assessee was held to be valid have changed and the Assessing Officer has reason to doubt the eligibility of an assessee or the international transaction for any assessment year other than the initial Assessment Year falling within the period for which the option was exercised by the assessee, he shall make a reference to the Transfer Pricing Officer for determination of eligibility of the assessee or the international transaction or both for the purpose of safe harbour .

Explanation.—For purposes of this sub-rule the facts and circumstances include:—

(a) functional profile of the assessee in respect of the international transaction;
(b) the risks being undertaken by the assessee;
(c) the substantive contractual conditions governing the role of the assessee in respect of the international transaction;
(d) the conduct of the assessee as referred to in sub-rule (2) or sub-rule (3) of rule 10TB; or
(e) the substantive nature of the international transaction.

(11) The Transfer Pricing Officer on receipt of a reference under sub-rule (10) shall, by an order in writing, determine the validity or otherwise of the option exercised by the assessee for the relevant year after providing an opportunity of being heard to the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(12) Nothing contained in this rule shall affect the power of the Assessing Officer to make a reference under section 92CA in respect of international transaction other than the eligible international transaction.

(13) Where no option for safe harbour has been exercised under sub-rule (1) by an eligible assessee in respect of an eligible international transaction entered into by the assessee or the option exercised by the assessee is held to be invalid, the arm's length price in relation to such international transaction shall be determined in accordance with the provisions of sections 92C and 92CA without having regard to the profit margin or the rate of interest or commission as specified in sub-rule (2) of rule 10TD.

(14) For the purposes of this rule,—

(i) no reference under sub-rule(4) shall be made by an Assessing Officer after expiry of a period of two months from the end of the month in which Form 3CEFA is received by him;

(ii) no order under sub-rule (6) or sub-rule (11) shall be passed by the Transfer Pricing Officer after expiry of a period of two months from the end of the month in which the reference from the Assessing officer under sub-rule(4) or sub-rule (10), as the case may be, is received by him;

(iii) the order under sub-rule (8) shall be passed by the Commissioner within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule(7) is received by him.

(15) If the Assessing Officer or the Transfer Pricing Officer or the Commissioner, as the case may be, does not make a reference or pass an order, as the case may be, within the time specified in sub-rule (14), then the option for safe harbour exercised by the assessee shall be treated as valid.

RULE 10TF: SAFE HARBOUR RULES NOT TO APPLY IN CERTAIN CASES

Nothing contained in rules 10TA, 10TB, 10TC, 10TD or rule 10TE shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

RULE 10TG: MUTUAL AGREEMENT PROCEDURE NOT TO APPLY

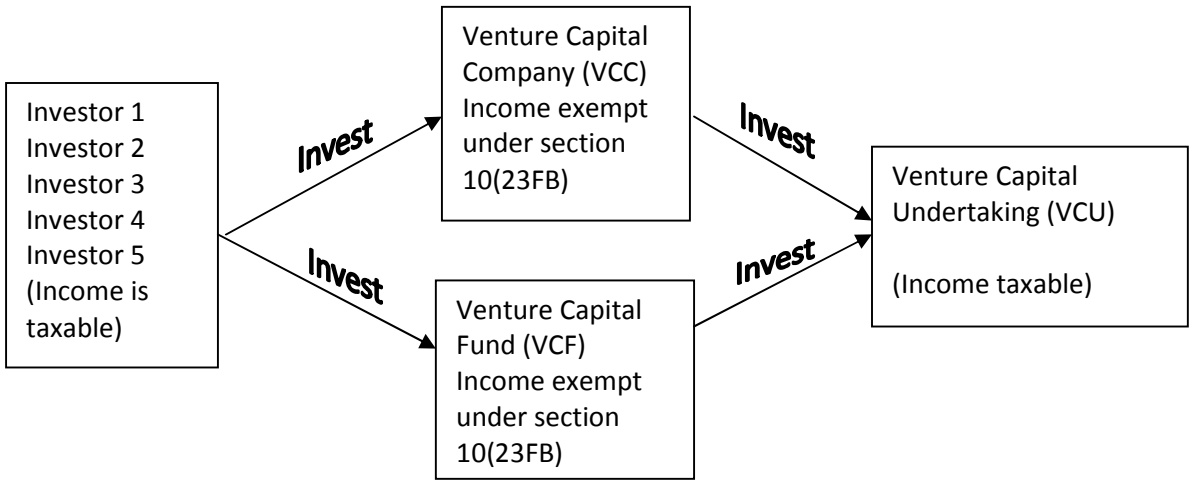
Where transfer price in relation to an eligible international transaction declared by an eligible assessee is accepted by the income-tax authorities under section 92CB, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or specified territory outside India as referred to in sections 90 or 90A.

19

SPECIAL PROVISIONS FOR VENTURE CAPITAL COMPANY OR FUND

SECTION 10(23FB): EXEMPTION OF INCOME OF A VENTURE CAPITAL COMPANY OR A VENTURE CAPITAL FUND

Introduction: Venture Capital Company or a Venture Capital Fund provides funds in form of loans to, or subscription in shares of Venture Capital Undertakings. Venture Capital Funds or Venture Capital Companies are provided a tax pass-through benefit on their income that arises from investments in any Venture Capital Undertakings. Under Section 10(23FB) read with Section 115U of the Indian Income Tax Act, 1961, the income of a Venture Capital Fund/ Venture Capital Company earned from its investment in any Venture Capital Undertaking is exempt from tax in the hands of the fund/ company and is only taxable in the hands of the investors of the fund / Company due to the tax pass through status. This ensures that there is a single level of taxation and more tax certainty for the investors.



Section 10(23FB) provides exemption in respect of –

- **any income**
- **of a venture capital company or**
- **venture capital fund**
- **from investments**
- **in a venture capital undertaking**

The investment in venture capital undertaking can be in form of loans or shares. The capital gains and interest arising from such investments shall be exempt in the hands of venture capital company or venture capital fund. The dividends are already exempt under section 10(34).

Explanation.—For the purposes of this clause,—

(a) **"venture capital company"** means a company which—

(A) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the SEBI (Venture Capital Funds) Regulations, 1996; or

(B) has been granted a certificate of registration as Venture Capital Fund as Category I Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Funds) Regulations, 2012; and

which fulfils the following conditions, namely:—

(i) it is not listed on a recognised stock exchange;

(ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking; and

(iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding 10% of its equity share capital) holds, either individually or collectively, equity shares in excess of 15% of the paid-up equity share capital of such venture capital undertaking;

(b) **"venture capital fund"** means a fund—

(A) operating under a trust deed, which—

(I) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the SEBI (Venture Capital Funds) Regulations, 1996; or

(II) has been granted a certificate of registration as Venture Capital Fund as Category I Alternative Investment Fund under the SEBI (Alternative Investment Funds) Regulations, 2012; and

which fulfils the following conditions, namely:—

(i) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking;

(ii) it has not invested in any venture capital undertaking in which its trustee or the settler holds, either individually or collectively, equity shares in excess of 15% of the paid-up equity share capital of such venture capital undertaking; and

(iii) the units, if any, issued by it are not listed in any recognised stock exchange; or

(B) operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963;

(c) **"venture capital undertaking"** means—

(i) a venture capital undertaking as defined in SEBI (Venture Capital Funds) Regulations, 1996; or

(ii) a venture capital undertaking as defined SEBI (Alternative Investment Funds) Regulations, 2012;

(Amended by Finance Act, 2013)

According to SEBI (Venture Capital Funds) Regulations, 1996 and SEBI(Alternative Investment Funds) Regulations, 2012, "venture capital undertaking" means a domestic company:

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

(1) non-banking financial companies;
(2) gold financing;
(3) activities not permitted under industrial policy of Government of India;
(4) any other activity which may be specified by the Board in consultation with Government of India from time to time;

SECTION 115U: SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS

(1) Notwithstanding anything contained in any other provisions of this Act, any income accruing or arising to or received by a person (Investor) out of investments made in a venture capital company (VCC) or venture capital fund (VCF) shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to or received by such person (Investor) had he made investments directly in the venture capital undertaking.

(2) The person responsible for crediting or making payment of the income on behalf of a VCC or VCF and the VCC or VCF shall furnish, within such time as may be prescribed, to the investor and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details as may be prescribed.

(3) The income paid or credited by the VCC and the VCF shall be deemed to be of the same nature and in the same proportion in the hands of the investor as it had been received by, or had accrued or arisen to, the VCC or the VCF, as the case may be, during the previous year.

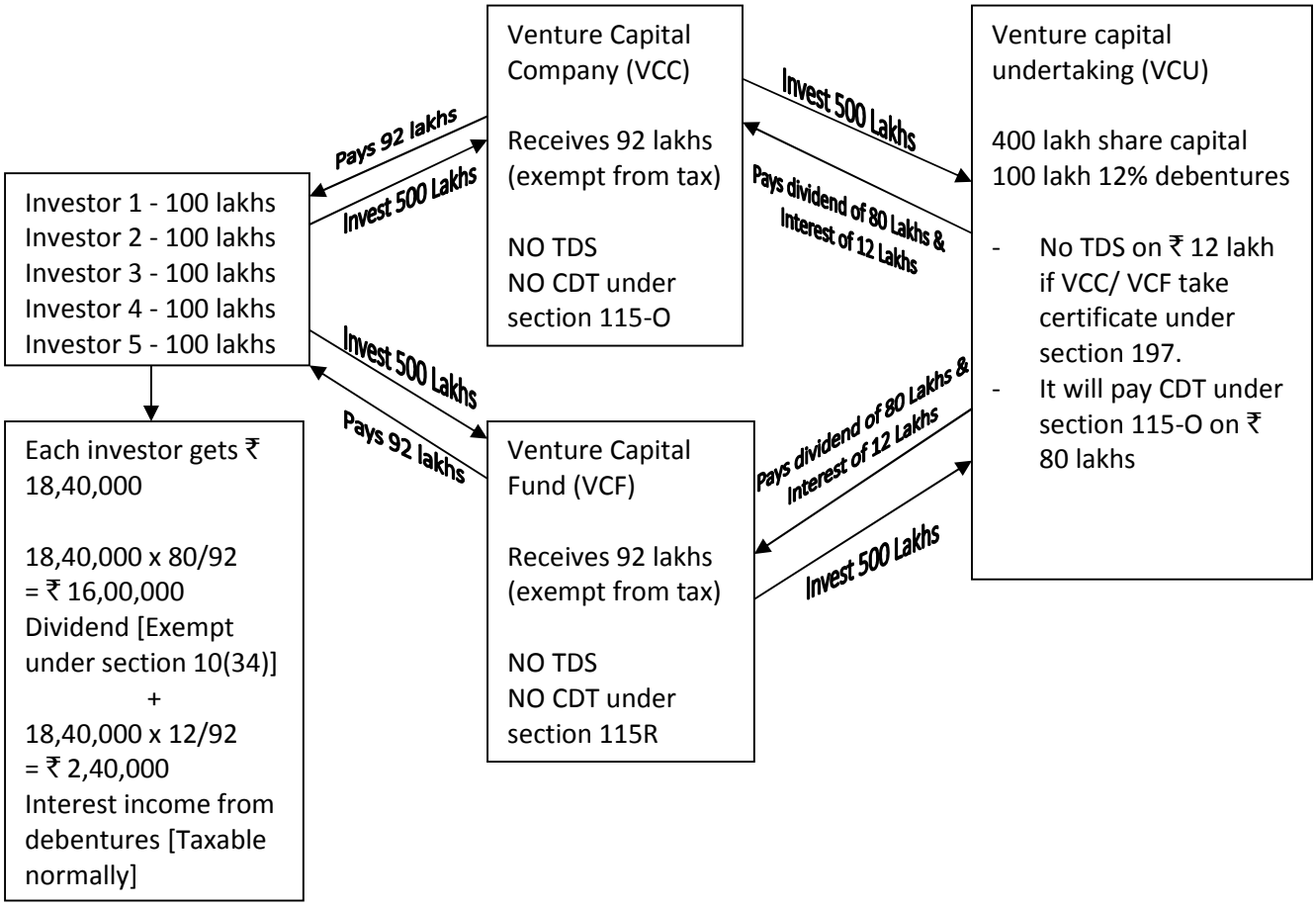
(4) The provisions of Chapter XII-D (CDT under section 115-O) or Chapter XII-E (CDT under section 115R) or Chapter XVII-B (TDS Chapter) shall not apply to the income paid by a VCC or VCF under this Chapter.

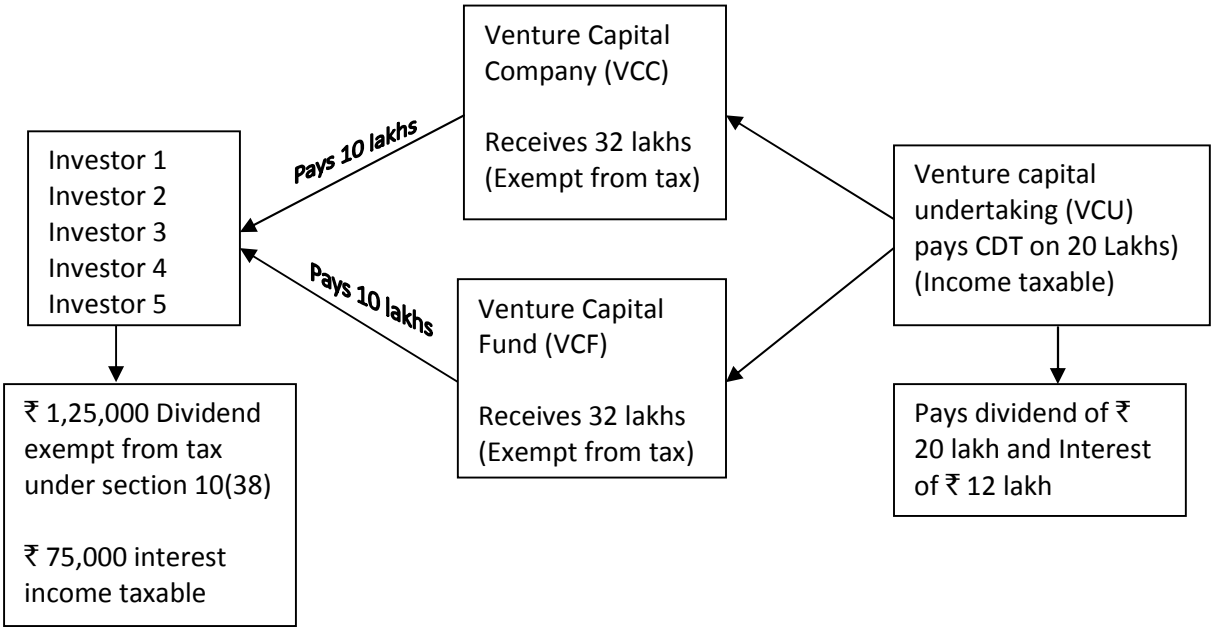
(5) The income accruing or arising to or received by the VCC or VCF, during a previous year, from investments made in venture capital undertaking if not paid or credited to the investor, shall be deemed to have been credited to the account of the investor on the last day of the previous year in the same proportion in which investor would have been entitled to receive the income had it been paid in the previous year.

(Added by Finance Act, 2012)

Explanation—For the removal of doubts, it is hereby declared that any income which has been included in total income of the investor in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such investor in the previous year in which such income is actually paid to him by the venture capital company or the venture capital fund.

Analysis of Amendment by Finance Act, 2012





As per amendment by Finance Act, 2012, ₹ 22 lakhs shall be deemed to be paid to the investor. Therefore, in hands of each investor ₹ 4,40,000 is deemed to be received.

₹ 2,75,000 is dividend which is exempt from tax
₹ 1,65,000 is debenture interest which is taxable

When ₹ 4,40,000 is received next year, no tax treatment for the same.

Memorandum Explaining Finance Bill, 2012

Provisions relating to Venture Capital Fund (VCF) or Venture Capital Company (VCC)

Provisions of Section 10(23FB) and Section 115U of the Act were intended to ensure a tax pass through status to Securities and Exchange Board of India (SEBI) registered Venture Capital Fund (VCF) or Venture Capital Company (VCC). Section 10(23FB) granted exemption in respect of income of such VCF/VCC. The benefit was available if investment by such VCC/VCF was in unlisted shares of a domestic company, i.e. a Venture Capital Undertaking (VCU). Section 115U ensures that income, in the hand of the investor through VCF/VCC is taxed in like manner and to the same extent as if the investment was directly made by investor in the VCU. Further, TDS provisions are not applicable to any payment made by the VCF / VCC to its investor and payment by VCC/VCF to the investor is exempted from Dividend Distribution Tax (DDT).

The provisions of section 115U currently allow an opportunity of indefinite deferral of taxation in the hands of investor. With a view to rationalize the above position and to align it with the true intent of a pass-through status, it is proposed to amend section 10(23FB) and section 115U to provide that Income accruing to VCF/ VCC shall be taxable in the hands of investor on accrual basis with no deferral.

MEMORANDUM EXPLAINING FINANCE BILL, 2013

PASS THROUGH STATUS TO CERTAIN ALTERNATIVE INVESTMENT FUNDS

Existing provisions of section 10(23FB) of the Income-tax Act provide 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 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.

These sections provide a tax 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.

The SEBI(Alternative Investment Funds) Regulations, 2012 (AIF regulations) have replaced the SEBI (Venture Capital Fund) Regulations, 1996 (VCF regulations) from 21st May, 2012.

In order to provide benefit of pass through to similar venture capital funds as are registered under new regulations and subject to same conditions of investment restrictions in the context of investment in a venture capital undertaking, it is proposed to amend section 10(23FB) 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 registered under AIF Regulations shall get pass through status under section 10(23FB).

PROBLEMS FROM PAST EXAMINATION

Problem 1:

What meaning has been assigned to 'Venture Capital Undertaking' in Section 10(23FB) of the Act?

[November 2008 (New syllabus)]

Answer:

"Venture Capital Undertaking" means—

(i) a venture capital undertaking as defined in SEBI (Venture Capital Funds) Regulations, 1996; or

(ii) a venture capital undertaking as defined SEBI (Alternative Investment Funds) Regulations, 2012;

(Amended by Finance Act, 2013)

According to SEBI (Venture Capital Funds) Regulations, 1996 and SEBI(Alternative Investment Funds) Regulations, 2012, "venture capital undertaking" means a domestic company:

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

(1) non-banking financial companies;
(2) gold financing;
(3) activities not permitted under industrial policy of Government of India;
(4) any other activity which may be specified by the Board in consultation with Government of India from time to time;

Problem 2:

A Venture Capital Fund derived income of ₹17 lakhs comprising dividend of ₹4 lakhs from shares from a Venture Capital Undertaking and interest of ₹13 lakhs on loan granted to such undertaking. Mr. G receives income of ₹2 lakhs from such fund. Examine the taxability of the sum of ₹2 lakhs received by Mr. G.

[Nov. 2012]

Answer:

As per the provisions of section 115U, income received by a person from investments made in the venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person from an investment made directly in a venture capital undertaking.

The income paid by the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital fund (VCF) during the previous year.

Therefore, the income of ₹ 2 lacs received by Mr. G from the venture capital fund shall be taxable in his hands as if he has made a direct investment in the venture capital undertaking (VCU).

Amount treated as dividend **= ₹ 2, 00,000x 4/17 i.e. ₹47,059**
Amount treated as interest from investment **= ₹ 2, 00,000 x 13/17 i.e. ₹ 1, 52,941**

Both these receipts of ₹ 17 lakhs will be income exempt under section 10(23FB) in the hands of the VCF.

As far as the investor is concerned, dividend will be exempt under section 10(34) since the VCU would have paid the DDT on the same. The interest income would be assessable as "Income from other sources".

20

TAXATION OF SECURITISATION TRUST & ITS INVESTORS INTRODUCED BY FINAN CE ACT, 2013)

SECTION 1023DA: EX EMPTION OF INCOME OF A SECURITISATION TRUST

Any income of a securitisation trust from the activity of securitization shall be exempt from tax.

Explanation.—For the purposes of this clause,—

a) **"securitisation"** shall have the same meaning as assigned to it,—

i) under Regulations of SEBI; or
ii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India;

b **"securitisation trust"** shall have the meaning assigned to it in the Explanation below section 115TC.

SECTION 10 35A: EXEMPTION OF INC OME OF INVESTOR OF SECURITISATION TRUST

Any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust shall be exempt from tax.

Explanation.—For the purposes of this clause, the expressions "investor" and "securitisation trust" shall have the meanings respectively assigned to them in the Explanation below section 115TC.

CHAPTER XII-EA: SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME BY SECURITISATION TRUSTS

SECTION 115TA: TAX ON DISTRIBUTED INCOME TO INVESTORS

1 Notwithstanding anything contained in any other provisions of the Act, any amount of income distributed by the securitisation trust to its investors shall be chargeable to tax and such securitisation trust shall be liable to pay additional income-tax on such distributed income at the rate of—

i) 25% on income distributed to any person being an individual or a Hindu undivided family;
ii) 30% on income distributed to any other person:

Provided that nothing contained in this sub-section shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act. [Therefore, no tax if income distributed to a Mutual fund whose income is exempt under section 1023 D.]

2 The person responsible for making payment of the income distributed by the securitisation trust shall be liable to pay tax to the credit of the Central Government **within 14 days from the date of distribution or payment of such income,** whichever is earlier.

3 The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th day of September in each year, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.

4 No deduction under any other provisions of this Act shall be allowed to the securitisation trust in respect of the income which has been charged to tax under sub-section 1.

SECTION 115TB: INTEREST PAYABLE FOR NON-PAYMENT OF TAX

Where the person responsible for making payment of the income distributed by the securitisation trust fails to pay the whole or any part of the tax referred to in sub-section 1 of section 115TA, within the time allowed under sub-section 2 of that section, he shall be li able to pay **simple interest @ 1% every month or part thereof** on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

SECTION 115TC: SECURITISATION TRUST TO BE ASSESSEE IN DEFAULT

If any person responsible for making payment of the income distributed by the securitisation trust does not pay tax, as referred to in sub-section 1 o f section 115TA, then, he shall be deemed to be an assessee in default in respect of the amount of tax payable by him and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.—For the purposes of this Chapter,—

b **"investor"** means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust;

c **"securities"** means debt securities issued by a Securitisation Trust as per guidelines of RBI.;

d **"securitised debt instrument"** securities issued by a Securitisation Trust as per guidelines of SEBI;

e **"securitisation trust"** means a trust, being a—

i) **"special purpose distinct entity"** as defined in regulations of SEBI; or

ii) **"Special Purpose Vehicle"** as defined in, regulations of RBI.

ANALYSIS

What is securitisation? - It is a process through which the loans and future income or receivables the money that is to become due in future of a bank/ financial institution, are sold to a special purpose vehicle which is a Trust. This allows the financial institution/bank to get funds upfront, which can be put to more productive use in the business.

Process of Securitisation

- Original lender bank or FI selects and then sells various types of loans to another institution called Special Purpose Vehicle, which is a Trust;
- The special purpose vehicle- SPV called issuer also makes the payment to the original lender for the loans purchased under the arrangement;
- SPV issues debentures/ bonds to Individuals or institutional investors, who are willing to make investments in SPV;
- The original lender will keep on getting recoveries from the original borrowers;
- Original lender passes on these recoveries to the SPV.
- The SPV in turn passes on the income in form of interest on debentures and bonds to the individual/institutional investors as per the arrangement made. The money is also used to redeem debentures/ bonds as per arrangement.

Need for separate tax regime for securitisation trusts

Mutual Funds enjoy exemption from income-tax under section 10 *23D* of the Act on their income irrespective of its nature or source. If mutual fund itself carries on securitization activity, securitization income will be tax-free. But this is not possible as under the existing regulatory framework, as securitization activity has to be by a special purpose vehicle—separate trust which is a distinct entity. So, if Mutual Fund sets up securitization trust, income earned by trust is taxed at maximum marginal rate under section 161 and MF becomes unable to avail tax exemption under section 10 *23D* on securitization income as securitization trust is separate entity and the income of trust gets taxed under section 161 at maximum marginal rate. Section 161 of the Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust.

The salient features of the special regime are:-

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

ii The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the line of distribution tax levied in the case of mutual funds. The additional income-tax shall be levied at the rate of 28.325% inclusive of surcharge, education cess and secondary and higher education cess) in case of distribution being made to investors who are individual and HUF and at the rate of 33.99% in other cases. No additional income-tax shall be payable if the income distributed by the securitisation trust is received by a person who is exempt from tax under the Act like a mutual fund.

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

iv The securitisation trust will be liable to pay interest at the rate of 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 securitisation trust will be deemed to be an assessee in default in respect of amount of tax payable by it in case the additional income-tax is not paid to the credit of Central Government.

New special tax regime for Securitisation Trusts introduced by the Finance Act, 2013

Finance Minister's Speech introducing Finance Bill, 2013 in the Lok Sabha explains the objects of these amendments as under:

> "140. In order to facilitate financial institutions and banks to securitise their assets through a special purpose vehicle, I propose to exempt the Securitisation Trust from income tax. Tax shall be levied only at the time of distribution of income by the Securitisation Trust at the rate of 30 per cent in the case of companies and at the rate of 25 per cent in the case of an individual or HUF. No further tax will be levied on the income received by the investors from the Securitisation Trust."

MEMORANDUM EXPLAINING FINANCE BILL, 2013

TAXATION OF SECURITISATION TRUSTS

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

The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act. 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.

In order to facilitate the securitisation process, it is proposed to provide a special taxation regime in respect of taxation of income of securitisation entities, set up as a trust, from the activity of securitisation. It is proposed to amend section 10 and also insert a new Chapter XII-EA 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 and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

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

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

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

v The securitisation trust will be deemed to be an assessee in default in respect of amount of tax payable by it in case the additional income-tax is not paid to the credit of Central Government.

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

21

OTHER AMENDMENTS BY FINANCE ACT, 2013

SECTION 167C: LIABILITY OF PARTNERS OF LIMITED LIABILITY PARTNERSHIP IN LIQUIDATION

Notwithstanding anything contained in the Limited Liability Partnership Act, 2008, where any tax due from a limited liability partnership in respect of any income of any previous year or from any other person in respect of any income of any previous year during which such other person was a limited liability partnership cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.

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

Amendment by Finance Act, 2013

SECTION 179: LIABILITY OF DIRECTORS OF PRIVATE COMPANY

Notwithstanding anything contained in the Companies Act, 1956, where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

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

Amendment by Finance Act, 2013

MEMORANDUM EXPLAINING FINANCE BILL, 2013

CLARIFICATION OF THE PHRASE "TAX DUE" FOR THE PURPOSES OF RECOVERY IN CERTAIN CASES

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 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 to hold that it does not include penalty, interest and other sum payable under the Act.

In view of the above, it is proposed to clarify that for the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act. Amendments on the similar lines for clarifying the expression 'tax due' is proposed to be made to the provisions of section 167C.

These amendments will take effect from 1st June, 2013.

SECTION 1049: EXEM PTION TO THE INCOME OF NATIONAL FINANCIAL HOLDINGS COMPANY LIMITED

In computing the total income of the previous year, any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before the 1st day of April, 2014, shall be exempt from tax.

Added by Finance Act, 2013

MEMORANDUM EXPLAINING FINANCE BILL, 2013

EXEMPTION TO NATIONAL FINANCIAL HOLDINGS COMPANY LIMITED

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 succ essor 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 wound up and is 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.

In order to provide the exemption on the lines of SUUTI to NFHCL, it is proposed to amend section 10 to grant exemption to National Financial Holdings Company Limited in respect of its income accruing, arising or received on or before 31.03.2014.

This amendment will take effect retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and assessment year 2014-15.

SECTION 1023ED): EXEMPTION TO THE INCOME OF INVESTOR PROTECTION FUND

In computing the total income of the previous year, any income, by way of contributions received from a depository, of such Investor Protection Fund set up in accordance with the regulations by a depository as the Central Government may, by notification in the Official Gazette, specify in this behalf shall be exempt.

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

Explanation.—For the purposes of this clause,—

- **i "depository" shall have the same meaning as assigned to it in clause e of sub -section 1 of section 2 of the Depositories Act, 1996;**
- **ii "regulations" means the regulations made under the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996.**

Inserted by Finance Act, 2013

MEMORANDUM EXPLAINING FINANCE BILL, 2013

EXEMPTION TO INCOME OF INVESTOR PROTECTION FUND OF DEPOSITORIES

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.

Under the existing provisions, section 1023EA provides that income by way of contributions from a recognised stock exchange received by Investor Protection Fund set up by the recognised stock exchange shall be exempt from taxation .

On similar lines, it is proposed 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.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

SECTION 252: APPELLATE TRIBUNAL

Who can be appointed as President of ITAT?

Answer: As per section 2523 as amended by Finance Act, 2013, the Central Government shall appoint—

- **a 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**
- **b the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal**

to be the President thereof.