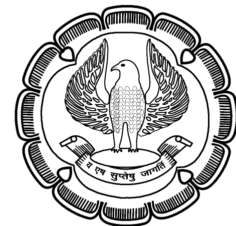
INTERMEDIATE (IPC) COURSE/ ACCOUNTING TECHNICIAN COURSE

SUPPLEMENTARY STUDY PAPER - 2013

TAXATION

[A discussion on the amendments made by the Finance Act, 2013 and significant Notifications & Circulars issued between 1st July 2012 and 30th April 2013]

(Relevant for students appearing for May, 2014 and November, 2014 examinations)



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A WORD ABOUT SUPPLEMENTARY

Taxation is one of the dynamic subjects of the chartered accountancy course. The level of knowledge prescribed for this subject at the Intermediate (IPC) level is 'working knowledge'. For attaining such a level of knowledge, the students have to be thorough with the basic provisions of the relevant laws and in addition, constantly update their knowledge regarding statutory developments.

The Board of Studies has been instrumental in imparting theoretical education for the students of Chartered Accountancy Course. The distinctive characteristic of the course i.e., distance education, has emphasized the need for bridging the gap between the students and the Institute and for this purpose, the Board of Studies has been providing a variety of educational inputs for the students.

One of the important inputs of the Board relating to Intermediate (IPC) Paper 4: Taxation is the "Supplementary Study Paper". The Supplementary Study Paper is an annual publication containing a discussion on the amendments made by the Annual Finance Act and significant notifications and circulars relating to income-tax and service tax. This publication is very important to the students for updating their knowledge regarding the latest statutory developments in these areas. A lot of emphasis is being placed on these latest amendments in the examination.

The amendments made by the Finance Act, 2013 in income-tax and service tax and important notifications and circulars issued between 1st July, 2012 and 30th April, 2013 have been explained in this Supplementary Study Paper – 2013, which are relevant for May 2014 and November 2014 examinations. In case you need any further clarification/guidance with regard to this publication, please send your queries relating to income-tax at priya@icai.in and queries relating to service tax at shefali.jain@icai.in.

Happy Reading and Best Wishes for the forthcoming examinations!

PART – I

INCOME TAX

PART - I : INCOME TAX

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TAXATION

PART – I : INCOME-TAX

AMENDMENTS BY THE FINANCE ACT, 2013

1. RATES OF TAX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Co-operative society

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

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

(iii) Firm/Limited Liability Partnership (LLP)

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

(iv) Local authority

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

(v) Company

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

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

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

Surcharge

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

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

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

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

(ii) Domestic company

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

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

Example 1

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

Answer

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

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

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

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

Example 2

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

Answer

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

(iii) Foreign company

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

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

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

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

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

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

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

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

2. BASIC CONCEPTS

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

Related amendment in section: 87

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

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

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

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

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

(Effective from A.Y.2014-15)

Example 3

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

Answer

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

Particulars	₹	₹
Salary		5,05,000
Interest on savings bank account		8,000
Gross Total Income		**5,13,000**

Less: **Deductions under Chapter VIA**		
Section 80C (deposit in PPF)	50,000	
Section 80TTA (interest on savings bank account)	8,000	
		58,000
Total Income		**4,55,000**

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

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

3. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

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

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

(ii) "Keyman insurance policy" has been defined in *Explanation 1* to section 10(10D) to mean a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person.

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

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

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

(Effective from A.Y.2014-15)

(b) Exemption of any income of a securitization trust from the activity of securitization [Section 10(23DA)]

Related amendment in:

Section 10(35A)	*Exemption of the distributed income referred to in section 115TA (received from a securitization trust) in the hands of the recipient-investor consequent to levy of additional income-tax on such distributed income in the hands of the securitization trust*

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

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

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

		RBI.	those for accomplishing the purpose of the company, trust or other entity as the case may be; and (b) which is structured in a manner intended to isolate the corporation, trust or entity as the case may be, from the credit risk of an originator to make it bankruptcy remote.

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

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

The significant provisions of the special regime are :-

(1) In case of securitisation vehicles which are set up as a trust and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation. **New clause (23DA) has been inserted in section 10 to exempt any income of a securitization trust from the activity of securitization with effect from A.Y.2014-15.**

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

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

(Effective from A.Y.2014-15)

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[1] Chapter XII-EA is not covered within the syllabus of Intermediate (IPC) Course. Therefore, the provisions of section 115TA, 115TB and 115TC have not been discussed here. These provisions will be dealt with in detail at the Final level.

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

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

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

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

(iv) In line with section 10(23EA), the Finance Act, 2013 has inserted section 10(23ED) to provide that any income, by way of contribution from a depository, of such Investor Protection Fund set up by a depository in accordance with the regulations made under the SEBI Act, 1992 and the Depositories Act, 1996, will not be included while computing the total income of such investor protection fund. The Central Government, would, by way of notification in the Official Gazette, specify such investor protection funds set up by depositories in accordance with the SEBI and depositories regulations.

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

(Effective from A.Y.2014-15)

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

(i) Section 10(23FB) exempts any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU). Further, as per section 115U, income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the like manner as if the person had made direct investment in the VCU.

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

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

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

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

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

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

(iv) The Finance Act, 2013 has granted "pass through status" to only the Venture Capital Fund, being a sub-category of Category I AIFs, with a corresponding direct tax charge on the investors. The benefit is available to only such AIFs which are established as a trust or a company. Further, the Income-tax Act,

1961 requires compliance of three conditions by such AIFs, in order to be covered within the ambit of exemption under section 10(23FB), namely:

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

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

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

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

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

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

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

Cate-gory	Sub-categories	Tax status in the event AIF is registered on or after 21 May 2012
I	VCF, being trust & VCC	Would qualify as VCC/VCF under section 10(23FB) but, subject to compliance of three conditions viz., 1. Shares of company/units of trust set up as an AIF are not listed on a recognized stock exchange. 2. Has invested not less than 2/3rd of its investible funds in unlisted equity shares/equity linked instruments of VCUs 3. Has not invested in associate VCUs.
I	SME Fund Social Venture	Will not qualify as VCC/VCF under section 10(23FB) and consequently will not be eligible for "pass through status" despite

Cate-gory	Sub-categories	Tax status in the event AIF is registered on or after 21 May 2012
	Fund Infrastructure Fund	being identified as socially desirable having positive spillover effects on the economy and eligible for other concessions from Government/SEBI. Will be governed by normal provisions of taxation as applicable to relevant nature of entity.
II	Generally includes private equity and debt funds	Will not qualify as VCC/VCF under section 10(23FB)
III	Generally includes hedge funds	

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

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

(Effective from A.Y.2013-14)

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(e) Exemption of income received by an investor on account of buy-back of unlisted shares of a domestic company [Section 10(34A)]

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

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

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

(iv) In order to discourage the practice of domestic companies resorting to buy back of unlisted shares instead of payment of dividends in order to avoid payment of tax by way of DDT, especially if the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate, a new Chapter XII-DA[2], comprising of sections 115QA, 115QB and 115QC, has been inserted with effect from 1st June, 2013 to levy additional income-tax on buy back of such shares by domestic companies.

(v) The income arising to the shareholders in respect of such buy back of unlisted shares by the domestic company would be exempt under section 10(34A) w.e.f. A.Y.2014-15, where the company is liable to pay the additional income-tax on the buy-back of shares.

(vi) For this purpose, buyback means purchase by a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956.

(Effective from A.Y.2014-15)

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

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

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[2] Chapter XII-DA is not covered within the syllabus of Intermediate (IPC) Course. Therefore, the provisions of section 115QA, 115QB and 115QC have not been discussed here. These provisions will be dealt with in detail at the Final level.

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

(Effective from A.Y.2014-15)

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

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

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

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

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

4. PROFITS AND GAINS OF BUSINESS OR PROFESSION

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

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

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

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

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

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

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

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

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

(vi) "New plant or machinery" does not include—

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

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

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

   (4) any vehicle;

   (5) ship or aircraft; or

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

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

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

(Effective from A.Y.2014-15)

Example 4

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

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

D Ltd.	0	98
E Ltd.	105	0
F Ltd.	0	110

Answer

Company	Investment in new plant and machinery (₹ in crore)		Investment allowance under section 32AC (₹ in crore)	
	P.Y.2013-14	P.Y.2014-15	A.Y.2014-15	A.Y.2015-16
A Ltd.	80	10	Nil	Nil
B Ltd.	75	35	Nil	16.50
C Ltd.	110	40	16.50	6.00
D Ltd.	0	98	Nil	Nil
E Ltd.	105	0	15.75	Nil
F Ltd.	0	110	Nil	16.50

Example 5

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

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

Answer

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

Particulars		**Plant and Machinery (15%)**	**Plant and Machinery (60%)**
		(₹ in crore)	
WDV as on 01.04.2013		25.00	-
Add: Plant and Machinery acquired during the year			
- Second hand machinery	12.00		
- New plant and machinery	90.00		
- Air conditioner installed in office	0.15		
		102.15	
Computers acquired during the year		-	0.40
		127.15	0.40
Less: Asset sold during the year		4.00	Nil
Written down value before charging depreciation		123.15	0.40
Less: Depreciation for the P.Y.2013-14 (***See Note 1 below***)		29.47	0.12
WDV as on 1.4.2014		93.68	0.28
Note 1 : Computation of depreciation for the P.Y.2013-14			
Normal depreciation			
Depreciation@30% on computers put to use for less than 180 days (50% of 60% × 0.40 crore)		-	0.12
Depreciation on plant and machinery (15% block)		15.47	
(40 × 7.5%) + [(123.15-40) × 15%]			
Additional depreciation			
- New plant and machinery installed on 31.7.2013 (₹ 50 crore × 20%)	10		
- on 31.10.2013 (₹ 40 crore × 10%)	4	14.00	Nil
Total depreciation		**29.47**	**0.12**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debts under section 36(1)(viia) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made under section 36(1)(viia) for rural advances.

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

(vii) In order to clarify the real intent of law, *Explanation* 2 has been inserted in section 36(1)(vii) stating that for the purposes of the proviso to section

36(1)(vii) and section 36(2)(v), only one account as referred to therein shall be made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account shall relate to all types of advances, including advances made by rural branches.

(viii) Therefore, in the case of an assessee to which section 36(1)(viia) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

(Effective from A.Y.2014-15)

Example 6

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

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

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

Answer

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

(Effective from A.Y. 2014-15)

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

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

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

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

(iv) A "commodity derivative" means –

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

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

(i) of such underlying goods; or

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

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

having a bearing on the commodity sector.

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

(Effective from A.Y.2014-15)

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

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

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

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

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

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

  (1) carried out electronically on screen based systems;

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

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

  The contract note should indicate the –

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

    (b) unique trade number; and

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

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

(Effective from A.Y.2014-15)

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

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

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

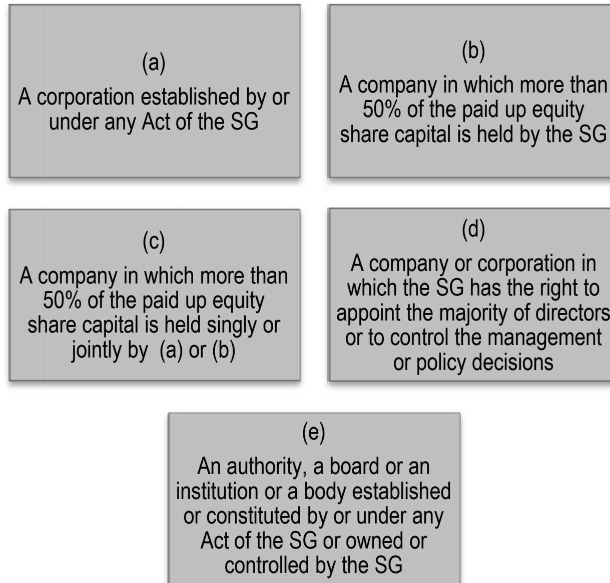
(iii) In order to protect the tax base of State Government undertakings *vis-à-vis* exclusive levy of fee, charge, etc. or appropriation of amount by the State Governments from its undertakings, new clause (iib) has been inserted in section 40(a), with effect from A.Y.2014-15, to provide that –

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

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

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

(iv) A State Government undertaking includes –



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

(i) At present, the provisions of section 50C require adoption of stamp duty value of land or building or both, which are held as a capital asset, if the same are transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.

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

(iii) Therefore, as an anti-avoidance measure, new section 43CA has been inserted to provide that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business of profession".

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

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

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

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

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

The term "assessable" covers transfers executed through power of attorney. The term 'assessable' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(Effective from A.Y.2014-15)

Example 7

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

		31/8/2012)				value of consideration.
3	1/5/2013	100 (₹10 lakhs received by **cash** on 31/8/2012)	120 (1/9/2012)	210 (1/5/2013)	210	Stamp duty value on the date of registration to be adopted as full value of consideration.
4	31/3/2014	100 (Full amount received on the date of registration)	120 (1/5/2013)	210 (31/3/2014)	210	Stamp duty value of the date of registration would be the full value of consideration.

5. CAPITAL GAINS

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

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

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

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

(a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand according to last preceding census, or

(b) agricultural land situated in any area within such distance not exceeding eight kilometers from the local limits of any municipality or cantonment board, as notified by the Central Government having regard to the extent and scope of urbanization and other relevant factors.

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

(iii) The Finance Act, 2013 has amended item (b) of sub-clause (iii) of section 2(14) so as to provide that "Capital asset" would include the agricultural land situated in any

area within such distance, **measured aerially**, in relation to the range of population according to the last preceding census as shown hereunder -

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

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

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

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

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

would be treated as agricultural income provided,

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

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

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

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

(Effective from A.Y. 2014-15)

6. INCOME FROM OTHER SOURCES

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

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

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

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

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

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

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

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

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

(v) Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration, if the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, provided at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.

(Effective from A.Y.2014-15)

Example 8

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2014, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.7.2013 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down

payment of ₹ 15 lakh by cheque from Rajesh on the date of agreement. Discuss the tax implications in the hands of Hari and Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2012.

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

Answer

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

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value on the date of agreement. Therefore, **₹ 65 lakh**, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 140 lakh) and the purchase price (i.e., ₹ 75 lakh), would be chargeable as **business income** in the hands of Mr. Hari.	Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(vii) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration. Therefore, **₹ 50 lakh,** being the difference between the stamp duty value of the property (i.e., ₹ 140 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(vii) in the hands of **Mr. Rajesh**.

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

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

7. DEDUCTIONS FROM GROSS TOTAL INCOME

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

Related amendment in section: 10(10D)

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

(ii) According to section 10(10D), any sum received under a life insurance policy including the sum allocated by way of bonus on such policy is exempt, provided the premium payable for any of the years does not exceed 10% of actual capital sum assured, in respect of life insurance policy issued on or after 1.4.2012. Consequently, no exemption under section 10(10D) shall be granted to the assessee, in case the premium payable for any of the years during the term of the policy exceeds 10% of the capital sum assured in case the life insurance policy is issued on or after 1st April, 2012.

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

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

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

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

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

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

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

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

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

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

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

<table>
<tr><th></th><th>Exemption u/s 10(10D)</th><th>Deduction u/s 80C</th></tr>
<tr><td>In respect of policies issued between 1.4.2003 and 31.3.2012</td><td>Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of “actual capital sum assured”.</td><td>Premium paid to the extent of 20% of “actual capital sum assured” qualifies for deduction u/s 80C.</td></tr>
<tr><td>In respect of policies issued on or after 1.4.2012 but before 1.4.2013</td><td>Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of “minimum capital sum assured” under the policy on the happening of the insured event at any time during the term of the policy.</td><td>Only premium paid to the extent of 10% of “minimum capital sum assured” qualifies for deduction u/s 80C.</td></tr>
<tr><td rowspan="2">In respect of policies issued on or after 1.4.2013</td><td colspan="2">(a) Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.</td></tr>
<tr><td>Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be</td><td>Only premium paid to the extent of 15% of “minimum capital sum assured” qualifies for deduction u/s 80C.</td></tr>
</table>

	available if the premium payable for any of the years during the term of the policy exceeds 15% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	
	(b) Where the insurance is on the life of any person, other than mentioned in (a) above	
	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	Only premium paid to the extent of 10% of "minimum capital sum assured" qualifies for deduction u/s 80C.

(Effective from A.Y. 2014-15)

Example 9

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

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

Answer

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

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

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

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

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

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

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

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

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

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

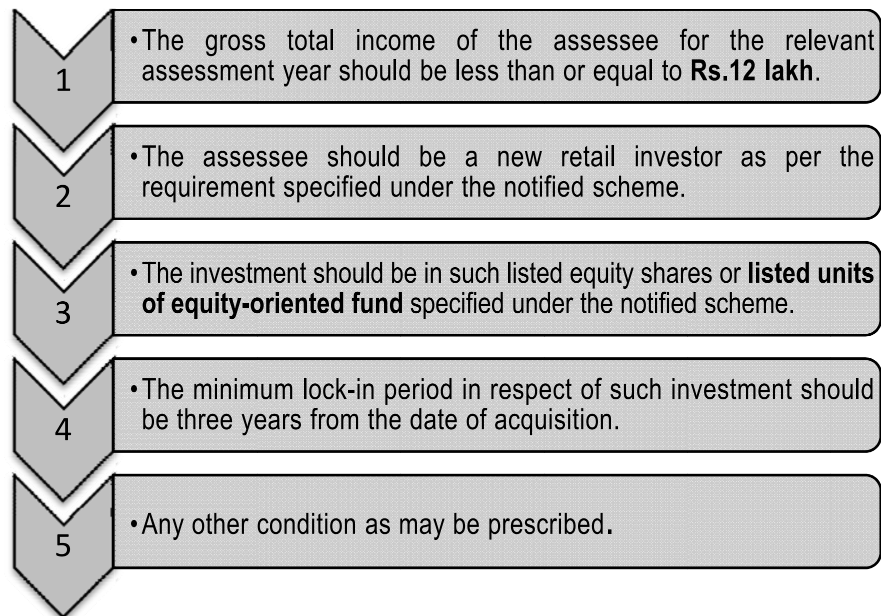
In addition to the above, other conditions may also be prescribed, subject to fulfillment of which, deduction under section 80CCG can be claimed. At present, Rajiv Gandhi Equity Savings Scheme has been notified under section 80CCG *[Notification No.51/2012 dated 23.11.2012]*.

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

Further, the deduction shall be allowed **for three consecutive assessment years**, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.[3]

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

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



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

(Effective from A.Y. 2014-15)

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

Example 10

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

Particulars	***P.Y.2013-14***	***P.Y.2014-15***	***P.Y.2015-16***
Mr.X	***₹***	***₹***	***₹***
(i) Investment in listed equity shares	*20,000*	*45,000*	*32,000*
(ii) Investment in units of equity-oriented fund	*40,000*	*-*	*11,000*
(iii) Gross Total Income (comprising of salary income and bank interest)	*11,25,000*	*11,15,000*	*12,50,000*
Deduction u/s 80CCG	**25,000**	**22,500**	**Nil**
Remark	(Restricted to 50% of ₹ 50,000)	(50% of ₹ 45,000)	(Not eligible since GTI>12,00,000)
Mr. Y	***₹***	***₹***	***₹***
(i) Investment in listed equity shares	*25,000*	*-*	*30,000*
(ii) Investment in units of equity-oriented fund	*15,000*	*40,000*	*25,000*
(iii) Sale of all units of equity oriented fund purchased in P.Y.2013-14 & P.Y.2014-15	*-*	*-*	*70,000*
(iii) Gross Total Income (comprising of Salary income and bank interest)	*10,50,000*	*12,15,000*	*11,50,000*
Deduction u/s 80CCG	**20,000**	**Nil**	**25,000**
Remark	(50% of ₹ 40,000)	(Since GTI > 12,00,000)	(Restricted to 50% of ₹50,000)
Amount liable to tax (on account of violation of condition) *[See Note below]*			**7,500**

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

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

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

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

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

(Effective from A.Y. 2014-15)

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

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

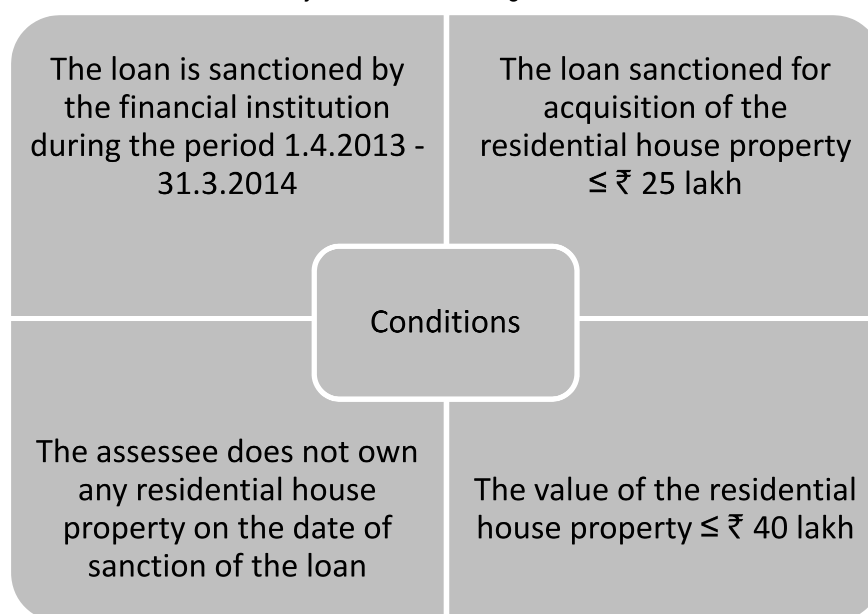
(ii) In case of capital borrowed for acquisition or construction of self-occupied property, or a property which cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a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

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

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

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

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



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

(Effective from A.Y.2014-15)

Example 11

Mr. A purchased a residential house property for self-occupation at a cost of ₹ 30 lakh on 1.6.2013, in respect of which he took a housing loan of ₹ 24 lakh from Bank of India@11% p.a. on the same date. Compute the eligible deduction in respect of interest on housing loan for A.Y.2014-15 and A.Y.2015-16 under the provisions of

the Income-tax Act, 1961, assuming that the entire loan was outstanding as on 31.3.2015 and he does not own any other house property.

Answer

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

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

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

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

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

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

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

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

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

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

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

(Effective from A.Y.2014-15)

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

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

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

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

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

(Effective from A.Y. 2014-15)

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

(i) As per the provisions of section 80-IA(4)(iv), a deduction of 100% of profits and gains is allowed for 10 consecutive assessment years to an undertaking which:

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2013;

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

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

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

(Effective from A.Y.2014-15)

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

(i) At present, deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed in any previous year by an Indian

company in its industrial undertaking engaged in manufacture or production of article or thing is allowed under section 80JJAA.

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

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

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

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

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

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

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

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

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

(vi) The deduction shall be of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee **in such factory**, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(vii) However, the deduction shall not be available if the factory is hived off or transferred from another existing entity or acquired by the assessee-company as a result of amalgamation with another company.

(Effective from A.Y. 2014-15)

8. PROVISIONS CONCERNING ADVANCE TAX AND TAX DEDUCTED AT SOURCE

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

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

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

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

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

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

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

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

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

(Effective from 1st June, 2013)

Example 12

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

Answer

(i)	**Tax implications in the hands of Mr.X**
	As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 45 lakh (i.e. ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2014-15. Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.
(ii)	**Tax implications in the hands of Mr.Y**
	In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(vii), if such difference exceeds ₹ 50,000. Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr.Y under section 56(2)(vii). Since agricultural land is not a capital asset, the provisions of section 56(2)(vii) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(vii) includes only **capital assets** specified thereunder.
(iii)	**TDS implications in the hands of Mr.Y**
	Since the sale consideration of house property exceeds ₹ 50 lakh, Mr.Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 60,000, being 1% of ₹ 60 lakh. TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

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

Related amendments in sections : 195 & 196D

(i) New section 194LD has been inserted to provide that any income by way of interest payable during the period between 1.6.2013 and 31.5.2015 in respect

of investment made by an FII or QFI in a rupee denominated bond of an Indian company or a Government security, shall be subject to tax deduction at source at a concessional rate of 5% (as against the rate of 20% of interest applicable in respect of other interest received by a QFI or FII).

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

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

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

(v) QFI refers to Qualified Foreign Investors i.e. Foreign Investors, being non-residents, who meet certain KYC requirements under SEBI laws and are hence permitted to invest in equity and debt schemes of Mutual Funds, thereby enabling Indian Mutual Funds to have direct access to foreign investors and widen the class of foreign investors in Indian equity and debt market. QFI does not include FIIs.

(vi) Consequently, section 196D, providing for deduction of tax@20% on income from securities referred to in section 115AD(1)(a) in case of a FII, has been amended to specifically exclude interest referred to in section 194LD, which would be subject to TDS@5%.

(vii) Likewise, section 195, providing for deduction of tax at source from payments to non-corporate non-residents and foreign companies at the rates in force, has been amended to specifically exclude interest referred to in section 194LD, which is subject to TDS@5%.

(Effective from 1st June, 2013)

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

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

(1) the rate prescribed in the Act;

(2) the rates in force; or

(3) the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the

payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I.

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

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

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

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

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

(Effective from 1st June, 2013)

9. PROVISIONS FOR FILING RETURN OF INCOME

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

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

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

(iii) However, since quite a few assessees file their returns of income without payment of self-assessment tax, clause (aa) has been inserted in the *Explanation* to section 139(9) to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

(Effective from 1st June, 2013)

10. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

I. NOTIFICATIONS

1. Notification No. 40/2012 dated 20.09.2012

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

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

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

2. Notification No. 46/2012, dated 06.11.2012

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

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

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

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

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

3. Notification No. 56/2012 dated 31.12.2012

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

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

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

(i) bank guarantee commission,

(ii) cash management service charges,

(iii) depository charges on maintenance of DEMAT accounts ,

(iv) charges for warehousing services for commodities,

(v) underwriting service charges,

(vi) clearing charges (MICR charges) and

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

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

4. Notification No. 4/2013 dated 24.1.2013

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

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

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

II. CIRCULARS

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

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

Section 37(1) provides for deduction of any revenue expenditure (other than those falling under sections 30 to 36) from the business income if such expense is laid out or

expended wholly or exclusively for the purpose of business or profession. However, the *Explanation* below section 37(1) denies claim of any such expenses, if the same has been incurred for a purpose which is either an offence or prohibited by law.

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

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

2. Circular No. 9/2012 dated 17.10.2012

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

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

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

3. Circular No. 1/2013, dated 17.01.2013

Clarification on issues relating to export of computer software

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

outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

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

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

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

PART – II

SERVICE TAX

PART - II : SERVICE TAX

AMENDMENTS AT A GLANCE – FINANCE ACT, 2013

S.No.	Section	Amendment	Implication
1.	65B(11)	Definition of **approved vocational education course** amended	(i) Courses in 'designated trades' offered by ITI/ITC affiliated to **State Council of Vocational Training** are also **exempt**. (ii) A course run by an institute affiliated to **National Skill Development Corporation** set up by the Government of India is now **liable to service tax**.
2.	65B(40)	Definition of **any process amounting to manufacture/ production of goods** amended	A **process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act** is also exempt from service tax.
3.	66D(d)(i)	The **word "seed"** has been **omitted** from the said negative list entry.	**Besides seed testing, other testing activities** directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes are **also exempt from service tax**.
4.	65BA	New section 65BA introduced	With effect from 01.07.2012, for the purpose of levy and collection of service tax, the **references to erstwhile section 66 shall be construed as references to section 66B**.

PART - II : SERVICE TAX

AMENDMENTS BY THE FINANCE ACT, 2013

1. Amendments relating to the negative list of services

(a) Courses run by ITI/ITC affiliated to State Council of Vocational Training not liable to service tax [Section 65B(11)]

Services by way of education as a part of an **"approved vocational education course"** are not liable to service tax as they are included in the negative list of services [Clause (l) of section 66D]. With effect from 10.05.2013, the definition of **"approved vocational education course"** under section 65B(11) has been amended vide the Finance Act, 2013 in the following manner:

(i) Courses in designated trades offered by industrial training institute (ITI)/ industrial training centre (ITC) affiliated to State Council of Vocational Training have been included in the definition. Earlier, only the courses offered by ITI/ITC affiliated to National Council of Vocational Training were covered in the definition.

(ii) A course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India has been removed from the definition.

The above amendments will have the following implications:-

(i) Courses in designated trades offered by ITI/ITC affiliated to State Council of Vocational Training will also be exempt from service tax as they have now been included under the negative list.

(ii) A course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India would no more be exempt from service tax.

A comparative analysis of the taxability of various vocational courses pre and post the Finance Act, 2013 is given hereunder:-

S.No.	Vocational courses	Prior to 10.05.2013	With effect from 10.05.2013
1.	Courses offered by ITI/ITC affiliated to State Council of Vocational Training	Taxable	**Exempt**
2.	Courses offered by ITI/ITC affiliated to National Council of Vocational Training	Exempt	Exempt
3.	Modular Employable Skill Course	Exempt	Exempt
4.	Courses run by an institute affiliated to the National Skill Development Corporation	Exempt	**Taxable**

__National Skill Development Corporation (NSDC)__ is a Public Private Partnership (PPP) in India set up to facilitate the development and upgrading of the skills of the growing Indian workforce

through skill training programs. A large part of the organization's efforts are directed at the private sector and towards developing the skills in the unorganized sector in India. The National Skill Development Policy 2009 mandates that NSDC would constitute Sector Skill Councils (SSCs) which would inter alia grant accreditation/affiliation to vocational courses being run by various institutes.

Illustration: Comment on the applicability of service tax in case of vocational educational courses (VEC) run by the following institutes during the month of February, 2013 and June, 2013:

(a) 'Udaan' an industrial training institute (ITI) affiliated to the National Council for Vocational Training (NCVT).

(b) 'A-Star' a vocational education provider affiliated to Sector Skill Council formed under National Skill Development Corporation (NSDC).

(c) 'Best Skill Centre' an industrial training centre (ITC) affiliated to the State Council for Vocational Training, Delhi.

(d) 'Horizon', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESC) approved by the National Council of Vocational Training.

The courses offered in point (a), (b) and (c) are in designated trades notified under the Apprentices Act, 1961.

Solution:

Sl. No.	Institute/Centre	February, 2013	June, 2013
1.	'Udaan' – ITIs affiliated to NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable	Non-taxable
2.	'A-Star' – With effect from 10.05.2013, institutes affiliated to NSDC have been removed from the definition of approved VEC vide the Finance Act, 2013. Thus, the same are outside the purview of negative list.	Non-taxable	Taxable
3.	'Best Skill Centre' – With effect from 10.05.2013, ITCs affiliated to SCVTs have been included in the definition of approved VEC vide the Finance Act, 2013. Thus, the same are included in the negative list.	Taxable	Non-taxable
4.	'Horizon' – Institutes registered with DGET running MESC approved by NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable	Non-taxable

(b) Manufacture under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 not liable to service tax [Section 65B(40)]

Erstwhile position

The negative list of services includes **"any process amounting to manufacture or production of goods"** [Clause (f) of section 66D]. The term **process amounting to manufacture or production of goods** had been defined under section 65B(40) to include-

(i) a process on which excise duty is leviable under section 3 of the Central Excise Act, 1944

or

(ii) any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

Thus, the above two processes, being covered under the negative list of services, were not liable to service tax.

New position

Definition of **"any process amounting to manufacture or production of goods"** has been expanded by the Finance Act, 2013 so as also to include a process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. Thus, with effect from 10.05.2013, service tax is not chargeable on a process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act.

Since, manufacture of the products specified in the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 also attracts excise duty, it should not be exigible to service tax. However, on account of the erstwhile definition of **"any process amounting to manufacture or production of goods"**, the same had been liable to service tax. This anomaly has now been rectified by bringing such manufacture under the negative list of services.

[Effective from 10.05.2013]

Illustration: State whether following activities undertaken by M & M Manufacturers of Chandigarh would be liable to service tax during April, 2013 and June, 2013:

(i) Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944.

(ii) Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914.

(iii) Processing of raw materials to make them fit for further production. The process is not liable to any excise duty.

(iv) Manufacture of medicines liable to excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

Solution:

Sl. No.	Activity	April, 2013	June, 2013
(i)	Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944 – covered in the definition of process amounting to manufacture. Thus, included in the negative list.	Non-taxable	Non-taxable
(ii)	Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914 – covered in the definition of process amounting to manufacture. Thus, included in the negative list.	Non-taxable	Non-taxable
(iii)	Processing of raw materials to make them fit for further production. The process is not liable to any excise duty. This will be a service liable to service tax.	Taxable	Taxable
(iv)	Manufacture of medicines liable to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 – The Finance Act, 2013 has included such manufacture in the definition of process amounting to manufacture. Thus, with effect from 10.05.2013, such a manufacture is included in the negative list.	Taxable	Non-taxable

(c) ALL testing activities including seed testing directly related to production of any agricultural produce not liable to service tax [Section 66D(d)(i)]

Erstwhile position

Earlier, sub-clause (i) of section 66D(d) [Negative list of services], inter alia, included only the **"seed testing"** directly related to production of any agricultural produce. Consequently, other type of testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes etc. became liable to service tax.

New position

The Finance Act, 2013 has expanded the scope of the said negative list entry by deleting the word "seed". As a result, all types of testing activities which are directly related to production of any agricultural produce have been covered under the negative list.

[Effective from 10.05.2013]

Illustration: 'Big Agro Handlers' furnishes the following details with respect to the activities undertaken by them in the month of June, 2013:

Sl. No.	Particulars	Amount (₹)
(i)	Supply of farm labour	58,000
(ii)	Warehousing of biscuits	1,65,000
(iii)	Sale of rice on commission basis	68,000
(iv)	Training of farmers on use of new pesticides and fertilizers developed through scientific research	10,000
(v)	Renting of vacant land to a stud farm	1,31,500
(vi)	Testing undertaken for soil of a farm land	1,21,500
(vii)	Leasing of vacant land to a poultry farm	83,500

Compute the service tax liability of 'Big Agro Handlers' for the month of June, 2013. Assume that the point of taxation in respect of all the activities mentioned above falls in the month of June, 2013 itself.

'Big Agro Handlers' has paid service tax of ₹6,18,000 during the Financial Year 2012-13.

Solution:

Computation of service tax payable by Big Agro Handlers for June, 2013

Sl. No.	Particulars	Amount (₹)
(i)	Supply of farm labour [Note 1]	-
(ii)	Warehousing of biscuits [Note 3]	1,65,000
(iii)	Sale of rice on commission basis [Note 1]	-
(iv)	Training of farmers on use of new pesticides and fertilizers developed through scientific research [Note 1]	-
(v)	Renting of vacant land to a stud farm [Note 2]	1,31,500
(vi)	Testing undertaken for soil of a farm land [Note 1]	-
(vii)	Leasing of vacant land to a poultry farm [Note 2]	-
	Total	**2,96,500**
	Service tax @ 12.36% (rounded off)	**36,586**

Notes:

(1) Clause (d) of negative list of services [section 66D] covers 'services relating to agriculture or agricultural produce by way of *inter alia* –

(i) supply of farm labour

(ii) services provided by a commission agent for sale or purchase of agricultural produce

(iii) agricultural extension services. Agriculture extension means application of scientific research and knowledge to agricultural practices through farmer education or training.

(iv) agricultural operations directly related to production of any agricultural produce including testing.

(2) Services relating to agriculture or agricultural produce by way of renting or leasing of vacant land are covered under clause (d) of section 66D. Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. Thus, leasing of vacant land to a poultry farm will be included in the negative list but renting of vacant land to a stud farm will be outside the purview of negative list.

(3) Loading, unloading, packing, storage or warehousing of agricultural produce is covered under clause (d) of Section 66D. However, agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. Thus, warehousing of biscuit will be taxable as biscuit is not an agricultural produce.

(4) As Big Agro Handler has paid service tax of ₹ 6,18,000 during the FY 2012-13, it is not eligible to small service providers exemption provided under *Notification No. 33/2012 ST dated 20.06.2012* in the FY 2013-14.

2. Reference to erstwhile section 66 to be construed as reference to section 66B [New section 66BA inserted]

Owing to the difficulties being faced in implementation of the negative list approach of taxation of services, in so far as it related to insertion of new charging section-section 66B, an explanation to section 66B was inserted vide *Order No. 2/2012 dated 29.06.2012* to provide that with effect from 01.07.2012, for the purpose of levy and collection of service tax, the references to section 66 shall be construed as references to section 66B.

The Finance Act, 2013 has deleted the said explanation and re-introduced the same in the form of a separate section viz., section 66BA.

By the authority of this section, with effect from July 1, 2012, references to section 66 (charging section under the positive list approach) in Chapter V of the Finance Act, 1994 or any other Act, will be construed as reference to section 66B (charging section under the negative list approach).

Hence, reference to section 66 appearing in the Finance (No.2) Act, 2004 [in the context of education cess] and the Finance Act, 2007 [in the context of secondary and higher education cess] will also be read as 66B, in accordance with this new section.

[Retrospectively effective from July 1, 2012]

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.07.2012 AND 30.04.2013

1. No service tax on remittances from abroad

CBEC has clarified that service tax is not leviable on the amount of foreign currency remitted to India from overseas as definition of 'service' under section 65B(44) specifically excludes transactions in money.

Further, service tax would also not be leviable on the fee or conversion fee chargeable for sending such money. It has also been clarified that Indian counterpart or financial institutions or entity who charges the foreign bank or any other entity for the services provided at the receiving end will also not be liable to service tax.

[Circular No.163/14/2012 ST dated 10.07.2012]

2. Clarification on point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01.04.2012

Issue: What is the point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01.04.2012?

Clarification: Till 31.03.2012, rule 6 of the Point of Taxation Rules, 2011 (POTR) determined point of taxation (POT) in case of continuous supply of services. Since, the rule started with a non-obstantate clause, "notwithstanding anything contained in rules 3, 4 …", the POT for continuous supply of services provided on or before 31.03.2012 would not be affected by rule 4 of POTR. In other words, if the invoice had been issued or payment received for such services on or before 31.03.2012, the POT would be determined under rule 6, not being affected by the amendments made effective only from 1.4.2012.

However, with effect from 01.04.2012, rule 6 has been omitted and the POT for continuous supply of services is also being determined ordinarily under the main rule i.e., rule 3 subject to provisions of rule 4. Rule 4 determines the POT when there is a *"change in effective rate of tax"*. C*hange in effective rate of tax* includes a change in the portion of value on which tax is payable.

[Circular No. 162/13/2012 ST dated 06.07.2012]

3. No service tax on vocational education course if offered by the Central/ State Government/Local Authority

CBEC has clarified that service tax is not leviable on vocational education/training/ skill development courses (VEC) offered by the institution of the Government (Central Government or State Government) or a local authority as in terms of section 66D(a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

However, if the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment would be determined by either sub-clause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994.

Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or State law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

[Circular No.164/15/2012 ST dated 28.08.2012]

4. No service tax liability at the time of issue of reminder letters by life insurance companies to policy holders to pay renewal premiums

Issue	Clarification
In terms of practice followed, life insurance companies issue reminder notices/letters to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Whether service tax needs to be paid on the basis of such reminders?	Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules, 1994. No tax point arises on account of such reminders. Thus, it is clarified that reminder letters / notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined.

[Circular No.166/1 /2013 – ST dated 01.01.2013]

5. Accounting codes for payment of service tax under negative list approach of taxation of services

Earlier, under the positive list approach of taxation of services, Department had issued Accounting codes [eight digit numerical codes] in respect of each taxable service to be used by the assessee while paying service tax through GAR-7 challan. Thus, 119 service specific accounting codes were there.

With the introduction of negative list approach of taxation of services, with effect from 01.07.2012, at first service specific old accounting codes were done away with and one Accounting code was prescribed for the purpose of payment of service tax i.e. "All Taxable Services" – 00441089. However, subsequently, for the purpose of statistical analysis, service specific old accounting codes were again restored along with 120th description as "other taxable services".

[Circular No. 161/12/2012 dated 06.07.2012 & Circular No.165/16/2012 -ST dated 20.11.2012]