BUDGET
2014

TAX PROPOSALS IN FINANCE BILL 2014

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Dear Reader,

The Country is facing high inflation particularly in the food segment and a significant fiscal deficit for the past few years, which are both a symptom and a cause of economy woes. The aspiration of the business community has grown with the National Democratic Alliance coming to power and it is expected that the new government will deliver on its mandate.

In a major boost for real estate and infrastructure sectors, the government proposed tax incentives for two new investment instruments Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (InvITs) to help attract long term funds from foreign and domestic investors, including the NRIs. The Government has focused on repatriation of foreign funds by continuing the concessional tax rate of 15 per cent on dividends received by Indian companies from foreign subsidiaries. These policies will go a long way for infusing fund in the economy. The majority of Laws and Compliances proposed for Trusts would create undue hardship and it would be difficult for them to maintain their existence. The Government has shown an urgency to converge the current Indian accounting standards with the International Financial Reporting Standards (IFRS) voluntarily from financial year 2015-16 and on a mandatory basis from the financial year 2016-17 for all companies. Need for compliance has increased all the more and the same is highlighted in the Government policy statement as seen through introduction of strict penal provisions for non adherence.

Budget 2014 reflects a number of priorities identified in the BJP election manifesto like the revamping of the dispute resolution mechanisms and the need to build a consensus with State Governments to introduce GST expeditiously. While presenting the Bill the Finance Minister emphasized the need to control Fiscal Deficit by outlining the roadmap for fiscal consolidation. The government will retain the fiscal deficit target for 2014-15 at 4.1 percent of GDP and reduce it further to 3 per cent by 2016-17.

Largely the budget proposals of this year have sought to address key concerns in indirect taxes, without being reformative or populist. It appears that the government will probably make reformative changes in the next year. However not all curative amendments made this year have been accurate, leaving many questions unanswered. All in all, while the budget announcements have tried to address current tax issues of the Industry, the Budget is directional towards bold reforms, we will have to wait for the Government to present its first full year budget in the next year. However, possibility of tax law amendments during the course of the year cannot be ruled out.

In this publication, we discuss in detail the direct tax and service tax amendments in Finance Bill. Every attempt has been made to present the proposals in a simple manner. We are grateful for the efforts of the entire team who have helped in bringing out this publication.

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1. Additional Resource Mobilisation Measures

Dividend and income distribution tax

The government has observed that due to differences in the base of the income distributed or the dividend on which the distribution tax is calculated, the effective tax rate is lower than the rate provided in the respective sections. In order to align the rates at which dividend distribution tax is paid in accordance with the provisions of Section 115-O, the computational mechanism has been changed. The amount distributed shall be considered as net of tax (excluding cess and surcharge) and would be grossed up (considering the net amount as 85%). Consequently the dividend distribution tax will increase from 16.995% to 19.994%.

Similar amendments have also been made to provisions of Section 115-R in respect of income distributed by mutual funds. As a result, the amount of dividends received by the investor will be significantly impacted.

The aforesaid amendment is applicable from the 1st October, 2014.

Change in period of holding of capital assets

The period of holding for classification of gains arising on sale of unlisted shares and units of mutual funds (other than equity oriented mutual funds) is proposed to be increased from 12 months to 36 months. After such amendment such shares/ units shall be considered to be long-term if the same are held for a period exceeding 36 months from the date of acquisition to the day immediately preceding the date of sale.

This will also impact the mutual fund industry – particularly Fixed Maturity Plans and Debt Funds.

The aforesaid amendment is applicable from the AY 2015-16.

Tax on long term capital gains on units

The provisions of Section 112 are proposed to be amended to provide that concessional rate of tax of 10% without indexation benefit shall not be available in case of units of mutual funds.

The proposed amendment shall make Section 112 redundant except in case of off-market/ buyback transactions for listed securities and zero coupon bonds.

The aforesaid amendment is applicable from the AY 2015-16.

2. Measures to promote socio-economic growth

Taxation Regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invit)

A REIT owns and manages income-generating developed property and is designed to offer common units to the public as an investment option. It uses the pooled capital of several investors to make mortgage loans to builders or developers, or to directly invest in income-producing property. Such REITs would enable people to channelize their investments into India's realty sector through a

regulated mechanism. The investment in REITS is asset-backed, and accordingly it is ideal for investors wanting to invest in real estate without the hassle of securing title to the property and ensuring compliance with a plethora of regulatory approvals. In the current scenario of economic slowdown and paucity of funds, the proposed introduction of REITS is likely to infuse a fresh lease of life.

Further, the Finance Bill, 2014 has also proposed to introduce Infrastructure Investment Trusts (InvITs) (hereinafter referred to as business trusts). Considering the challenging phase of infrastructure in the country today such business trusts are likely to provide a suitable structure for financing/refinancing of infrastructure projects in the country.

The Securities Exchange Board of India (SEBI), through a consultation paper released on December 20, 2013, had proposed to introduce a framework to primarily aid financing/ refinancing of infrastructure projects and enable developers to unlock capital. The infrastructure space, specifically the public-private-partnership (PPP) sector comprising roads and highways, ports, power and transmission projects, has been facing severe liquidity crunch due to the limited funding options, high interest cost and subdued investor interest. To address these issues, SEBI proposed business trusts to act as funding vehicles, and the same has also been proposed by the Finance Minister.

The income-investment model of such REITs and business trusts has the following distinctive elements:

i. the trust would raise capital by way of issue of units (to be listed on a recognized stock exchange) and can also raise debts directly both from resident as well as non-resident investors;
ii. the income bearing assets would be held by the trust by acquiring controlling or other specific interest in an Indian company (SPV) from the sponsor.

It is proposed to amend the Act to put in place a specific taxation regime for providing the way the income in the hands of such trusts is to be taxed and the taxability of the income distributed by such business trusts in the hands of the unit holders of such trusts. Chapter XII FA enumerating the following special provisions relating to business trusts is proposed to be inserted.

The Finance Bill, 2014 proposes to provide a new taxation regime for REIT and Invit by making the following amendments and insertions to the existing provisions of the Act:-

- It is proposed to include the definition of the term business trust vide insertion of clause 13A to Section 2 of the Income Tax Act, 1961.

- Taxability of Income accruing to the trust:-
  Interest received from the SPV
  The income accruing to the trust by way of interest received or receivable by the business trust from a special purpose vehicle shall be exempted vide proposed insertion of Clause 23FC to Section 10 of the Act. Such income is proposed to be accorded a pass through treatment i.e., no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV.

  The proposed explanation to Clause 23FC defines the expression 'special purpose vehicle' to mean "an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration";

However, withholding tax at the rate of 5% in case of payment of interest component of income distributed to non-resident unit holders, at the rate of 10% in respect of payment of interest component of distributed income to a resident unit holder shall be effected by the trust.

Capital Gains arising in the hands of the trust on disposal of assets by the trust:-
The income by way of capital gains on disposal of assets by the trust shall be taxable in the hands of the trust at the applicable rate. However, if such capital gains are distributed, then the component of distributed income attributable to capital gains would be exempt in the hands of the unit holder. Any other income of the trust shall be taxable at the maximum marginal rate.

Taxability of income received by the unit holders:-
The distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause 23FC of section 10 of the Act, is proposed to be exempted vide insertion of Clause 23FD.

It is further proposed that that where any income arising from the transfer of a unit of a business trust has been subjected to STT, the same shall be exempted vide amendments in the existing provisions of Section 10(38) of Act, including such business trusts within its ambit. The short term capital gains arising therefrom would be taxable at the rate of 15%.

Transfer of shares of a SPV in exchange of units of business trust:-
Section 47 of the Act is proposed to be amended to include clause (*xvii*) wherein if any capital asset, being shares of a SPV is transferred to a business trust in exchange of units allotted by that trust to the transferor, the same shall not be regarded as transfer for the purposes of computation of capital gains tax thereon. However, at the time of disposal of such units by the sponsor, capital gains in respect thereof shall be computed. By virtue of the proposed amendments to Section 49 of the Act, the cost of acquisition of such units shall be determined with reference to the cost of acquiring the shares of the SPV, and the holding period in respect thereof shall include the holding period of such units.

Liability of Tax Deduction at Source
TDS shall not be deducted on any interest income received or receivable by the business trust from a Special purpose Vehicle by virtue of amendments sought to be made to the provisions of Section 194A.

A new Section 194LB is proposed to be inserted wherein if any distributed income referred to in section 115UA, being of the nature referred to in clause (*23FC*) of section 10, is payable by a business trust to its unit holder then the person responsible for making the payments shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the following rates:-

a. In case of payments made to a resident: - TDS at the rate of 10%
b. In case of payments made to a non-resident:- TDS at the rate of 5%

Where any income by way of interest is payable by a business trust to a non-resident in respect of monies borrowed by it in foreign currency, from a source outside India at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015, either

a. under a loan agreement; or

b. by way of issue of long-term infrastructure bonds,

then the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

- *Other amendments*

  Every business trust shall be required to furnish a return of income in respect of income or loss accruing to it, pursuant to the proposed amendments to Section 139(1).

Investment based Deduction (Section 35 AD)

- Two new specified businesses are proposed to be introduced
  a. laying and operating a slurry pipeline for the transportation of iron ore;
  b. setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines;

- Such specified business should have **commenced** on or after 1st day of April, 2014. It is to be kept in mind that expenditure may have been incurred before the commencement of the business can also be claimed as deduction provided other conditions are satisfied. Deduction available shall be 100% only and no weighted deduction has been prescribed.

- It has been proposed that where the amount has been claimed as deduction under Section 35AD then no deduction under Chapter VI-A or Section 10AA in respect of same or any other assessment year. Similar amendments are also proposed to Section 10AA to provide that that no deduction under section 35AD shall be available in any assessment year to a specified business which has claimed and availed of deduction under section 10AA in the same or any other assessment year.
- New provision is proposed to be introduced to ensure that assesses claiming investment based deductions do not use such assets for purposes other than specified businesses for a period of 8 years in which the asset is acquired or constructed. The language has been worded in a manner that the proposition appears to be retrospective and needs clarification.
- The proposed sub-section (7A) limits the use of asset for specified business and is silent on the aspect whether the same should be used for the specified business for which it is acquired. In absence of any such provisions a view can be taken that there would be no violation of the proposed provisions in case assets acquired for one specified business are used for any other specified business.
- This proposition is not to apply to a Company that has **become sick during the period** of eight years. Therefore the proposed amendment shall apply in relation to a Sick Company which makes investment in any specified business after it becomes sick.
- A unique mechanism has been provided for computing the taxable amount in case of violation of the proposed provisions of sub-section (7A). It has been proposed that in case of violation of condition relating to use, the entire amount claimed as deduction u/s 35AD as

reduced by amount that would be eligible as depreciation u/s 32 (including additional depreciation) will be taxed as business income in the previous year in which the asset is so used.

Example:

Deduction claimed under section 35AD on a capital asset	:	Rs. 100
Depreciation eligible on such asset under section 32	:	Rs. 15
Profit chargeable to tax in accordance with the proposed sub-section (7B) of section 35AD	:	Rs. 85

- Proposed Section 35AD(7B) creates anomaly in certain situations. Where an asset is used for specified business u/s 35AD and in subsequent years due to violation of the proposed sub-section (7A) i.e. used for other than specified business, the amount claimed under Section 35AD will be taxed as stated hereinabove. Now, if such asset is disposed of, in view of provisions of Section 28(vii), which provides for inclusion in business income of any sum on account of transfer of capital asset on which deduction has been allowed under section 35AD (other than land, goodwill or financial instrument), the entire sale consideration will again be taxed as business income. This unintended anomaly results in double taxation and needs to be addressed.
- Explanation 13 to sub-section (1) of Section 43 provides that in case of an specified asset on which deduction has been allowed u/s 35AD, actual cost of the same shall be taken at NIL value. However, in a case of an asset where due to proposed sub-section (7A), if an asset is used for other than specified business, the amount as specified hereinabove is taxed by virtue of proposed Section 35AD(7B) as business income. No specific amendment is proposed in such a scenario to include the said amount as part of block of assets of non-specified business and determination of its cost. There is no consequential provision in Section 43(1) for determining cost in such situation. This anomaly requires to be addressed.

The aforesaid amendment is applicable from the AY 2015-16.

Investment Allowance to Manufacturing Companies (Section 32AC):

- The investment allowance was introduced by the Finance Act 2013 to provide impetus to manufacturing sector making investment in plant and machinery exceeding Rs. 100 crores during the period from 1st April 2013 to 31st March 2015. (Section 32AC(1))
- The Finance Bill (No. 2) 2014 now proposes to introduce Section 32AC(1A) to provide similar investment linked deduction in cases of investment in plant and machinery exceeding Rs. 25 crores.
- Period covered for claiming benefits is also proposed to be extended: AY 2015-16, AY 2016-17 and AY 2017-18.
- In order to claim allowance under the proposed amendment the eligible plant and machinery should be <u>acquired **and** installed</u> in the previous year relevant to eligible assessment years.
- Allowance will be available on a year to year basis i.e. where the investment in **new plant and machinery** exceeds the threshold of Rs. 25 crores the assessee will be eligible to claim allowance @15% of such amount in the respective assessment year.
- Eligible Assessee: Company (including foreign company as the proposed sections do not use the terms Indian Company) engaged in the business of manufacture or production of any

article. However, it is quite surprising that LLP has still not been included as an eligible assessee.

(Rs. in crore)

Sl. No.	Particulars	P.Y. 2013-14	P.Y. 2014-15	P.Y. 2015-16	P.Y. 2016-17	Remarks
1.	Amount of investment	20	90	-	-	Under the existing section 32AC(1)
	Deduction allowable	Nil	16.5	-	-	
2.	Amount of investment	30	40	-	-	Under the proposed section 32AC(1A)
	Deduction allowable	Nil	6	-	-	
3.	Amount of investment	150	10	-	-	Under the existing section 32AC(1)
	Deduction allowable	22.5	1.5	-	-	
4.	Amount of investment	60	20	-	-	No deduction either u/s 32AC(1) or 32AC(1A)
	Deduction allowable	Nil	Nil	-	-	
5.	Amount of investment	30	30	30	40	Under the proposed section 32AC(1A)
	Deduction allowable	Nil	4.5	4.5	6	
6.	Amount of investment	150	20	70	20	Deduction both u/s 32AC(1) & 32AC(1A)
	Deduction allowable	22.5	3	10.5	Nil	

- New Plant and Machinery excludes:
  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;
  6) Any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of deprecation or otherwise) in computing the income chargeable under the head "profits and gains of business or profession' of any previous year.

- Lock in period for such new plant and machinery: 5 years from the date of installation.
  In case such asset is sold or otherwise transferred, except in connection with the amalgamation or demerger, before completion of the said five years, the amount of deduction allowed in respect of such new asset shall be deemed to be business income of the assessee in the previous year in the year of sale/ transfer. The same is in addition to taxability of gains, arising on account of transfer of such new asset.

- **The aforesaid amendment is applicable from the AY 2015-16.**

Extension of sunset date for power sector assessees

In case of assesses engaged in specified power sector activities eligible for profit linked deductions under Section 80-IA, terminal date for commencement of eligible activity is proposed to be revised from 31st March, 2014 to 31ST March, 2017.

This is a welcome change and signals movement towards a stable tax regime. It was observed that in the earlier Finance Acts, the sunset date was revised every year.

3. Relief and Welfare Measures

Raising the Limit of Deduction under Section 80C

Under the existing provisions of section 80C of the Act, an individual or a Hindu undivided family is allowed a deduction from income of an amount not exceeding one lakh rupees with respect to sums paid or deposited in the previous year, in certain specified instruments.

In order to encourage household savings, it is proposed to raise the limit of deduction allowed under section 80C from the existing Rs. 1 lakh to Rs.1.5 lakh. In view of the same, consequential amendments are proposed in sections 80CCE and 80CCD of the Act.

The aforesaid amendment is applicable from the AY 2015-16.

Deduction from income from house property

It is proposed to amend the second proviso to clause (b) of said section 24, so as to increase the limit of deduction on account of interest in respect of self-occupied house property from Rs 1,50,000 to Rs 2,00,000.

The aforesaid amendment is applicable from the AY 2015-16.

Concessional rate of tax on overseas borrowing

The existing provisions of section 194LC of the Act provide for lower withholding tax rate of 5 percent on interest paid by an Indian company to non-residents on monies borrowed by it in foreign currency from a source outside India under a loan agreement or through issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 subject to certain conditions.

In order to further incentivise low cost long-term foreign borrowings by Indian companies, it is proposed to amend section 194LC to extend the benefit of this concessional rate of withholding tax to borrowings by way of issue of any long-term bond, and not limited to a long term infrastructure bond.

It is further proposed to extend by two years the period of borrowing for which the said benefit shall be available.

Section 206AA of the Act provides for levy of higher rate of withholding tax in case the recipient of income does not provide permanent account number to the deductor. An exception from applicability of section 206AA in respect of payment of interest on long-term infrastructure bonds eligible for benefit under section 194LC is currently provided in sub-section (7) of this section.

Consequential amendment is also proposed in section 206AA to ensure that this benefit of exemption is extended to payment of interest on any long-term bond referred to in section 194LC.

The aforesaid amendment is applicable from 1st October, 2014.

Reduction in tax rate on certain dividends received from foreign companies

Benefit under Section 115BBD of the Act for taxation of gross dividends received by an Indian company from a specified foreign company at the concessional rate of 15 percent is extended to perpetuity. A specified foreign company means a foreign company in which the Indian company holds 26% or more in nominal value of equity share capital.

The above amendment shall increase overseas investment as well as encourage repatriation of income from abroad.

The aforesaid amendment is applicable from the AY 2015-16.

Roll-Back provisions in Advance Pricing Agreement Scheme (Section 92CC)

The existing provisions of section 92CC empowers the Board to enter into an advance pricing agreement, with the approval of the Central Government, with any person for determining arm's length price or specifying the manner in which arm's length price is to be determined in relation to an international transaction which is to be entered into by such person. Thus, the existing advance pricing provisions are prospective in nature.

Accordingly, it is proposed to insert a new sub-section *9A* in section 92CC to provide that an advance pricing agreement may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to an international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous year for which the agreement applies in case of future transactions. It is further provided that where such agreement provides for determination in respect of past transactions, the arm's length price of such transactions shall be determined in accordance with the agreement.

This is a very welcome amendment and go a long way in reducing transfer pricing litigations.

This amendment is sought to be effective from 1st October, 2014.

Scheme characterisation of income in case of foreign institutional investors

The foreign institutional investors generally face a difficulty in characterisation of their income arising from transaction in securities (whether it is capital gain or business income). Also, the fund manager managing the funds of such investor remains outside India under the apprehension that their presence in India may have adverse tax consequences. It is proposed to provide tax certainty to such investor by clarifying that investment made in security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be treated as capital asset and the consequential gain arising thereon would be Capital Gain only.

The aforesaid amendment is applicable from the AY 2015-16.

4. Widening of Tax Base and Anti-tax avoidance measures

Alternate Minimum Tax

Under the Income Tax Act, profit linked deductions (deductions claimed under Part C of Chapter VI-A and deductions claimed under section 10AA) had been subjected to alternate minimum tax (AMT).

The amendment has been proposed to include investment linked deductions u/s 35AD in order to widen the tax base. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

- Continuing with the above example:

Example:

Total income		: Rs. 60
Deduction claimed under Chapter VI-A		: Rs. 40
Deduction claimed under section 35AD on a capital asset		: Rs. 100

<u>Computation of adjusted total income for the purposes of AMT</u>

Total income		: Rs. 60
Addition:		
(i) deduction under Chapter VI-A (on non-specified business)		: Rs. 40
(ii) deduction under section 35AD (on specified business)	Rs. 100	
Less: depreciation under section 32	Rs. 15	: Rs. 85
Adjusted total income under section 115JC		: Rs. 185

The above amendment does not take care of the situation where the amount claimed as deduction u/s 35AD is sought to be included as business income by virtue of provisions contained in proposed Section 35AD(7A), (7B) relating to use of asset for other than specified business and Section 28(vii) in case of sale/ transfer of such assets. No specific exclusion for such amounts has been provided in Section 115JC in computing Adjusted Total Income in the year of sale/ transfer/ change of use. This anomaly requires to be addressed.

Note: The aforesaid amendment is applicable from the AY 2015-16.

Taxability of advance money received for transfer of capital asset

It has been proposed to tax any sum of money received as an advance or otherwise, in course of negotiations in relation to a capital asset if such sum has been forfeited and the negotiations do not result in transfer, under "Income from Other Sources" under Section 56(2)(ix). Consequential amendment has been introduced in Section 2(24)(xvii) to include the same within the definition of income.

The above amendment proposes to nullify the judgement of various tribunals/ courts, which have held that advance forfeited in excess of the cost of acquisition of the capital asset is a capital receipt.

Further, amendments have also been proposed to Section 51 providing that advance money received by the assessee shall not be reduced from the cost of acquisition or written down value or fair market value of an asset to avoid double taxation of such advance money.

The aforesaid amendment is applicable from the AY 2015-16.

TDS from non-exempt payment made under life insurance policy

Any person responsible for making payment to a resident any sum (including bonus) under life insurance policy in excess of Rs. 100,000 in aggregate during the financial year and which is not exempt under Section 10(10D) shall be liable to deduct tax @ 2% on such payments.

The aforesaid amendment is applicable from 1st October, 2014.

5. Rationalisation Measures

Rationalisation of taxation regime for charitable trusts and institutions

The Finance Bill proposes to provide that no deduction shall be allowed in respect of depreciation in respect of an asset which has been claimed as an application of income in the earlier years.

This has the effect of overruling the judgements of the Bombay, Punjab and Haryana, Madras, Madhya Pradesh, Gujarat, Karnataka and Delhi High Courts which have taken the view that depreciation would be allowable as a deduction even in such cases where the capital expenditure had been allowed as an application of income for charitable purposes, and falling in line with the contrary view taken by solitary Kerala High Court holding that such depreciation should be added back to the income of the trust as disclosed in its books of account. This puts an end to the regime of double deduction benefit to such trusts/ institutions.

Further it has been categorically proposed that Sections 11 to 13 of the Act are special provisions governing taxation of charitable institutions and that exemptions contained in Section 10 (except agricultural income) cannot be claimed by such trusts and institutions. Accordingly, blanket exemptions under Section 10 inter alia in respect of dividends and long-term capital gains will no longer be available to such trusts/ institutions unless the same is applied or deemed to be applied for charitable purposes.

Similar analogy has been proposed to be provided for institutions approved/ notified under Section 10(23C).

Clarification of "substantially financed" for Section 10(23C)

Under the sub-clauses (iiiab) and (iiiac) to Section 10(23C) educational and medical institutions which are substantially funded by government are totally exempted. The Finance Bill 2014 has proposed to define the term "substantially funded" which shall be such percentage as may be notified.

Cancellation of registration of the trust or institution in certain cases

The powers of Commissioner to cancel registration are severely restricted under the existing provisions of section 12AA and confined to the following cases:

(a) the activities of a trust or institution are not genuine, or;

(b) the activities are not being carried out in accordance with the objects of the trust or institution.

Under section 10(23C), which also allows similar benefits of exemption to a fund, Institution, University etc, the power of withdrawal of approval is vested with the prescribed authority if such authority is satisfied that such entity has not applied income or made investment in accordance with provisions of section 10(23C) or the activities of such entity are not genuine or are not being carried out in accordance with all or any of the conditions subject to which it was approved.

Therefore, in order to rationalise the provisions relating to cancellation of registration of a trust, it is proposed to amend section 12AA of the Act to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

(i) its income does not enure for the benefit of general public;

(ii) it is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);

(iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees etc.; or

(iv) its funds are invested in prohibited modes,

then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

The proposed amendment is bound to create much litigations and sleepless nights to trusts/ NGOs. Regulatory and assessment powers of CIT have been considerably enhanced. Further certain conditions specified therein overlap with the provisions of Section 13(1) falling under the jurisdiction of the Assessing Officer. The matters under section 13(1) are assessment issues and the registration under section 12AA is given on fundamental and constitutional issues such as genuineness and the charitable or religious purpose. Therefore, bringing CIT to act upon an assessment issue which is already subject to punishment may create confusion, needless litigations and arbitrariness in exercise of power.

This amendment will take effect from 1st October, 2014.

Taxation of anonymous donations u/s 115BBC

The existing provisions of section 115BBC of the Act provide for levy of tax at the rate of 30 per cent. in case of certain assessees, being university, hospital, charitable organisation, etc. on the amount of aggregate anonymous donations exceeding five per cent of the total donations received by the assessee or one lakh rupees, whichever is higher.

Due to the mechanism of aggregation of tax provided in section 115BBC, while tax at the rate of 30 per cent. is levied on the amount of anonymous donations exceeding the threshold, the remaining tax is chargeable on total income after reducing the full amount of anonymous donations. The proper way of computation is to reduce the income by the amount which has been taxed at the rate of 30 per cent.

It is proposed that while computing the taxable income, instead of excluding entire amount of anonymous donation, only the amount of anonymous donations in excess of 5% of total income or Rs.1.00 lac whichever is higher shall be deducted.

Accordingly the income tax payable shall be the aggregate of the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of five per cent of the total donations received by the assessee or one lakh rupees, whichever is higher, and the amount of income-tax with which the assessee would have been chargeable had his total income

been reduced by the aggregate of the anonymous donations which is in excess of the five per cent of the total donations received by the assessee or one lakh rupees, as the case may be.

This amendment will take effect from the assessment year 2015-16.

Definition of "International Transaction" (Amendment to Section 92B)

Sub section 2 of Section 92B extends the scope of the definition of the term International Transaction by deeming a transaction between an enterprise and an unrelated third party as a transaction between two associated enterprises subject to the condition that there exists a prior agreement in relation to the relevant transaction between the third party and associated enterprise or the terms of the relevant transaction are determined in substance between such third party and the associated enterprise.

The Finance Minister has sought to amend the said sub-section (2) so as to provide that the relevant transaction shall be deemed to be an international transaction, where the enterprise or the associated enterprise or both of them are non-residents, **irrespective of whether such other person is a non-resident or not.**

Thus, the amendment proposes to cover even transactions between residents subject to the condition that

- the same is pursuant to an agreement entered into between the non-resident associated enterprise and the resident other person or vice versa.
- terms of the relevant transaction are determined in substance between such non-resident associated enterprise and the resident other person or vice versa.

The above proposed amendment seeks to unsettle the principles laid down in Swarnandhra IJMII Integrated Township Development Co. Pvt. Ltd. vs. DCIT (Hyd ITAT).

The above amendment is proposed to be made effective from AY 2015-16.

Levy of penalty under section 271G by transfer pricing officers

The existing provisions of section 271G of the Act provide that if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such document or information as required by sub-section (3) of section 92D, then such person shall be liable to a penalty which may be levied by the **Assessing Officer or the Commissioner (Appeals)**. It is proposed to amend section 271G of the Act to **include TPO**, as referred to in Section 92CA, as an authority competent to levy the penalty under section 271G **in addition to** the Assessing Officer and the Commissioner (Appeals).

The amendment will take effect from 1st October, 2014.

Retrospective tax exemptions to trusts

To remove hardship in genuine cases, it is proposed to amend Section 12A of the Act to provide that where a trust or institution has been granted registration under Section 12AA of the Act, beneficial provisions of Sections 11 and 12 shall be available in respect of any assessment proceedings for an earlier assessment year which is pending before AO on the date of registration, if the objects in the

relevant assessment year are the same as those on the basis of which registration is granted. This will provide relief to genuine NGOs who have delayed in seeking registration.

The benefit shall not be available in case the registration was refused or cancelled.

The proposal restores the provisions back to 2007. Prior to 1-6-2007 the CIT had the power to condone the delay in filing of an application for registration under section 12AA. The Finance Act, 2007 withdrew the power of CIT to condone the delay if the application was filed after the said limitation period. As a result, the exemptions were available for the assessment year immediately following the financial year in which the application was made.

Corporate Social Responsibility (CSR) [Section 37(1)]

Every Company (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy under Section 135 of the Companies Act, 2013.

Under the existing provisions of the Income Tax Act, expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing business income. CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing business income of a company, amount spent on CSR cannot be allowed as deduction. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold limit. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government.

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. *Therefore, in order to provide certainty on this issue, it is clarified that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37.*

However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

The Finance Minister, however, also proposed in his speech to add the inclusion of slum development in the list of Corporate Social Responsibility (CSR) activities to encourage the private sector to contribute more towards this activity.

It is to be noted that no consequential amendments are proposed in Section 80G of the Act relating to deduction of amounts contributed to Trusts created for CSR activities.

Disallowance of expenditure for non-deduction of tax [Section 40(a)]

- Payments to non-residents

  The extant provisions as contained in Section 40(a)(i) provide that payment to a non-resident on which withholding tax is applicable shall be allowed if the TDS is deposited during the previous year, or in the subsequent year within the time specified under Section 200(1) i.e. within the due date for the deposit of TDS.

  It is now proposed that such payment shall be allowed even if such TDS is paid till the time of filing of return u/s 139(1) of the Act. The provision is now proposed to be brought in line with TDS on payments to residents under Section 40(a)(ia).

- Provision of Section 40(a)(ia) extended to all kinds of expenditure

  Existing provisions of section 40(a)(ia) of the Act covers payments such as interest, commission, brokerage, rent, royalty fee for technical services and contract payment made to a resident. However, Chapter XVII-B has a wider scope and includes other payments (such as salaries and directors fee). As a result amounts falling outside the purview of Section 40(a)(ia) are claimed (for computing business income) by the assesses even where tax has not been deducted/ paid. Therefore, it is proposed that disallowance under Section 40(a)(ia) shall extend to all **expenditure** on which tax is deductible under Chapter XVII-B.

  The Explanation to Section 40(a)(ia) defining terms such as commission or brokerage, professional services, work, rent is still retained in the law but without any relevance.

- Disallowance under Section 40(a)(ia) in case of payments to residents curtailed down to 30%

  Under the provisions of Section 40(a)(ia), no deduction in respect of payments specified therein was allowed during the previous year if the tax on such payments was not deducted or after deduction was not paid before the due date of filing return of income under Section 139(1). A welcome change is proposed in the Finance Bill wherein the disallowance is restricted only to 30% of expenditure in case of non-deduction/ non-payment of TDS. It is to be noted that this benefit is extended only in case of payments to residents.

  A consequential amendment is proposed to allow deduction to the assessee in respect of the said 30% expenditure in the subsequent year in which the TDS is paid.

  However, this proposed amendment, as is worded now, even restricts 100% disallowances suffered upto AY 2014-15 to only 30% of such expenditure in the year of payment of TDS. Therefore, a suitable proviso needs to be inserted to clarify that the disallowances made upto AY 2014-15 shall be allowed in full in the year of payment of TDS.

The proposed amendments however does not relieve the assessee from penal provisions under chapter XVII-B and the assessee is advised to comply with TDS provisions religiously.

- **All the aforesaid amendments are applicable from the AY 2015-16.**

Procedural amendments to ensure compliance with TDS provisions

The Bill seeks to amend section 200 of the Income-tax Act in order to bring clarity relating to filing of correction statement of TDS and provides that a correction statement for rectification of any mistake or to add, delete or update the information may be furnished in the statement in the specified form and manner.

Section 200A of the Income-tax Act is proposed to be amended to incorporate processes relating to filing of corrected statements of tax deducted at source.

Currently, no orders could be passed at any time after the expiry of two years from the end of the financial year in a case where the statement referred to in section 200 has been filed. The amendment proposes to omit this time limit.

Further in cases the statement referred to in section 200 has not been filed, no orders could be passed at any time after the expiry of six years from the end of the financial year in which payment is made or credit is given. The amendment proposes to increase this time limit by a further period of one year.

The existing provisions contained in sub-section (1) of section 271H provide the circumstances in which the person shall be liable to pay penalty, but do not specify the authority which would be competent to levy the penalty under the said section. It is proposed that section 271H(1) will be amended so as to provide that the penalty shall be levied by the Assessing Officer.

Business of plying, leasing or hiring goods carriages [Section 44AE]

Considering erosion in the real values of presumptive income due to inflation and in order to simplify the provisions with respective to assesses engaged in the business of plying, hiring or leasing goods carriages, all types of goods carriage are proposed to be taxed at a uniform presumptive income of Rs. 7,500 for every month or part of the month of ownership (as against Rs. 5000/ Rs. 4000 per month under the existing provisions). The classification between Heavy goods vehicle (HGV) and other than HGV is proposed to be dispensed with.

The aforesaid amendment is applicable from the AY 2015-16.

Tax Accounting Standards [Section 145]

With the proposed amendment, the Government aims to clarify that the standards notified u/s 145(2) are "Income Computation and Disclosure Standards" and should not be adopted **for maintenance of books of accounts**. It is proposed to provide that the Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income.

It is also proposed to amend sub-section (3) of the aforesaid section to provide that where the Assessing Officer is not satisfied with the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1), has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

The aforesaid amendment is applicable from the AY 2015-16.

Extension of income tax exemption to SUUTI

The mandate of Special Undertaking of Unit Trust of India (SUUTI) is to liquidate Government liabilities on account of the erstwhile UTI. Exemption from tax to SUUTI on any income or profits or gains derived has been extended from the 31st day of March, 2014, to the 31st day of March, 2019 and with effect from the 1st day of April, 2014.

Transfer of Government security from one non-resident to another

The existing provision contained in section 47 provides that certain transactions shall not be considered as transfer for the purpose of charging capital gains.

It is proposed to insert a new clause (viib) in the section 47 to provide that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident shall not be considered as transfer for the purpose of charging capital gains. "Government Security" shall have the meaning assigned to it in clause (b) of section 2 of Securities Contract (Regulation) Act, 1956.

The aforesaid amendment is applicable from the AY 2015-16.

Speculative transactions – Section 43(5)

Section 43(5) defines the term speculative transaction. There are various exclusions in the proviso to this section, which excludes certain category of transactions from the ambit of being speculative transactions.

Finance Act, 2013 levied commodities transaction tax on commodity derivatives in respect of commodities other than agricultural commodities, which led to the inclusion of clause (e) in the said proviso. The proviso contained that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association shall not be considered as speculative transaction. The department vide Circular No. 3 dated 24-01-2014 clarified the provisions of Finance Act, 2013 and stated that the eligible transaction shall include only those transactions in commodity derivatives which are liable to commodities transaction tax.

In view of the above circular, it has now been proposed to amend clause (e) of the proviso to the said clause (5) so as to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association and chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be considered to be a speculative transaction.

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

Capital gains arising from transfer of an asset by way of compulsory acquisition

It has been proposed that compensation received in pursuance of an interim order of the court or tribunal or other authority shall be deemed to be income chargeable in the previous year in which final order is made.

The amendment will take effect from AY 2015-16.

Limitations imposed on claiming exemption from Capital Gain (Sec. 54 and 54F)

The extant provisions of section 54 and section 54F of the Income Tax Act, 1961 provide forexemption of capital gain arising from the transfer of a long term capital asset specified therein onfulfilling certain conditions, if the consideration/ capital gain is invested in a residential house.

The provision is proposed to be amended to clarify that exemption u/s 54 and u/s 54F shall be available in case investment is made in "**one** residential house **situated in India**" within the prescribed time limits, emphasizing that the exemption is available with respect to <u>one residential house and that too it must be located in India</u>. Such a move was much necessitated in view of conflicting judgments rendered in this regard by various Tribunals.

In the case Smt. Leena J. Shah v. ACIT, 6 SOT 721 (Ahd.) the honourable Tribunal concurred with the view that the legislative intent behind introduction of section 54F was to be gathered from the Notes, Memorandum and the Circular which in the Tribunal's view provided that the investment was to be in the residential house located in India. The Tribunal found appropriate that a residential house purchased/constructed must be in India and not outside India.

Whereas in case of Prema P. Shah v. ITO, 100 ITD 60 (Mum.) the Tribunal on consideration of the submissions was of the considered view that the assessee was entitled to the benefit of exemption from taxation under the Act which did not exclude the right of the assessee to claim the property purchased in a foreign country. The Tribunal held that if all other conditions laid down in the section were satisfied, merely because the property acquired was located in a foreign country, the exemption claimed would not be denied."

There are other such cases where conflicting judgments have been rendered and there was a much felt need to resolve the standoff.

The aforesaid amendment is applicable from the AY 2015-16.

Capital gains exemption on investment in specified bonds

The proviso to the sub-section (1) of Section 54EC provides that the investment made in the long-term specified asset **during any financial year** shall not exceed fifty lakh rupees. It has generally been observed that in case of capital gains arising after September were invested in specified assets in a manner that the investment was split into two years thereby claiming a relief of Rs. 1 crore instead of Rs. 50 lakh.

In order to clarify the legislative intent it has been proposed that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred **and in the subsequent financial year does not exceed fifty lakh rupees.**

The above amendment negates the judgement of various tribunals beneficially ruling in the favour of the assessee.

The amendment will take effect from AY 2015-16.

Loss in Speculation Business – Section 73

Explanation to section 73 provides that in case of a company deriving its income mainly under the head "Profits and gains of business or profession" (other than a company whose principal business is business of banking or granting of loans and advances), and where any part of its business consists of purchase or sale of shares, such business shall be deemed to be speculation business for the purpose of this section.

It is proposed to amend the aforesaid Explanation so as to provide that the provision of the Explanation shall also not be applicable to a company the principal business of which is the business of trading in shares.

This will go a long way in providing relief to stock broking and pure share dealing companies. However, the term principal business has not been defined and remains a subject of judicial controversy.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

Power of survey

An income-tax authority acting under section 133A has the powers as conferred upon it under sub-section (1) of section 131. With a view to align the time period and the authority for approval beyond the specified time period it is proposed to provide that an income-tax authority under section 133A shall not retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director therefor, as the case may be.

It is also proposed to amend section 133A to extend the powers of survey to an income-tax authority for the purpose of verifying that tax has been deducted or collected at source. The survey may be made at office or place of business, where books of accounts or documents are kept.

It is also proposed to provide that an income-tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, in case of survey for verification of TDS/ TCS, the power to impound and retain in custody any books of account or documents inspected is not available. Further, the authorities shall not be allowed to make an inventory of any cash, stock or other valuables.

These amendments will take effect from 1st October, 2014.

Mutual Funds, Securitisation Trusts and Venture Capital Companies or Venture Capital Funds to file return of income

It is proposed to amend sub-section (4C) of section 139 so as to provide that Mutual Fund referred to in clause (23D) of section 10, securitization trust referred to in clause (23DA) of section 10 and Venture Capital Company or Venture Capital Fund referred to in clause (23FB) of section 10 shall, if the total income in respect of which such fund, trust or company is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, compulsorily furnish a return of such income of the said previous year.

Consequently, in the case of the Mutual Funds and securitisation trusts referred to above, the requirement of filing of statements before an income-tax authority is proposed to be dispensed with by omitting sub-section (3A) of section 115R and sub-section (3) of section 115TA.

These amendments will take effect from 1st April, 2015.

Inquiry by prescribed income-tax authority

With a view to enable prescribed income-tax authority to verify the information in its possession relating to any person, it is proposed to insert a new section 133C in the Act so as to provide that for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him, on or before a date to be therein specified, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under this Act.

This amendment will take effect from 1st October, 2014.

Estimate of value of assets by Valuation Officer

It is proposed to substitute the said section 142A so as to provide that the Assessing Officer may, for the purposes of assessment or reassessment, require the assistance of a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him. The Assessing Officer may make a reference whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Rejection of books of account shall not be a pre-requisite for making reference to Valuation Officer.

Further, the Valuation Officer, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957.

Also, a time limit of six months is proposed to be given to the Valuation Officer to send a copy of his estimate to the Assessing Officer and the assessee.

The Assessing Officer on receipt of the report from the Valuation Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Further, it is also proposed that the intervening time period shall be excluded from the time limit provided under Sections 153 and 153B for completion of assessment or reassessment.

These amendments will take effect from 1st October, 2014.

Interest u/s 220

It is proposed to insert a new sub-section in section 220 so as to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

It is further proposed to provide that where as a result of an order under sections 154, 155, 250, 254, 260, 262, 263 or 264, the amount on which interest was payable under this section has been increased, the assessee shall be liable to pay interest on the amount payable as a result of such order, from the day immediately following the end of the period mentioned in the first notice of demand under Section 156 and ending with the day on which the amount is paid.

The provision to levy interest from the date of original demand in cases the assessee does not succeed before the final appellate authority will result in a significant outflow in the hands of the assessee.

These amendments will take effect from the 1st day of October, 2014.

Mode of Acceptance or Repayment of Loans and Deposits [Section 269SS & 269T]

Sections 269SS and 269T are proposed to be amended to allow acceptance/ repayment of loan and/ or deposit by use of electronic clearing system through a bank account in addition to account payee cheque or account payee bank draft. The monetary limit of Rs. 20,000, however, remains same.

These amendments will take effect from assessment year 2015-16.

Failure to produce accounts and documents – Section 276D

The provisions of section 276D provide for penal consequences for wilful failure to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 or wilful failure to comply with a direction issued to him under sub-section (2A) of section 142, being prescribed fine or imprisonment or both.

It is now proposed to amend the provisions to provide punishment by way of both rigorous imprisonment for a term which may extend to one year and with fine.

This amendment will take effect from 1st October, 2014.

Provisional Attachment under Section 281B

The existing provisions of sub-section (1) section 281B of the Act provide that the Assessing Officer, during the pendency of any proceeding for assessment or reassessment, in order to protect the interest of revenue may, with the previous approval of the Chief Commissioner of Commissioner, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. Sub-section (2) of the said section provides that the provisional attachment shall cease to have effect after the expiry of six months provided that the Chief Commissioner or Commissioner may extend the period upto a total period of two years.

It is proposed to amend the proviso to sub-section (2) so as to provide that the Chief Commissioner, Commissioner, Director General or Director may extend the period of provisional attachment so that the total period of extension does not exceed two years or upto sixty days after the date of assessment or reassessment, whichever is later.

This amendment will take effect from 1st October, 2014.

Obligation to Furnish Statement of Information

The existing provisions of section 285BA of the Act provide for filing of an annual information return by specified persons in respect of specified financial transactions which are registered or recorded by them and which are relevant and required for the purposes of the Act to the prescribed income-tax authority.

It is proposed to amend the said section so as to also provide for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority.

Further procedural amendments are proposed to be introduced for streamlining the procedure and ensure correctness of data.

It is also proposed that the Central Government may, by rules, specify,- (a) the persons referred to in sub-section (1) of section 285BA to be registered with the prescribed income-tax authority; (b) the nature of information and the manner in which such information shall be maintained by the persons referred to in (a) above; and (c) the due diligence to be carried out by the persons referred in (a) for the purpose of identification of any reportable account referred to in sub-section (1) of section 285BA.

The proposed amendments are very significant and the intention of the Government appears to unearth black money and check money laundering activities through information reported in the said statement. A notable inclusion in list of persons required to furnish the statement is "prescribed reporting financial institution", which suggest inclusion of overseas banks/ financial institutions in the lines of FATCA in USA.

These amendments will take effect from 1st April, 2015.

Assessment of Income of a person other than the person who has been searched

Section 153C of the Act relates to assessment of income of any other person.

The existing provisions contained in sub-section (1) of the said section 153C provide that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A (in respect of whom search is initiated), then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

It is proposed to amend section 153C of the Act to provide that the Assessing Officer having jurisdiction over such other person shall proceed against each such other person if he is satisfied

that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A (i.e. upto preceding six assessment years).

The amendment will take effect from 1st October, 2014.

Cont. to Pension Scheme of Central Government [Section 80CCD]

Under the existing provisions contained in sub-section (1) of section 80CCD of the Act, if an individual, employed by the Central Government or any other employer on or after 1st January, 2004, has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding 10% of his salary is allowed. Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under sub-section (2) of section 80CCD, to the extent it does not exceed 10% of the salary of the individual in the previous year.

Considering the fact that for employees in the private sector, the date of joining the service is not relevant for joining the New Pension Scheme (NPS), it is proposed to amend the provisions of section 80CCD to provide that the condition of the date of joining the service on or after 1.1.2004 is not applicable to them for the purposes of deduction under the said section.

This amendment will take effect from assessment year 2015-16.

Credit of Alternate Minimum Tax

The present provisions of sub-section (2) of section 115JEE provide that the AMT provisions shall not be applicable if the adjusted total income does not exceed twenty lakh rupees. This has created difficulty in claim of credit of alternate minimum tax (AMT) under section 115JD in an assessment year where the income is not more than twenty lakh rupees or there is no claim of any deduction under section 10AA or Chapter VI-A.

With a view to enable an assessee who has paid alternate minimum tax in any earlier previous year to claim credit of the same, in any subsequent year, it is proposed to amend this section so as to provide that the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD, even if the assessee does not claim any deduction under section 10AA or Section 35AD or Chapter VI-A or where adjusted total income is not more than Rs. 20 lakhs.

This amendment will take effect from assessment year 2015-16.

6. Proposed income tax slabs & rates for Assessment Year 2015-16

1. INDIVIDUAL RESIDENT AGED BELOW 60 YEARS (I.E. BORN ON OR AFTER 1ST APRIL 1955) OR ANY NRI / HUF / AOP / BOI / AJP*

	INCOME SLABS	TAX RATES
i.	Where the total income does not exceed Rs.	NIL

	2,50,000/-.	
ii.	Where the total income exceeds Rs. 2,50,000/- but does not exceed Rs. 5,00,000/-.	10% of amount by which the total income exceeds Rs. 2,50,000/-. **Less**:** Tax Credit - 10% of taxable income upto a maximum of Rs. 2000/-.
iii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 25,000/- + 20% of the amount by which the total income exceeds Rs. 5,00,000/-.
iv.	Where the total income exceeds Rs. 10,00,000/-.	Rs. 125,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-.

** Applicable in case of Resident Individuals only.

Surcharge: 10% of the Income Tax, where total taxable income is more than Rs. 1 crore. (Marginal Relief in Surcharge, if applicable)

Education Cess: 3% of the total of Income Tax and Surcharge.

*** Abbreviations used:**
NRI - Non Resident Individual; HUF - Hindu Undivided Family; AOP - Association of Persons; BOI - Body of Individuals; AJP - Artificial Judicial Person

2. INDIVIDUAL RESIDENT WHO IS OF THE AGE OF 60 YEARS OR MORE BUT BELOW THE AGE OF 80 YEARS AT ANY TIME DURING THE PREVIOUS YEAR (I.E. BORN ON OR AFTER 1ST APRIL 1934 BUT BEFORE 1ST APRIL 1954)

	INCOME SLABS	TAX RATES
i.	Where the total income does not exceed Rs. 3,00,000/-	NIL
ii.	Where the total income exceeds Rs. 3,00,000/- but does not exceed Rs. 5,00,000/-.	10% of amount by which the total income exceeds Rs. 3,00,000/-. **Less**:** Tax Credit - 10% of taxable income upto a maximum of Rs. 2,000/-.
iii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	Rs. 20,000/- + 20% of the amount by which the total income exceeds Rs. 5,00,000/-.
iv.	Where the total income exceeds Rs. 10,00,000/-.	Rs. 120,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-.

** Applicable in case of Resident Individuals only.

Surcharge: 10% of the Income Tax, where total taxable income is more than Rs. 1 crore. (Marginal Relief in Surcharge, if applicable)

Education Cess: 3% of the total of Income Tax and Surcharge.

3. IN INDIVIDUAL RESIDENT WHO IS OF THE AGE OF 80 YEARS OR MORE AT ANY TIME DURING THE PREVIOUS YEAR (I.E. BORN BEFORE 1ST APRIL 1934)

	INCOME SLABS	TAX RATES
i.	Where the total income does not exceed Rs. 5,00,000/-	NIL
ii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-.	20% of the amount by which the total income exceeds Rs. 5,00,000/-.
iii.	Where the total income exceeds Rs. 10,00,000/-.	Rs. 100,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-.

Surcharge: 10% of the Income Tax, where total taxable income is more than Rs. 1 crore. (Marginal Relief in Surcharge, if applicable)

Education Cess: 3% of the total of Income Tax and Surcharge.

4. CO-OPERATIVE SOCIETY

	INCOME SLABS	TAX RATES
i.	Where the total income does not exceed Rs. 10,000/-	10% of the income.
ii.	Where the total income exceeds Rs. 10,000/- but does not exceed Rs. 20,000/-.	Rs.1,000/- + 20% of the amount by which the total income exceeds Rs. 10,000/-.
iii.	Where the total income exceeds Rs. 20,000/-.	Rs. 3,000/- + 30% of the amount by which the total income exceeds Rs. 20,000/-.

Surcharge: 10% of the Income Tax, where total taxable income is more than Rs. 1 crore. (Marginal Relief in Surcharge, if applicable)

Education Cess: 3% of the total of Income Tax and Surcharge.

5. DOMESTIC COMPANY / FIRM / LOCAL AUTHORITY

TAX	***DOMESTIC COMPANY***	***FIRM***	***LOCAL AUTHORITY***
INCOME TAX	*30% of total income*	*30% of total income*	*30% of total income*
SURCHARGE	*5% of such income tax, provided that the total income exceeds Rs. 1 crore* *OR* *10% of such income tax, provided that the total income exceeds Rs. 10 crores* *(Marginal Relief in Surcharge, if applicable)*	*10% of the Income Tax, where total taxable income is more than Rs. 1 crore* *(Marginal Relief in Surcharge, if applicable)*	*10% of the Income Tax, where total taxable income is more than Rs. 1 crore* *(Marginal Relief in Surcharge, if applicable)*
EDUCATION CESS	*3% of the total of Income Tax and Surcharge*	*3% of the total of Income Tax and Surcharge*	*3% of the total of Income Tax and Surcharge*

6. COMPANY OTHER THAN A DOMESTIC COMPANY

Income Tax:

- @ 50% of on so much of the total income as consist of (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved by the Central Government.
- @ 40% of the balance

Surcharge : The amount of income tax as computed in accordance with above rates, and after being reduced by the amount of tax rebate shall be increased by a surcharge as under

- At the rate of 2% of such income tax, provided that the total income exceeds Rs. 1 crore. (Marginal Relief in Surcharge, if applicable)
- At the rate of 5% of such income tax, provided that the total income exceeds Rs. 10 crores.

Education Cess : 3% of the total of Income Tax and Surcharge.

Marginal Relief: *When an assessee's taxable income exceeds Rs. 1 crore, he is liable to pay Surcharge at prescribed rates mentioned above on Income Tax payable by him. However, the amount of Income Tax and Surcharge shall not increase the amount of income tax payable on a taxable income of Rs. 1 crore by more than the amount of increase in taxable income.*

INDIRECT TAXES

INDIRECT TAX PROPOSALS

CUSTOMS

Classes of Officers of Customs

⇒ Principal Chief Commissioner and Principal Commissioner of Customs are included in the class of officers of customs

Date for determination of rate of duty and tariff valuation of imported goods

⇒ Imported goods arrived by **VEHICLES** now included along with other means of transportation to determine the date of presentation of Bill of Entry for rate of duty and tariff valuation

Power to grant exemption from duty

⇒ Custom Duty on mineral oils including petroleum and natural gas extracted or produced in the Continental Shelf or Exclusive Economic Zones of India shall be exempted for the period prior to 7th February, 2002

Entry of goods on importation

⇒ Now Bill of Entry can be filed prior to the Import Report at the Land Custom Station when imported through land route for faster clearance of goods.

Settlement Commission

⇒ Customs and Central Excise Settlement Commission will now be known as Customs, Central Excise and Service tax Settlement Commission since it includes service tax matters as well.

⇒ Application for settlement of cases can now also be filed on the basis of Bill of Export, Baggage Declaration or label accompanying the goods that have been effected through post or courier.

⇒ It is now clarified that the concealment of particulars of duty liability relates to concealment from the customs officer and not from the Settlement Commission

Appeals and Revisions

⇒ The Appellate Tribunal has the discretionary power to refuse the admit of the appeal in cases up to Rs 2 lakhs, which was earlier Rs 50000.

Power of committee of Chief Commissioner of Customs or Commissioner of Customs to pass orders

⇒ The Board now has the powers to condone the delay, for upto 30 days if it is satisfied with the causes shown to it, for passing the order by the committee

Deposit, pending appeal, of duty and interest demanded or penalty levied

⇒ A mandatory fixed penalty of 7.5% of total duty demanded or penalty imposed or both for filing appeals with the Commissioner (Appeals) or Tribunal at the first stage and 10% has been prescribed for filing appeals with the Tribunal at the second stage upto a maximum deposit of 10 crores.

Appeal not to be filed in certain cases

⇒ From now on Commissioner (Appeals) are also eligible to look into the relevant matters

Amendment in the Tariff

⇒ Safeguard duty has been levied on inputs/raw materials imported by Export Oriented Unit

and cleared into Domestic Tariff Area (DTA) as such or used in the manufacture of the final products and cleared into DTA

Baggage Rules

⇒ Under the existing provisions, an Indian citizen at the time of their return journey from outside India shall be allowed duty free clearance of upto Rs 35,000 w.e.f 11/07/2014 the value of Rs 35000 has been substituted with the value of **Rs 45,000.**

⇒ Under the existing provisions, an Indian citizen at the time of their return journey from outside India are allowed duty free allowance of cigarettes – 200, cigars- 50 and tobacco - 250 gms w.e.f 11/07/2014 the duty free allowance of cigarettes, cigars and tobacco have been reduced to 100, 25 and 125 gms respectively

Tariff Structure- UPS & DOWNS

Agriculture and Plantation Sector

⇒ Full exemption from customs duty on edible oils such as groundnut oil/ sunflower oil/ mustard oil upto 31.12.2014

Chemicals and Petrochemicals

⇒ The BCD on reformate has been reduced from **10% to 2.5%**

⇒ The BCD on propane, ethane, ethylene, propylene and butadiene reduced from **5% to 2.5%**

⇒ The BCD on denatured ethyl alcohol and methyl alcohol reduced from **7.5% to 5%**

⇒ The BCD on crude naphthalene reduced from **7.5% to 5%**

⇒ The BCD on fatty acids, crude palm stearin, other palm stearin and on crude glycerine has been reduced to **NIL** for manufacture of soaps

Energy Sector

⇒ The BCD on Coking coal increased from **NIL to 2.5%** and on steam coal and bituminous coal from **2% to 2.5%.**

⇒ The BCD on anthracite coal and other coal is being reduced from **5% to 2.5%.**

⇒ The CVD on Anthracite coal, Coking coal and other Coal is being reduced from **6% to 2%**

⇒ The BCD on metallurgical coke is being increased from **Nil to 2.5%.**

⇒ Exemption from Basic Customs Duty is being granted on re-gasified LNG for supply to Pakistan

Textiles

⇒ Non-fusible embroidery motifs or prints can now be imported duty free for manufacture of garments for export

⇒ Wire Rolls can now be imported by handicraft – manufacturer exporters duty free

⇒ Fusible embroidery motifs or prints, anti-theft devices, pin bullets for packing, plastic tag bullets, metal tabs, bows, ring and slider hand rings can now be imported duty free for manufacture of handloom made ups or cotton made ups or manmade made ups for export.

⇒ The BCD on raw materials for manufacture of spandex yarn viz. Polytetramethylene ether glycol (PT MEG) and Diphenylmethane 4,4 di-isocyanate (MDI) is being reduced from 5%

Metals

⇒ The BCD on stainless steel flat products increased from **5% to 7.5%**

⇒ The BCD on ships imported for breaking up reduced from **5% to 2.5%**

⇒ Export duty on bauxite increased from **10% to 20%**

⇒ The BCD on coal tar pitch reduced from **10% to 5%**

⇒ The BCD on battery waste and battery scrap reduced from **10% to 5%**

⇒ The BCD on steel grade limestone and steel grade dolomite reduced from **5% to 2.5%**

⇒ The BCD on half cut or broken diamonds is being increased **from NIL to 2.5%** and on cut & polished diamonds including lab grown diamonds and coloured gemstones from **2% to 2.5%.**

Electronic Hardware

⇒ The BCD on LCD and LED TV panels of below 19 inches reduced from **10% to NIL.**

⇒ The BCD is being exempted on specified parts of LCD and LED panels for TVs

⇒ Special Additional Duty (SAD) on all inputs/components used in the manufacture of Personal Computers (laptops/desktops) and tablet computers is being **exempted**, subject to actual user condition

⇒ Education cess and Secondary and Higher Education (SHE) cess is being levied on imported electronic products

⇒ **Full exemption** from Special Additional Duty (SAD) is being provided on specified inputs (PVC sheet & Ribbon) used in the manufacture of smart cards.

⇒ The BCD reduced from **7.5% to NIL** on E-Book readers.

⇒ CVD exemption on portable X-ray machine / system is being withdrawn.

Renewable Energy

⇒ **Full exemption** from Special Additional Duty (SAD) is being provided on parts and components required for the manufacture of wind operated electricity generators

⇒ The BCD on machinery, equipments, etc. required for setting up of solar energy production project reduced to 5%

⇒ Concessional customs duty of 5% is being provided on machinery, equipments, etc. required for setting up of compressed biogas plant (Bio-CNG)

Capital Goods

⇒ The road construction machinery imported duty free can be sold within 5 years of importation subject to payment of customs duty on depreciated value and that individual constituents of the consortium whose names appear in the contract can import goods without payment of duty

HEALTH

⇒ **Full exemption** from customs duty is being provided for HIV/AIDS drugs and diagnostic kits imported under National AIDS Control Programme (NACP) funded by the Global Fund to Fight AIDS, TB and Malaria

EXCISE

Basic Rate

⇒ The basic rate of Excise Duty (ED) remains **unchanged** at 12% (12.36% including cess & higher edu cess)

Insertion of Sec 15A

⇒ It empowers Central Govt. to prescribe an authority to collect the information return to be filed by the Income Tax Authorities, State Electricity Boards, ROC so as to identify tax evaders or recover dues.

Appeal to the Supreme Court

⇒ From now on appeal against Tribunal's order in matters relating to taxability and excisability of goods would lie before the Supreme Court

Retrospective Exemption

⇒ Un-branded articles of precious metals are being exempted from excise duty for the period 01.03.2011 to 16.03.2012

⇒ Polyester Staple Fiber (PSF) and Polyester Filament Yarn (PFY) manufactured from plastic waste or scrap or plastic waste including waste polyethylene terephthalate (PET) bottles (which is already exempt w.e.f. 08.05.2012) is being exempted retrospectively w.e.f. 29.06.2010 to 07.05.2012

Tariff Structure- UPS & DOWNS

Agriculture and Plantation

⇒ Excise duty on machinery for the preparation of meat, poultry, fruits, nuts or vegetables, and on presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages and on packaging machinery reduced from **10% to 6%**

Automobiles

⇒ Excise duty is being exempted on parts of tractors removed from one or more factories of a tractor manufacturer to another factory of the same manufacturer for manufacture of tractors

Metals

⇒ Excise duty on winding wires of copper increased from **10% to 12%**

Textiles

⇒ Excise duty at the rate of 2% (without CENVAT) or 6% (with CENVAT) is being imposed on Polyester Staple Fiber and Polyester Filament Yarn manufactured from plastic waste or scrap or plastic waste including waste polyethylene terephthalate (PET) bottles w.e.f. 11th July, 2014

Health

⇒ Excise Duty hike on cigarettes by **72%** on cigarettes of length not exceeding 65mm and by **11% - 21%** on cigarettes of other lengths

⇒ Excise duty increased from **12% to 16%** on pan masala, from **50% to 55%** on unmanufactured tobacco and from **60% to 70%** on jarda scented tobacco, gutkha and chewing tobacco.

Electronics Hardware

⇒ Excise duty on Metal Core PCB and LED driver for use in the manufacture of LED lights and fixtures and LED lamps, is being reduced from **12%/10% to 6%**

Renewable Energy

⇒ **Full exemption** from excise duty is being provided on machinery, equipments, etc. required for setting up of compressed biogas plant (Bio-CNG)

⇒ **Full exemption** from excise duty is being provided to parts consumed within the factory of production for the manufacture of non-conventional energy devices

⇒ **Full exemption** from excise duty is being granted in respect of machinery, equipments, etc. required for setting up of solar energy production projects.

⇒ Excise duty reduced from **12% to Nil** on forged steel rings used in the manufacture of bearings of wind operated electricity generators

Consumer Goods

⇒ No Excise duty on Heena powder mixed with liquid so far as the liquid is the medium to change the form of the powder to paste.

⇒ **Footwear : Exemption** on footwear upto Rs 500
Reduction in Excise duty from **12% to 6%** on footwear of MRP between Rs 501 to Rs 1000

⇒ **Cold Drinks :** Become dearer as additional duty of excise is levied @ 5%

⇒ **Sports Gloves :** Concessional rate of Excise Duty @ 2% without CENVAT credit and @ 6% with CENVAT credit has been imposed

Energy Sector

⇒ Excise duty on Branded Petrol reduced from Rs.7.50 per litre to Rs. 2.35 per litre

Miscellaneous

⇒ Excise Duty @ 6% has been levied on writing and printing paper for printing of educational text books

⇒ Excise Duty exemption to all goods supplied against International Competitive Bidding also includes supplies from sub contractor to main contractor (who has won the bid)

⇒ Education cess and secondary & higher education cess (customs component) is being exempted on goods cleared by an Export Oriented Unit (EOU) into the Domestic Tariff Area (DTA)

⇒ Full exemption from Excise duty is being provided on plastic materials reprocessed out of the scrap or waste and cleared into the Domestic Tariff Area (DTA) by an Export Oriented Unit

AMENDMENTS UNDER SERVICE TAX REGIME

After the introduction of the negative list based service tax regime and the Voluntary Compliance Encouragement Scheme, Service Tax has been a major source of revenue for the Government since past few fiscal. The intent behind such approach has been to widen the tax base and to ensure proper compliance. Service Tax Regime has gone through vast changes the over the past few years and is one of the focal point of discussion. In view of above, amendments made under Service Tax Regime needs proper attention and due care. Amendments proposed by the new government are discussed in brief hereunder:

REVIEW OF NEGATIVE LIST OF SERVICES

With the intent to broaden the tax base, the proposed Finance Bill, 2014 has reviewed the negative list of services to make the following amendments:

- ⇨ Service tax leviable currently on sale of space or time for advertisements in broadcast media, namely radio or television, has been extended to cover such sales on other segments like online and mobile advertising. Sale of space for advertisements in print media has now been excluded from the ambit of Service Tax. Moreover, 'print media' has been defined by inserting clause 39a after clause 39 of section 65B which reads as under –

  "print media" means:

  (i) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

  (ii) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;';

- ⇨ Service tax has now been levied on the services provided by radio taxis or radio cabs, whether or not air-conditioned. The abatement presently available to rent-a-cab service would also be made available to radio taxi service in order to bring them at par.

These amendments shall come into effect from the date to be notified later, after the Finance (No.2) Bill, 2014 receives the assent of the President.

REVIEW AND RATIONALIZATION OF GENERAL EXEMPTIONS

- ⇨ The following exemptions extended under Notification No. 25/2012-ST in exercise of powers conferred under section 93(1) of the Finance Act, 1994 have now been withdrawn:
  - ✓ clinical research on human participants
  - ✓ air-conditioned contract carriages like buses

- ⇨ Exemptions available vide Notification No. 25/2012-ST under clause 12 in respect of services provided to Government or local authority or governmental authority, have been restricted to services by way of:
  - ✓ water supply,
  - ✓ public health,
  - ✓ sanitation conservancy,
  - ✓ solid waste management or slum improvement and upgradation.

  This amendment brings all other services covered under clause 12 of the said notification under the Service tax net viz. Construction, erection, commissioning, installation etc. of a civil structure or historical monuments, canals, dams, residential complex predominantly meant for self use or use of employees etc..

However, where the aggregate value of taxable service provided in a financial year does not exceed Rs. 10 lacs, exemption will be available in terms of notification 33/2012-ST.

CHANGES IN EXEMPTIONS

The Mega Exemption Notification No. 25/2012-ST has been amended vide Notification No. 06/2014-ST dated 11.07.2014 as follows:

- In respect of services received by such educational institutions, the concept of "auxiliary educational services" is being done away with. Following services when received would be exempted-

  (i)transportation of students, faculty and staff of the eligible educational institution; (ii) catering service including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services in such educational institution; (iv) services relating to admission to such institution or conduct of examination.

  Further, **exemption extended so far in respect of renting of immovable property service received by educational institutions has now been done away with**.
- Life micro-insurance schemes for the poor, approved by IRDA, where sum assured does not exceed ` 50,000/- has been exempted from service tax.
- Transport of organic manure by vessel, rail or road (by GTA) is being exempted.
- Loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, is being exempted.
- Services provided by common bio-medical waste treatment facility operators to clinical establishments are being exempted.
- Specialized financial services received by RBI from global financial institutions in the course of management of foreign exchange reserves, e.g., external asset management, custodial services, securities lending services, etc. are being exempted.
- Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India are being exempted.
- Services by a hotel, inn, guest house, club or campsite, ***by whatever name called*** **(viz dharamshalas or ashrams)**, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.

RETROSPECTIVE EXEMPTION

- Service provided by Employees' State Insurance Corporation (ESIC) during the period prior to 1.7.2012 has been exempted from the purview of service tax.

WORKS CONTRACT SERVICE

In Rule 2A of the Service Tax (Determination of Value) Rules, 2006, category "B" and "C" of works contracts are proposed to be merged into one single category, with percentage of service portion as 70%. vide Notification No. 11/2014-ST dated 11/7/2014. The earlier valuation was for category B- 70% and for category C- 60%.

TRANSPORTATION SERVICE BY VESSELS

- Taxable portion in respect of transport of goods by vessel has been reduced from 50% to 40%. Effective Service Tax thereof shall now be 4.944% as against 6.18%.

This effect will come into force from 1st October 2014.

CHANGES IN REVERSE CHARGE MECHANISM W.E.F. 11-07-2014

- Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism. Service receiver will now be liable to pay Service Tax. [Notification No. 09/2014-ST dated 11/7/2014.]
- Service provided by a Director to a body corporate has been brought under the ambit of Reverse Charge Mechanism. Service Receiver, who is a body corporate, will now bear the Service Tax. It is pertinent to note that services provided by director to company where

already covered. In view of this amendment Foreign Company also gets covered vide Notification No. 09/2014-ST dated 11/7/2014.

- As regards point of taxation for reverse charge, rule 7 of the POT Rules is amended to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. The earlier law had a time period of six months but in case of non payment within six months, the date of invoice was the date of taxation. This amendment will apply only to invoices issued after 1st October, 2014.[Notification No 13/2014-ST Dated 11/7/2014]

CHANGES IN INTEREST RATE ON DELAYED PAYMENT

Simple interest rates per annum payable under section 75, to vary on the basis of extent of delay in payment of service tax. This will come into force on 1st October 2014. Revised rate of interest is as under –

Sl. No.	Period of delay	Simple interest p.a.
1	Upto six months	18%
2	Beyond six months upto one year	24%
3	More than one year	30%

CHANGES IN CENVAT CREDIT

- In respect of Service Tax paid under full reverse charge, the condition to pay invoice value to the service provider for availing credit of tax paid, has been omitted [change to have immediate effect].
- Re-credit of Cenvat credit reversed on account of non-receipt of export proceeds within the specified period, is now allowed, provided such export proceeds are received within one year from the specified period on the basis of documentary evidence of receipt of payment [change to have immediate effect].
- Under Rent-a-cab operator and tour operator service tax paid by sub-contractor in the same line of business would be allowed as eligible credit to the main service provider to avoid double taxation, subject to certain conditions [w.e.f. 1st October 2014].
- For GTA services, service receiver may avail abatement, without having to obtain non-availment of Cenvat Credit certificate from service provider [change to have immediate effect].
- Credit on input and input services shall now be taken within six months from the date of the invoice or challans or other documents specified [w.e.f. 1st September, 2014].

PLACE OF PROVISION OF SERVICE RULES

- Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods, to be omitted.
- Intermediary of goods to be given the same treatment as is given to intermediary of services.
- Vessels (excluding yachts) and aircraft have been excluded from Rule 9(d). This step is expected to promote the Indian Shipping Industries. Hiring of vessels or aircrafts, irrespective of whether short term or long term, will now be covered by the general rule, which is place of location of the service receiver.

The above change to take effect from 1st October, 2014

PARTIAL REVERSE CHARGE

- In renting of motor vehicle, where the service provider does not take abatement the portion of service tax payable by the service provider and service receiver will be as 50% each vide Notification No. 10/2014-ST dated 11/7/2014.

  [This change will come into effect from 1st of October 2014]

SEZ PROCEDURES SIMPLIFIED

- ⇨ To be provided that the Central Excise Officer would issue Form A-2, within fifteen days from the date of receipt of Form A-1.
- ⇨ Exemption would be available from the date when list of service on which SEZ is entitled to upfront exemption is endorsed by the authorised officer of SEZ in Form A-1, provided Form A-1 is furnished to the jurisdictional Central Excise Officer within fifteen days of its verification. If furnished later, exemption would be available from the date on which Form A-1 is so furnished.
- ⇨ Pending issuance of Form A-2, exemption will be available subject to condition that authorization issued by the Central Excise officer will be furnished to service provider within a period of three months from provision of service.
- ⇨ As regards services covered under reverse charge, the requirement of furnishing service tax registration number of service provider shall be dispensed with.
- ⇨ A service shall be treated as exclusively used for SEZ operations if the recipient of service is a SEZ unit or developer, invoice is in the name of such unit/developer and the service is used exclusively for furtherance of authorized operations in the SEZ.

MISCELLANEOUS AMENDMENTS

- ⇨ In section 67A, for determination of rate of exchange, rules to be prescribed.
- ⇨ Section 73 to be amended to prescribe time limit for completion of adjudications. Time limit to be followed, as far as possible. In section 73 sub section 4A has been followed by inserting sub section 4B which reads as under –

  "(4B) The Central Excise Officer shall determine the amount of service tax due under subsection (2)—

  (a) within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section (1);

  (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A).";
- ⇨ Reference to first proviso to sub-section (1) of section 78, in section 80, to be omitted. In case of serious offences, waiver of penalty not to be available, though details may be available in records.
- ⇨ Section 82(1) to be amended, along the lines of section 12F (1) of the Central Excise Act, so that Joint Commissioner or Additional Commissioner or any other officer notified by the Board can authorize any Central Excise Officer to search and seize.
- ⇨ Section 83 to be amended to include a reference to sections 5A (2A), 15A and 15B of the Central Excise Act : (a) Section 5A(2A) prescribes that insertion of an explanation in notifications/orders within one year shall have the effect as if it had always been part of the notification; (b) Section 15A is being inserted in the Central Excise Act to prescribe that specified third party sources shall furnish periodic information in the manner as may be prescribed; (c) Section 15B is being inserted in the Central Excise Act to prescribe that failure to provide information under section 15A would attract penalty.
- ⇨ Vide section 83, Section 35F of the Central Excise Act is already applicable to service tax. Section 35F of the Central Excise Act is now being substituted with a new section which prescribes a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both, for filing appeal before the Commissioner (Appeals) or the Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both, for filing the second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of `10 Crore. All pending appeals/stay applications would be governed by the statutory provisions prevailing at the time of filing such stay applications/appeals. When the amended section 35F

in the Central Excise Act comes into force, it would, mutatis mutandis, apply to service tax by virtue of section 83 of the Finance Act, 1994.

- Sub-section (6A) of section 86 proposed to be amended to omit the words "for grant of stay or".
- In section 87, power to recover dues of a predecessor from the assets of a successor purchased from the predecessor, is to be provided, as it is available in section 11 of the Central Excise Act. A proviso to clause (c) to section 87 has been inserted as under:

  > "Provided that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, **all goods**, in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."

- Section 94 to be amended to obtain rule making power (a) to impose upon assessees, inter alia, the duty of furnishing information, keeping records and making returns and specify the manner in which they shall be verified; (b) for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on a service provider or exporter, to check evasion of duty or misuse of CENVAT credit; and (c) to issue instructions in supplemental or incidental matters.

Connect with Us:

CORPORATE OFFICE

P-6/90, Connaught circus
Connaught Place New Delhi 11001
Phone no.9555555480
Email.info@indiaexpert.in
www.indiaexpert.in

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