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An Overview of
THE FINANCE BILL 2014

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THE FINANCE (No. 2) BILL, 2014

Unless otherwise specifically mentioned, the amendments proposed or new provisions are to be effective from A.Y. 2015-16 and are therefore applicable with respect to income arising on or after 1st April 2014. Specific mention is made at the relevant places, where the effective date of a proposed amendment is other than 1st April 2014. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Finance Bill (no. 2), 2014 ("the Bill")

Any reference to the sections, unless otherwise stated, is to the sections of the Income Tax Act, 1961 ("the Act")

A. RATES OF TAX

In respect of rates of tax, the following has been proposed in the Bill:

- Increase in basic exemption limit for Individual / HUF to ₹ 2,50,000
- Basic exemption limit for Senior Citizen increased to ₹ 3,00,000
- Basic exemption limit for Individual above 80 years remained unchanged.
- Basic Income Tax Rates for all persons remained unchanged.
- Surcharge and Educational Cess remained unchanged.
- No Changes in threshold limit and rate for Wealth Tax.
- Rebate u/s 87A upto ₹ 2,000 is continued to be allowed to Individual Resident Assessee whose total taxable income does not exceed ₹ 5 lacs.

The proposed income tax rates (including Surcharge, Education Cess and Secondary and Higher Education Cess) for A.Y. 2015-16 have been given below in **Table 1 and 2** for ready reference. These income tax rates are applicable on any income earned during the period from 01.04.2014 to 31.03.2015.

The rates of Dividend Distribution Tax, Securities / Commodities Transaction Tax and Wealth Tax are given in **Table 3**, **4** & **5** respectively.

TDS & TCS rates are contained in **Table 6 & 7** respectively.

TABLE – 1 (Income Tax Rate for Non-Corporate Assessee)*

Particulars	Tax Rates	
	Without Surcharge	With Surcharge
	Up to ₹ 1 Crore	Above ₹ 1 Crore
GENERAL RATES		
Individual, HUF, AOP & BOI		
Resident & Non-Resident Assessee		
Upto ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000	10.300%	11.330%
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%
Resident Senior Citizen Assessee aged from 60 to 79 years		
Upto ₹ 3,00,000	Nil	Nil
₹ 3,00,001 to ₹ 5,00,000	10.300%	11.330%
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%
Resident Senior Citizen Assessee aged 80 years & above		
Upto ₹ 5,00,000	Nil	Nil
₹ 5,00,001 to ₹ 10,00,000	20.600%	22.660%
₹ 10,00,001 onwards	30.900%	33.990%
Co-operative Society		
Upto ₹ 10,000	10.300%	11.330%
₹ 10,001 to ₹ 20,000	20.600%	22.660%
₹ 20,001 onwards	30.900%	33.990%
Partnership Firm	30.900%	33.990%
Limited Liability Partnership	30.900%	33.990%
Local Authority	30.900%	33.990%
SPECIAL RATES		
Alternate Minimum Tax	19.055%	20.961%
LTCG on assets other than listed securities and zero coupon bonds	20.600%	22.660%
STCG on listed securities	15.450%	16.995%
STCG on assets other than listed securities		
Individual, HUF,AOP & BOI	As per slab	As per slab
Partnership Firm / LLP	30.900%	33.990%

* **Non-corporate Assessee includes Individual, HUF, AOP, BOI, Co-operative Society, Local Authority, Firm, and LLP**

TABLE – 2 (Income Tax Rates for Corporate Assessee)

Particulars	Tax Rates		
	Without Surcharge	With Surcharge	
	Up to ₹ 1 Crore	Above ₹ 1 Crore and up to ₹ 10 Crores	Above ₹ 10 Crores
Domestic Companies			
General Tax Rate	30.900%	32.445%	33.990%
Minimum Alternate Tax	19.055%	20.008%	20.961%
STCG on listed securities	15.450%	16.223%	16.995%
STCG on assets other than listed securities	30.900%	32.445%	33.990%
LTCG on assets other than listed securities and zero coupon bonds	20.600%	21.630%	22.660%
Foreign Companies ***			
General Tax Rate	41.200%	42.024%	43.260%
Minimum Alternate Tax	19.055%	19.436%	20.008%
STCG on listed securities	15.450%	15.759%	16.223%
STCG on assets other than listed securities	41.200%	42.024%	43.260%
LTCG on assets other than listed securities and zero coupon bonds	20.600%	21.012%	21.630%
Interest from Infrastructure debt fund (section 115A)	5.150%	5.253%	5.408%
Interest from External Commercial Borrowing (ECB) (section 115A)	5.150%	5.253%	5.408%
Dividend Received by Indian Company from Foreign Subsidiary (section 115BBD)	15.450%	16.223%	16.995%
Income from Royalty and Fees for Technical Services (section 115A)	25.750%	26.265%	27.038%

*** Subject to the relief available as per the provisions of applicable DTAA, if any.

TABLE – 3 (Tax on Income / Profit Distribution)*

Particulars	Tax Rates
Dividend / Income Distribution Tax	
By Domestic Company (section 115-O)	16.995%
By Money Market Mutual Fund or Liquid Fund (section 115-R)	
For income distributed to Individual / HUF	28.325%
For income distributed to others	33.990%
By Other Mutual Funds (section 115-R)	
For income distributed to Individual HUF	28.325%
For income distributed to others	33.990%
By Mutual Fund under Infrastructure Debt Scheme (section – 115R)	
For income distributed to Non-residents (other than Company) and Foreign Company	5.665%

* The rates mentioned above is to be applied on amount grossed up with above mentioned rate. Therefore the effective rate would be higher than that are mentioned above.

TABLE – 4 (Securities / Commodities Transaction Tax)

Particulars	Tax Rates
Securities Transaction Tax	
Delivery based purchase or sale of an Equity Share in Company	0.100%
Delivery based purchase of a Unit of an Equity Oriented Fund	Nil
Delivery based sale of a Unit of Equity Oriented Fund	0.001%
Non-Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund	0.025%
Derivatives (Future & Options)	0.010%
Sale of option in securities where option is exercised	0.125%
Repurchase of Units of an Equity Oriented Fund	0.001%
Commodities Transaction Tax	
Sale of Commodity Derivatives payable by Seller (for Commodities other than Agar. Products)	0.010%

TABLE – 5 (Wealth Tax)

Particulars	Tax Rates
Wealth Tax (Individual, HUF & Company) (Threshold Limit: ₹ 30 Lacs)	1.000%

TABLE – 6 (TDS rates for the A.Y. 2015-16)

Section	Nature of Payment	Threshold Limit in ₹	Rate of TDS %
192	Salary	As per Slab	As per Slab
193	Interest on Securities		
	(1) Interest on Debentures or Securities (Listed/Unlisted)	5,000**	10.000
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10.000
	(3) Any Other Interest on Securities (Unlisted)	0	10.000
194	Dividend other than dividend covered by section 115-O	2,500*	10.000
194A	Interest other than Interest on Securities (cases other than below)	5,000	10.000
	Where the payer is		
	(1) Banking Company	10,000	10.000
	(2) Co-operative Society engaged in banking business	10,000	10.000
	(3) Post Office under a deposit scheme framed by Central Government	10,000	10.000
194B	Winning from Lotteries	10,000	30.000
194BB	Winnings from Horse Races	5,000	30.000
194C	Payments to Contractors		
	(1) In case of Contractors / Sub-Contractor /Advertising (In case of Individual / HUF)	30,000[1]	1.000
	(2) In case of Contractors / Sub-Contractor /Advertising (Any other Assessee)	30,000[1]	2.000
	(3) Contractor / Sub-Contractor in Transport Business	30,000[1]	NIL[2]
194D	Insurance Commission	20,000	10.000

Section	Nature of Payment	Threshold Limit in ₹	Rate of TDS %
194DA	LIC payment which are not covered u/s 10(10D) (w.e.f. 01.10.2014)	1,00,000	2.000
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20.000[3]
194EE	Deposits under NSS to Resident /Non-Resident	2,500	20.000[3]
194F	Repurchase of units of Mutual Fund /UTI from Resident /Non-Resident	0	20.000[3]
194G	Commission on Sale of lottery tickets to Resident /Non-Resident	1,000	10.000[3]
194H	Commission or Brokerage to Resident	5,000	10.000
194I	Rent to Resident (a) Rent for machinery / plant / equipment (b) Rent for other than in (a)	 1,80,000 1,80,000	 2.000 10.000
194IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1.000
194J	Fees payable to resident for professional / technical services	30,000	10.000
194J	Remuneration, fees, commission paid to Director which is not in nature of Salary	0	10.000
194LA	Compensation to Resident on acquisition of immovable property	2,00,000	10.000
194LB	Interest paid to Non-Resident by Notified Infrastructure Debt	0	5.000[3]
194LBA	Payment to resident Unit Holder specified in Section 115UA (w.e.f. 01.10.2014)	0	10.000
194LBA	Payment to non- resident Unit Holder specified in section 115UA (w.e.f. 01.10.2014)	0	5.000

Section	Nature of Payment	Threshold Limit in ₹	Rate of TDS %
194LC	Interest paid by Specified Company to Non-Resident	0	5.000[3]
195	Payment of other sums to Non-Resident (Other than specified in section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and education cess subjected to rate specified under applicable DTAA	
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10.000[3]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10.000[3]
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20.000[3]

(* in case of Resident Individual only)
(in case of Resident Individual / HUF only)**

[1] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds ₹ 75,000/- then tax will required to be deducted even where individual transaction is less than the threshold limit of ₹ 30,000.

[2] Nil rates will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 20%. (Transporter means persons engaged in plying, hiring and leasing of Goods Carriages).

[3] All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge, Education Cess and Secondary and Higher Education Cess.

Note:

a) In order to strengthen the PAN Mechanism, any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:
   (i) prescribed in the Act;
   (ii) at the rate in force i.e. the rate mentioned in the Finance Act; or
   (iii) of 20%

b) On applicability of section 94A, the tax is required to be deducted at source at the higher rate of 30%

TABLE – 7 (TCS rate for the A.Y. 2015-16)

Section	Nature of Payment	Threshold Limit in ₹	Rate of TCS %
206C	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.000
	Timber obtained by any mode and any other forest produce	0	2.500
	Scrap	0	1.000
	Parking lot / Toll plaza / Mining and Quarrying	0	2.000
	Tendu leaves	0	5.000
	Minerals, being coal or lignite or iron ore	0	1.000
206C(1D)	Cash Sale of Bullion & Jewellery (consumption for personal use by buyer is excluded)	2,00,000	1.000

B. PERSONAL TAXATION

B.1 Deduction in respect of certain payments u/s 80C

Section 80C provides deduction from the taxable income in respect of certain investments made by Individual or HUF with an overall ceiling of deduction of ₹ 1,00,000. The investments eligible for deduction u/s 80C inter alia include investment in Provident Fund, Public Provident Fund, Life insurance premia, repayment of principal amount of housing loan, NSC, etc. The existing ceiling limit of deduction of ₹ 1,00,000 in case of section 80C has been proposed to be increased to ₹ 1,50,000.

Consequent, the limit of deduction u/s 80CCE (encompassing section 80C and contribution to pension funds) has proposed to be increased from ₹ 1,00,000 to ₹ 1,50,000. In this regard, it may also be mentioned that the Finance Minister has also announced increase in annual cap on subscription to Public Provident Fund from ₹ 1,00,000 to ₹ 1,50,000.

B.2 Deduction in respect of contribution to Pension Scheme

As per the existing provision, deduction u/s 80CCD in respect of contribution to pension scheme of Central Government was available to employee individuals who has been employed on or after January 1, 2004. However, the same was available to persons other than employed individuals without any restrictions.

In order expand coverage thereof, the amendment proposes to restrict the employment date criterion in respect of Central Government employees only. Post amendment, individuals employed by employers other than Central Government would be eligible to claim deduction u/s 80CCD irrespective of their date of joining employment. This effectively makes the scheme available to all the individuals except employed by Central Government prior to 1st January 2004.

The deduction u/s 80CCD was available subject to ceiling of 10% of salary or Gross Total Income, as applicable. However, the Bill proposes an additional restriction on the quantum of deduction and prescribes the deduction u/s 80CCD should not exceed ₹ 1,00,000. One may also note that deduction u/s 80CCD further subject to restriction of overall deduction in respect of savings of ₹ 1,50,000 u/s 80C, 80CCC and 80CCD.

B.3 Deduction of interest on housing loan for self-occupied property

As per existing provision, where the self-occupied property has been acquired or constructed with borrowed capital on or after 1st April 1999, then interest on such borrowed capital is allowable as deduction up to ceiling of ₹ 1,50,000. However, in order to give partial relief from high cost of financing, the above said limit is proposed to be increased to ₹ 2,00,000.

C. BUSINESS INCOME

C.1 Deduction of CSR Expense

The deduction u/s 37(1) is allowable in respect of the expenditure incurred wholly and exclusively for business purpose.

As per section 135 of the Companies Act, 2013 certain companies are required to spend 2 per cent of their average profit for past three financial years on activities relating to Corporate Social Responsibility (CSR). However, deductibility of such CSR expenses has been subject matter of debate. The revenue authorities had been advocating the position that CSR expenditure being an application of income not considered as expenditure incurred wholly and exclusively for the purpose of business or profession and therefore no deduction should be allowable u/s 37 of the Act. On the other hand, taxpayers were advocating the position that since CSR costs are mandatorily required to be incurred by the law, they are statutory costs incurred by them and not being in the nature of income taxes, the same should be allowable as deduction.

In order to put potential controversy at rest, the Bill proposes to insert an explanation in section 37(1) which provides that no deduction u/s 37 will be allowable for any expenditure incurred by the Assessee on the activities relating to CSR. It may be mentioned that the proposed amendment only clarifies that merely by virtue of statutory obligation it would not be deemed as incurred for the purpose of the business or profession, however, if the expenditure incurred can be established to have incurred for the business or profession, it would be available as deduction, subject to fulfillment of other conditions. Further, since section 37(1) being residuary deduction available to business (i.e. items of expenditure not covered by sections 30 to 36), the explanation shall not be applicable to the nature of expenses which are covered by sections 30 to 36 and they shall continue to be governed by respective provisions to assess deductibility thereof.

C.2 Disallowance of expenditure on non-deduction of TDS

Payment to Non-Residents

The provisions of section 40(a)(i) provides for disallowance of various payments made to non-resident in case if tax on such payment was not deducted, or after deduction was not paid within the time prescribed u/s 200(1) of the Act.

Section 40(a)(ia) contains the similar provision for disallowance on the ground of non-deduction or non-payment of TDS on payment made to residents. U/s 40(a)(ia) deduction should be allowed in the previous year of payment if the tax is deducted during the previous year and the same is paid on or before the due date specified for filing the return u/s 139(1) of the Act.

Thus, effectively, stringent requirements were stipulated for deduction of tax at source from payments to non-residents vis-à-vis payments to residents in order to claim such expense as deduction. In case of some countries it was possible to argue that the extended time limit for payment of TDS as available to residents, is applied due to the clause relating to non-discrimination under the relevant DTAA.

The Bill proposes to amend section 40(a)(i) to bring the same in parity with section 40(a)(ia) by extending the time limit for payment of tax deducted from payments made to non-resident. Therefore, now, such extended period for payment of TDS will be available in case of tax deducted from payments made to non-residents.

Payment to Residents – Quantum of Disallowance

Presently, for payments to non-residents as well as residents, section 40(a)(i) and section 40(a)(ia) respectively, provides for disallowance of whole expenditure in case whre tax is deducted at source or after deduction, such tax is not paid to the government treasury. The Bill proposes to reduce such disallowance to 30% in respect of payment made to residents as specified in section 40(a)(ia). For example, if tax has not been deducted on payment of ₹ 10,000 made to resident, 30% thereof (₹ 3,000) would be disallowed u/s 40(a)(ia) in computing taxable income.

It would be relevant to note that no such relief is granted in case of payment to non-resident u/s 40(a)(i) and therefore whole of the expenditure would continue to be disallowed in case where tax is not deducted (or not paid after deduction) from payment to non-resident. At this juncture also, one may possibly claim that based on non-discrimination clause of relevant DTAA (where applicable), disallowance in respect of payment made to non-resident also should be restricted to 30% of the expenditure only.

Payment to Resident – Scope of Disallowance – Salary included

Presently, expenditure on payment of salary to resident employees was not hit by the provision of section 40(a)(ia). However, while reducing the quantum of disallowance to 30% of expenditure, the amendment proposes to expand the scope of disallowance to all the expenses paid to resident including salary payments. Accordingly, on account of failure to deduct tax or after deducting failure to make payment of such tax on salaries, 30% of such salaries will be disallowed.

It is interesting to note that TDS on salaries is payable at the time of payment of salaries and not at the time of debit of the said expenditure. Therefore, in case of unpaid salaries, till filing of the return, it would be difficult to determine the amount disallowable.

C.3 Tax Accounting Standards

Section 145 grants power to the Central Government to notify tax accounting standards. The intention in framing the standards under the Income-tax Act is to compute the income precisely and objectively. Till date only two accounting standards have been notified.

The CBDT had constituted a Committee to harmonize the Accounting Standards issued by the ICAI with the provisions of the Act, for the purposes of notification under the Act and also to suggest amendments to the Act necessitated by transition to Ind-AS. The Committee also deliberated on, whether after notification of the Accounting Standards under the Act, the taxpayer is required to maintain two sets of books of account i.e. one in accordance with the Accounting Standards issued by the ICAI and another in accordance with the Accounting Standards notified under the Act. The Committee recommended that the Accounting Standards to be notified under the Act should be made applicable only for computing the taxable income and a taxpayer need not maintain separate set of books of account on the basis of these notified Accounting Standards. The said Committee also recommended that the standards notified under section 145 should not be called Accounting Standards but should be called "Income Computation Standard".

Accepting the recommendation of the said Committee, it has been proposed in the Bill that the standards will be known as "Income Computation and Disclosure Standards" and accordingly applicability of these standards would be restricted to computation of income and disclosure of information. It is also proposed to empower the Assessing Officer to make an assessment u/s 144 if Assessee has not complied with these Standards to compute income.

C.4 Speculative transactions – section 43

Section 43(5) deals with the speculative transactions. The clause (e) was inserted in section 43(5) by the Finance Act, 2013 to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognized association shall not be considered as speculative transaction.

The Bill proposes to amend clause (e) so as to provide that eligible transaction in respect of trading in commodity derivatives shall not be considered to be a speculative transaction only if it is carried out in a recognized association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013.

C.5 Speculation Business

As per existing provision of section 73 of the Act, speculation business loss can be set off only against speculation business income. Further, as per existing explanation in case of a company where any part of the business of such company consists of the purchase and sale of shares of the other companies, such business be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

The said explanation does not apply to the companies whose GTI consists mainly of income which is chargeable under the heads “Interest on securities”, “Income from House Property”, “Capital Gain” and “Income from other Sources” or a company the principal business of which is the business of banking or granting of loans and advances.

The existing deeming provision is also applicable to the company whose principal business is trading in shares and business of said companies are deemed to be speculation business even though said transaction is normal trading activity of such company.

It is proposed to amend Explanation to section 73 to provide that the said explanation will not apply to a company whose “principal business is trading in shares”. Accordingly, in case of company whose principal business consists of trading in shares, the loss arising from trading in shares will not be treated as speculation loss merely by operation of explanation to section 73.

C.6 Presumptive income based taxation of Transport Business

Section 44AE provides for presumptive taxation of the income in case of profits and gains arising from the business of plying, hiring or leasing of goods carriage. The provision applies to an Assessee who is not owning more than ten goods carriages at any time during the previous year. The current provisions prescribe different income for heavy goods vehicle and other goods vehicle.

The Bill proposes to simplify the presumptive taxation scheme by removing bifurcation of vehicles between the heavy goods vehicle and other than heavy goods vehicle. It proposes uniform amount of presumptive income of ₹ 7,500 for every month or a part of month during which the goods carriage is owned by the Assessee irrespective of heavy goods vehicle or other vehicle or an amount actually earned from the vehicle whichever is higher.

D. TAX ON DISTRIBUTION

D.1 Dividend Distribution Tax

As per the existing provisions of Section 115-O, Dividend Distribution Tax ('DDT') of 16.995% (15% basic plus 3% cess plus 10% surcharge) is applicable on the amount of dividend declared. **As per the proposed provision, the DDT would be applicable on the profits from which dividend is to be declared.** In such a case, the dividend payable would be grossed up by a rate in such a way that such gross amount minus DDT of 16.995 % would be equal to the dividend to be declared. Effectively, while the rate of DDT has been maintained at the same level, due to increase in the basis on which such tax is payable, effective rate of DDT on the amount of dividends distributed has been increased from 16.995% to 20.4755%.

Examples:

Scenario 1: If the amount from which dividend is to be declared is fixed

Existing Provision

Net distributable profits	100.00
Less: DDT	14.50
Dividend Distributable	**85.50**
DDT / Dividend Distributable	**17.00%**

Proposed Provision

Net distributable profits	100.00
Less: DDT	17.00
Dividend Distributable	**83.00**
DDT / Dividend Distributable	**20.50%**

Scenario 2: If the dividend to be declared is fixed

Existing Provision

Dividend Distributable	100.00
Add: DDT	17.00
Net distributable profits	**117.00**
DDT / Net distributable profits	**14.50%**

Proposed Provision

Dividend Distributable	100.00
DDT	20.50
Net distributable profits	**120.50**
DDT / Net distributable profits	**17.0%**

Similar amendment has been proposed in case of income distributed by UTI, specified company or Mutual Fund to which provisions of section 115R is applicable.

These provisions are proposed to be applicable for dividend declared, distributed or paid on or after 1st October 2014. Accordingly, final dividend or interim dividends declared and distributed on or brefore 1st October, 2014 will not be liable for the grossing up provision.

E. ALTERNATE MINIMUM TAX

E.1 Alternate Minimum Tax (AMT)

The Finance Act, 2011 introduced AMT for LLPs which was later extended to all persons other than company. Presently, the provisions of AMT are applicable to Assessee who claims deduction under any section (excluding Section 80P) of Chapter VI-A [heading C] and section 10AA (SEZ) ['eligible sections']. AMT is charged at the rate of 18.5% (plus cess and surcharge, as applicable) of the adjusted total income.

The thrust of the AMT was to restrict the benefit of deductions available under Chapter VIA-C [Deduction in Respect of certain incomes] or section 10AA [SEZ Units] and make such units pay at least minimum tax of 18.5% (plus cess and surcharge, as applicable) of the adjusted total income.

The scope of provision of section 35AD [Investment linked deduction] has been expanded to various industries every year. With a view to restricting the benefit of deductions under this section to non-corporate Assessees, the Bill proposes to cover the persons claiming deductions u/s 35AD in the net of AMT.

The Bill proposes to levy AMT on income adjusted to the extent deduction claimed u/s 35AD over and above normally allowable depreciation on eligible capital expenditure for the purpose of section 35AD.

It is interesting to see that section 35 AD itself is only a provision for postponing the tax liability by giving accelerated deduction of the expense incurred. AMT is pre-poning the tax liability, which as per the normal provision is payable during later period. It is difficult to understand that both the provisions which nullify each other are made applicable to same entity.

E.2 Rationalization of AMT credit

In case of specified assesses, the provisions for AMT are not applicable if the adjusted total income does not exceed ₹ 20 lacs. Further, AMT applies only in case where the person is eligible for the incentives specified therein. In such a case, if the provisions of AMT are not applicable for a particular year due to low adjusted total income or no deduction under the eligible sections, it would not have been possible for the person to claim credit of AMT paid in the earlier years in subsequent year, where normal tax exceeds the AMT.

To rationalize the carry forward of credit of AMT, the Bill proposes to carry forward and allow credit for AMT under section 115JD, in cases where the AMT provisions are not applicable for a particular year.

F. CAPITAL GAINS

F.1 Taxation of Foreign Institutional Investors

The characterization of income arising to FIIs through sale of shares and securities as capital gains vis-à-vis business income has been an area of dispute since long.

Existing provisions of section 2(14) defines "Capital asset" to include property of any kind held by an Assessee, whether or not connected with his business or profession, but does not include stock in trade amongst other exclusions. There has been contentious issues raised with respect to whether the shares and securities held by FIIs constituted "stock in trade" and thus transfer thereof should be considered as business income or whether the same should be considered as capital assets or investments and the income thereof should be classified as capital gains.

There has been contradictory judgments delivered by various authorities where on set of judgments, depending on the facts and circumstances of the case, held that such income should be considered as capital gains liable to tax in India. Whereas, other set held that the income arising to FIIs is in the nature of business income and should be taxed in India only if the FII has a permanent establishment in India.

The Bill proposes to amend the definition of "Capital Asset" to clarify and reduce further litigation on the issue of characterization of income that accrue to FIIs on sale of securities. The proposed amendment clarifies that the income arising to FIIs from sale of securities will now be taxable as capital gains only and shall be liable to tax at the rates specified in section 115AD of the Act.

As a consequential amendment, the definitions of the expressions foreign institutional investors and securities have also been inserted by way of explanation to section 2(14) of the Act.

F.2 Change in Period of Holding for classification of Capital Asset into long term vis-à-vis short term

A capital asset is classified as short term or long term depending on the period of holding the asset. Generally a capital asset is considered to be long term capital asset if it is held for thirty six months or more, except in case of certain specified assets which are classified to be long term even if they are held for twelve months or more.

Currently, following capital assets are considered as long term capital asset even if the same are held for twelve months or more:

i. Shares held in a company;
ii. Any other security listed in a recognized stock exchange in India;
iii. Unit of Unit Trust of India;
iv. Unit of Mutual Fund specified u/s 10(23D) of the Act; and
v. Zero Coupon Bond

However, the definition of short term capital asset u/s 2(42A) of the Act has been proposed to be amended with effect from 1st April 2015 such that only following assets will be classified based on twelve months period of holding:

i. Security (other than a unit) listed in a recognized stock exchange in India;
ii. Unit of Unit Trust of India;
iii. Unit of an equity oriented fund; and
iv. Zero Coupon Bond

Accordingly, transfer of unlisted shares of a company or units of a mutual fund other than equity oriented units will be considered as long term capital gains only if they are held for thirty six months or more. Also, as a result of this amendment, various benefits available in case of long term capital gains such as concessional tax rate u/s 112 of the Act and exemptions available u/s 54EC and section 54F will be available only if such assets are held for a minimum period of thirty six months.

Further, unit of an equity oriented fund has been defined as provided in section 10(38) of the Act i.e. as a unit of a scheme of a mutual fund specified u/s 10(23D) of the Act where more than sixty five percent of total investible proceeds are invested in equity shares of domestic companies.

This amendment is to take effect from A.Y. 2015-16 and is therefore partially retrospective in operation and will affect the transfer of such securities made from 1st April, 2014 onwards.

Transfer of Government Securities between non-residents not chargeable to tax as capital gains.

Section 47 of the Act exempts transfer of capital assets in certain specified circumstances from being liable to tax under the head capital gains. This section has been proposed to be amended to exempt transfer of government securities, carrying periodic payment of interest, between non-residents, where such transfer is made through an intermediary dealing in settlement of securities.

F.3 Long Term Capital Gain on transfer of units

Section 112 of the Act provides special rates of taxation on long term capital gains. Currently, long term capital gain tax on transfer of listed securities, units and zero coupon bonds is restricted to ten percent of the gains without considering any available indexation benefits.

Section 112 of the Act has been proposed to be amended to exclude "units" from the concessional tax rate of ten percent as stated above. Accordingly, while Long Term Capital Gains Tax on listed securities (other than units) and zero coupon bonds will be continued to be restricted to ten percent of such gains (without indexation benefits), long term capital gain arising on transfer of units, other than transfer of equity oriented units on which securities transaction tax has been paid, would be taxable at the rate of twenty percent.

As a consequential change, the reference to definition of the word 'units' has been proposed to be deleted from the section.

F.4 Exemption on investment in residential house - section 54 and 54F

Section 54 and 54F provides exemption from capital gains resulting from sale of capital asset in form of residential house or other property respectively to the extent such gains are invested in buying or constructing a new residential house within prescribed time limit.

However, disputes had arisen in as to whether such exemption is available only in respect of one residential house or multiple house would also qualify for the deduction. Similarly, disputes had also erupted as to whether deduction would be admissible in respect of investment made outside India or not. In this respect the judgments from various authorities have been in contradiction. The decisions in the matter of Vinay Mishra vs ACIT [2013] 30 taxmann.com 341 (Bangalore - Trib.) and Prema Shah Vs ITO ([2006] 100 ITD 60 (MUM.) was in favour of the Assessee whereas the case of Leena J. Shah vs ACIT [2006] 6 SOT 721 (AHD.) was decided in against.

In order to put such controversies at rest, the Bill proposes to amend section 54 and 54F to provide that such exemption is available only in respect of one residential house purchased or constructed and further that the new residential house should be located in India.

F.5 Exemption on investment in specified long term assets – section 54EC

Presently, section 54EC provides an exemption from long term capital gains to the extent the taxpayer has invested the gain in certain specified bonds. However, from A.Y. 2007-08, the government had introduced an additional condition that investment made in the specified bonds by the taxpayer during any financial year should not exceed ₹ 50,00,000. The cap on investment was made qua financial year and not qua asset transferred. Since the investment is to be made within six months from the date of transfer, where the asset was transferred after September, the taxpayer had an option to invest ₹ 50,00,000 in the same financial year and another ₹ 50,00,000 in the subsequent year (before expiry of six months) and in such event, he could claim exemption up to ₹ 1,00,00,000 u/s 54EC.

There has been controdictory decisions by various adjudicating authority in respect of calim of exemption to the extent ₹ 1,00,00,000 u/s 54EC while deciding the matter of following cases.

i. ITO vs Ms. Rania Faleiro (2013) 33 taxmann.com 611 (Panaji – Trib)
ii. Smt. Sriram Indubal V ITO (2013) 32 taxmann.com 118 (Chennai)
iii. ACIT vs Shri Raj Kumar Jain & Sons (HUF) [2012] 19 taxmann.com 27 (Jp.)
iv. Areva T&D India Ltd .vs ACIT [2009] 177 TAXMAN 192 (MAD.)

However, the Bill now proposes to restrict the deduction u/s 54EC by providing that investment made in the specified bonds during the financial year in which the original asset or asset are transferred and in the subsequent financial year does not exceed ₹ 50,00,000. The proposal seeks to restrict the deduction u/s 54EC for investment to maximum of ₹ 50,00,000 for capital gains earned in a financial year. This limit is in addition to overall cap of investment of ₹ 50,00,000 in a financial year. The way in which the amendment is drafted, it can raise dispute on claiming exemption u/s 54EC for fresh capital gains arising in the subsequent year, if claim for exemption u/s 54EC is made in immediate preceding year.

F.6 Taxing year for compensation for compulsory acquisition

As per existing provision there was uncertainty about the year in which the amount of enhanced compensation is chargeable to tax in pursuance of interim order of the courts, Tribunal or other authority. The new proviso is proposed to provide clarity in respect of timing of taxability of such receipts. The Bill provides that any compensation received in pursuance of an interim order of a court, Tribunal or any other authority shall be deemed to be income chargeable as "Capital gains" of the previous year in which the final order of such court, Tribunal or other authority is made.

F.7 Taxation of forfeited Advance received for transfer of property

As per existing provision of section 51 of the Act, any advance or other money received in respect of a capital asset and retained by the taxpayer is not treated as income in the year of receipt or retention but the same is required to be deducted from the cost of acquisition or WDV of such asset for computing capital gains on such asset at the time when such capital asset is actually transferred later on.

However, the Bill now proposes to treat such forfeited sum as income chargeable to tax in the year in which the sum is forfeited (i.e. the right of buyer to acquire the property and recourse to refund of money already paid lapses). Consequently, this sum would not be deducted from cost of acquisition when the property is later on sold. Consequential changes have also been proposed in sections 56(2)(vii) and 2(24) of the Act to include such receipt on forfeiture as 'income' liable to tax under the Act.

The amendment effectively prepones the tax implication on such forfeiture and also treat such income as normal income as opposed to present practice to tax such gain as capital gain. This provision is also retrospective in operatoin as it applies to all the forefeitures which have taken place after 1st April, 2014.

F.8 Cost of Inflation Index (CII)

While calculating long term capital gain on sale of assets, taxpayer is eligible to deduct inflation adjusted costs and such adjustments are provided based on the "Cost Inflation Index" (CII). As per existing provision, CII means Index that the Central Government may specify having regard to 75 per cent of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME) for the immediately preceding previous year to such previous year. However, Central Government has discontinued publishing data relating to CPI for UNME and therefore it is proposed that CII shall be calculated based on Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

This amendment will be applicable from A.Y. 2016-17. It may be noted that CBDT has declared the Cost Inflation Index (CII) for A.Y. 2015-16 as 1024.

G. INCENTIVES, DEDUCTIONS AND EXEMPTIONS

G.1 Investment Allowance

In order to incentivize the manufacturing sector, section 32AC was introduced by the Finance Act, 2013 to provide the deduction equivalent to 15% of the cost of new plant and machinery provided the aggregate amount of actual cost of such new assets acquired and installed exceed one hundred crore rupees during the two A.Y.s 2014-15 and 2015-16. Only large manufacturing sector could have got benefit under this section.

In order to boost the medium scale industries to invest in the acquisition and installation of plant and machinery, the Bill proposes to provide the deduction of 15% of cost of new assets provided the investments in the new plant and machinery acquired and installed during the relevant year exceeds ₹ 25 crore. Deduction as per the newly inserted provision shall be available during A.Y.s 2015-16 to 2017-18. It may be noted that the proposal requires acquisition as well as installation of the new plant and machinery in the same year and therefore where the assets have been acquired in one year but installed in another year could create point of litigation.

It may also be mentioned that the current allowance of 15% deduction based on aggregate investment during F.Y.s 2013-14 & 2014-15 exceeding ₹ 100 crores has been continued. However, in case the deduction under existing scheme is availed, benefit on the same assets would not be available under the new mechanism. In case of Assessees who have not satisfied ₹ 100 Crore criteria in FY 2013-14 but satisfy the said criteria on combined investment for FY 2013-14 and FY 2014-15, it would be advatnageous for them to claim benefit under the old provisions for FY 2014-15 as they would be entitled to claim investment allowance also for investment made in FY 2013-14.

G.2 Extension of Profit Linked Incentive to Power Sector Units - section 80IA

Under the existing provision of section 80IA(4)(iv) of the Act, the deduction in respect of profits or gains is available to an undertaking which:

a) is set up for generation or generation and distribution of power and begins to generate power
b) starts transmission or distribution by laying a network of new transmission or distribution lines
c) undertakes substantial renovation and modernization of existing network of transmission or distribution of lines.

Under the existing provision the undertaking was required to be set up, start or undertake expansion, on or before 31.03.2014. The clause is proposed to be extended by three more years and thus the requirement of set up, start or undertake expansion has been extended up to 31.03.2017.

G.3 Deduction in respect of expenditure on specified business – section 35AD

Presently provisions of section 35AD allows investment linked deduction in respect of capital expenditure incurred wholly and exclusively for the purpose of the "specified business" as prescribed in section 35AD during the previous year in which such expenditure is incurred. The Bill proposes to extend such deductions to following two new businesses:

i. laying and operating a slurry pipeline for the transportation of iron ore;

ii. setting up and operating a semiconductor water fabrication manufacturing unit and which is notified by the Board in accordance with the prescribed guidelines.

For availing deduction u/s 35AD for the above two new businesses the business should be commenced on or after the 1st April 2014.

The existing provisions of section 35AD do not provide for a specific time period for which the capital assets on which the deduction has been claimed and allowed are to be used for the specified business. In order to curb this ambiguity and to ensure that the assets purchased have been used for specified business purpose it is proposed to insert sub section (7A) which provides that any assets in respect of which a deduction is claimed and allowed under this section shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.

The Bill also provides that if such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed u/s 35AD, shall be deemed to be income of the Assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used. The amendment is introduced to ensure that the assets in respect of which deduction is availed has been used for the specified business purpose. And in case of non-compliance the entire deduction claimed would get taxed under the head of "Profits and gains of business or profession". However, the lock-in period of use for specified business as described above shall not be applicable to a company which has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 within 8 years from the year in which it is acquired or constructed.

G.4 Double Benefit Denied – section 35AD and section 10AA

Section 10AA provides for profit linked incentive in respect of the profits and gains derived from the export of articles or things during the previous year relevant to the assessment year commencing on or after the 1st April 2006 in any special economic zone. This section was inserted by the Special Economic Zone Act, 2005 w.e.f. 10.02.2006

In order to move from profit linked incentive to investment linked incentives, section 35AD of the Act was introduced with effect from A.Y. 2010-11 which provided for deduction of whole expenditure of capital nature incurred wholly and exclusively for the purpose of the "specified business" as referred in section 35AD(8)(c).

In order to ensure that the taxpayer does not claim benefits under both the incentive provisions, section 10AA as well as section 35AD is proposed to be amended to provide that once deduction under either of section 10AA or section 35AD has been claimed, no deduction under the other section will be available in the same or any other year.

H. INTERNATIONAL TAXATION & TRANSFER PRICING

H.1 Concessional Tax Treatment of Foreign Dividend

Finance Act, 2011 introduced concessional tax treatment for dividend received from foreign companies. As per section 115BBD of the Act, dividends received by an Indian company from a foreign company, in which the Indian company holds 26% per cent or more equity capital, is liable to tax at a reduced rate of 15%. However, these provisions were introduced for limited period which expired on 31st March 2014.

Considering the encouraging response in repatriation of funds, the Bill for continuing such concessional tax treatment of foreign dividends permanently proposes to remove sunset clause from the provisions of section 115BBD.

H.2 Arm's Length Range

In order to reduce the litigation on transfer pricing issues, some changes in the transfer pricing regulations have been proposed. However, most of these proposals are not reflected in the Bill. Necessary legislative amendments in this regards are proposed to be moved in the current session of the Parliament.

Rationalization of provisions – Range concept

As per current provisions of the Act, an arithmetic mean of comparables is considered as arm's length price for transfer pricing purposes. This suffers from a severe limitation of the arithmetic mean getting unduly affected by certain comparables with extreme margins. This is explained as follows:

Comparables	Margin
A Ltd	10%
B Ltd	16%
C Ltd	18%
D Ltd	6%
E Ltd	11%
F Ltd	7%
G Ltd	-115%
H Ltd	20%
AM	**-3%**
AM excluding G Ltd	**13%**

As per the above table, the range of comparable companies is within 6% to 20%, except that of G Ltd which is minus 115%. Due to the extreme margin of G Ltd the Arithmetic Mean is minus 3% which is in no way a representative of margin of all comparables. The extreme margin of G Ltd could be due to several factors which may impair its comparability and it may be comparable solely due to lack of such information in the public domain. In such a case, based on a statistical method, it would be better to eliminate comparables having an extreme margin, while computing arm's length margin.

Currently, the tax department and the courts do allow elimination of certain comparables with extreme margins depending upon facts and circumstances. However it is purely judgmental and subjective. There is not standardized concept in this regards, based on any regulation or scientific method.

To avoid influence of such extreme values in the comparable data, many countries follow inter-quartile range or median to arrive at arm's length price instead of arithmetic mean. Organization for Economic Development ('OECD') also recommends use of such range for comparability analysis.

It has been proposed in the budget speech to introduce range concept for determination of arm's length price. This proposal endeavors to reduce subjectivity and litigations in transfer pricing.

However, Finance Minister also stated that the proposed range concept would not be applied if the number of comparables is inadequate.

Finance Minister mentioned about these changes during his speech however no amendment is proposed in provisions of the Act. It may be introduced as separate guideline or amendment in the Income Tax Rules, 1962.

H.3 Rationalization of provisions – Multiple Year data

Rule 10B(4) of the Income tax Rules, 1962 allows the use of comparable data of uncontrolled transactions relating to the financial year under consideration only. At times, external comparable data for year under consideration is not available in the public domain or in databases at the time of carrying out transfer pricing exercise for testing the arm's length nature of the transactions. Hence, data of years prior to the year under consideration are generally used for analyzing the arm's length nature of the transaction. Further, in order to average out effects of cyclical fluctuations, if any, comparable data for multiple years is used for comparability analysis as a general practice.

This has led to various litigations and judicial decisions have been held both in favour of and against use of multiple year data. It has been proposed in the budget speech that the use of multiple year data would be allowed for carrying out the comparability analysis. This would resolve practical challenges faced by the tax payers in this regards and may go a long way in reducing several litigations.

Finance Minister mentioned about this changes during his speech however no amendment is proposed in provisions of the Act. It may be introduced as separate guideline or amendment in the Income Tax Rules, 1962.

H.4 Deemed International Transaction (section 92B)

The existing provisions of section 92B defines "International Transactions" which are subject to Transfer Pricing Provisions. The existing provisions define international transaction to be the transactions between two associated enterprises where at least one enterprise is non-resident. Further, it creates deeming fiction to cover the transactions that have been entered with non-associated enterprise where there is involvement / influence of associated enterprise of either party.

The existing provision of the section 92B(2) considers the transactions between two non-associated enterprises as one entered into between Associated Enterprise if AE of either party is involved or have influenced the transaction. However, the provision of section 92B(2) does not clarify whether at least one enterprise out of two between which the transactions is entered into should be "Non-Resident" unlike the provisions of section 92B(1).

There has been disputes u/s 92B(2), where it was contented by the Assessee that, since both the enterprises are domestic entities, such transaction cannot be regarded as an international transaction. In the matter of IJM (India) Infrastructure Ltd. it was held in favor of the Assessee and decided that the deeming fiction of section 92B is not intended to cover transactions between two domestic enterprises.

However, In the case of Kodak India Pvt. Ltd. 37 taxmann.com 233, Hon'ble Mumbai Tribunal conceptually envisaged that the transaction between two domestic enterprises shall be covered by this provision if such transaction takes the color of international transaction irrespective of residential status of the concerned enterprises.

With a view to reducing the litigation on application of transfer pricing provisions based on interpretational differences, the Bill proposes to carry out clarificatory amendment to provisions of section 92B(2) to avoid ambiguity in the provision and to avoid dispute on concept of deemed international transaction on interpretation. The Bill proposes to provide that either the enterprise or the associated enterprise exercising influence or both have to be non-resident, but the independent enterprise through which this transaction is carried out need not be a non-reisdent.

Post-amendment even if the transaction would be between two resident entities, it would be deemed as 'international transaction', and accordingly

Transfer Pricing Regulations (TPR) would apply to such transaction without any threshold.

H.5 Roll back provision in Advance Pricing Agreement Scheme

The Finance Act, 2012 introduced Advance Pricing Agreement Mechanism as a measure for reducing transfer pricing litigations. The section 92CC provides mechanism for entering into agreement between the Assessee and the CBDT with the approval of Central Government.

Section 92CC of the Income Tax Act, 1961, states the provisions relating to Advance Pricing Agreements (APA). The CBDT, with the approval of the Central Government, may enter into an APA with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

The industry has responded positively seeking least litigation on successful APA. There has been number of application filed for entering into the APA. The CBDT out of first batch of applications for APA, recently, has concluded and entered into 4 APAs. As per the current provisions, the CBDT can enter into an APA which shall be applicable for a period of maximum 5 consecutive subsequent years from the year mentioned in the Agreement.

With a view to reducing litigation and increasing the interest for applying for APA, the Bill proposes to expand the applicability of APA to the preceding period in which transactions have been entered by the Assessee which are similar to the transactions for which APA is entered into. The Bill proposes to extend the applicability of agreed methodology for maximum 4 preceding years from the first year from which APA is applicable. Accordingly, the maximum period for which APA would be applicable is 5 subsequent years and 4 preceding years.

H.6 Penalty for non-furnishing Transfer Pricing Documents

Section 92D empowers Assessing officer or Commissioner (Appeal) to call for the information and documents as required to be maintained by section 92D of the Act from the person who has entered into international transactions or specified domestic transactions. Vide section 92CA, Transfer Pricing Officer (TPO) has also been empowered to utilize such power. However, in event of non-furnishing of information or documents, current law provided for penalty to be levied by Assessing Officer or Commissioner (Appeals) only. In order to correct the anomaly, section 271G has been amended to empower TPO as well to levy penalty in case of non-furnishing of information or documents required to be maintained u/s 92D.

The above amendment shall be effective from October 1, 2014.

I. BUSINESS TRUST

I.1 Introduction of Real Estate Investment Trust and Infrastructure Investment Trust

Real Estate Investment Trusts ('REITs') are investment vehicles used to pool resources from the investors for investment in revenue generating assets in real estate and construction sector. REITs are popular investment vehicles used globally for investment in real estate assets that fetch regular revenues, which are distributed to the investors. Framework for REITs exists in various countries such as United States of America, Japan, Singapore, Australia, France, United Kingdom, etc.

Securities and Exchange Board of India ('SEBI') has proposed to introduce REITs in India vide its Consultation paper on draft SEBI (Real Estate Investment Trust) Regulations 2013 issued on 10th October 2013 for further development and growth of the real estate sector.

Similar to REITs, SEBI has also proposed introduction of investment vehicle for financing infrastructure sector called Infrastructure Investment Trusts ('InvITs'). SEBI has come out with a Consultation paper on Infrastructure Investment Trust on 20th December 2013. Similar financing / refinancing structures for infrastructure sector exist in other countries also in form of Business Trust Model in Singapore and Hong Kong, Master Limited Partnerships in USA, etc.

In order to provide clarity with regard to taxation of income earned by the REITs, InvITs and their investors, the Bill has introduced a new framework for taxation and introduced a concept of "business trust".

Business trust has been defined by section 2(13A) to mean a trust registered as an InvIT or a REIT with SEBI and whose units are listed on recognized stock exchanges in India.

The above amendment shall be effective from October 1, 2014.

I.2 Taxation of Business Trusts

As per the proposed section 115UA of the Act, a business trust will be treated as a pass through entity and hence the nature of income of proportionate distributions received by the unit-holders from the business trust would be the same as nature of income in the hands of the business trust. Tax treatment with respect to different nature of income has been detailed hereunder.

The above amendment shall be effective from October 1, 2014.

I.3 Interest Income

In the hands of the Business Trust

Interest income received by a business trust from a special purpose vehicle ('SPV') will not be liable to tax in the hands of the business trust by virtue of proposed insertion of clause (23FC) in section 10 of the Act. In other words, a business trust will be considered to be a pass through entity with respect to interest income earned from a SPV. Further, as per the proposed amendment to section 194A of the Act, such interest payments from SPV to the business trust will not be liable to tax deduction at source.

An SPV has been defined to mean an Indian company controlling interest and specified percentage of shareholding or interest as per governing SEBI regulations.

In the hands of the investors / unit-holders

Distributions received by a unit-holder from business trust out of the interest income of the business trusts as referred to in section 10(23FC) will be taxable in the hands of the unit-holders as interest income. Further, as per the proposed introduction of section 194LBA of the Act, such distributions by business trust to unit-holders would be liable to withhold tax at the rate of five percent in case of payments to non-resident unit-holders and ten percent in case of payments to resident unit-holders, respectively, subject to compliance with section 206AA of the Act.

Interest payments on External Commercial Borrowings

As per the proposed amendments to section 194LC of the Act, interest paid by business trust on external commercial borrowing will be liable to withhold tax at the reduced rate of five percent subject to the provisions of the section 206AA of the Act.

The above amendment shall be effective from October 1, 2014.

I.4 Capital Gains

In the hands of the Business Trust

Capital Gains arising to business trust is liable to tax at the applicable rate of tax depending upon the short term or long term nature of capital gains.

In the hands of the investors / unit-holders

Distributions received by a unit holder from a business trust out of the capital gains arising to the business trust will be exempt from tax in the hands of the unit-holders by virtue of proposed introduction of section 10(23FD) read with section 115UA.

The listed units of a business trust, when traded on a recognized stock exchange, would be subject to levy of Securities Transaction Tax (STT) and accordingly the same have been accorded tax treatment similar to other listed securities.

Long term capital gains arising to the unit-holders from transfer of units of a business trust are proposed to be exempt in the hands of the unit-holders under the provisions of section 10(38) of the Act. However, such exemption is not available in case of units acquired in exchange of shares in SPV.

Similarly, short term capital gains arising to the unit-holders from transfer of units of a business trust would be chargeable to tax at 15% (plus surcharge and education cess) as per section 111A of the Act.

The above amendment shall be effective from October 1, 2014.

I.5 Dividends

In the hands of the Business Trust

Dividends distributed to business trusts will be liable to dividends distribution tax as per the provisions of section 115-O of the Act. Accordingly, the same will not be liable to tax in the hands of the business trust by virtue of section 10(34) of the Act.

In the hands of the investors / unit-holders

Distributions received by a unit holder from a business trust out of such dividend income will be exempt from tax in the hands of the unit-holders since the dividend will take the same character as that in the hands of the business trust, by virtue of proposed introduction of section 10(23FD) read with section 115UA.

The above amendment shall be effective from October 1, 2014.

I.6 Other Income

In the hands of the Business Trust

Income other than in the nature of interest, capital gains and dividends as discussed above, will be liable to tax in the hands of the business trust at the maximum marginal rate.

In the hands of the investors / unit-holders

Distributions received by a unit holder from a business trust out of such other income will be exempt from tax in the hands of the unit-holders by virtue of proposed introduction of section 10(23FD) read with section 115UA.

Tax Treatment in case of acquisition of units of business trust against shares of SPV

Where an investor acquires units of a business trust in consideration for shares of the SPV, such transfer will not be regarded as transfer liable to capital gains as per the proposed amendment to section 47 of the Act.

As a consequential amendment, cost of shares of the SPV transferred will be considered as the cost of acquisition of the units so acquired by the investor as per the proposed amendments to section 49 of the Act. Further, the period of holding of the shares so transferred will be included in the period of holding of the units so acquired as per the proposed amendments to section 2(42A) of the Act.

However, it may be noted that while long term capital gains on transfer of units of business trust are exempt in the hands of the unit-holders subject to provisions of section 10(38) of the Act, such exemption is not available in case of units acquired in exchange of shares in SPV.

The above amendment shall be effective from October 1, 2014.

I.7 Securities Transaction Tax

The listed units of a business trust, when traded on a recognized stock exchange, would be subject to levy of Securities Transaction Tax (STT).

The above amendment shall be effective from October 1, 2014.

I.8 Other Compliances

Business trust is required to furnish its return of income mandatorily irrespective of its income. Apart from filing return of income, person responsible for making payment of the income distributed on behalf of business trust to unit-holder shall furnish a statement to the unit-holder in prescribed form.

The above amendment shall be effective from October 1, 2014.

J. NGOs

J.1 Elucidation of trusts substantially financed by the Government

The existing section 10(23C)(iiab) provides for exemption to any university or other education institution financed wholly and substantially by the Government and formed solely for education purpose and not for purpose of profit. Similarly section 10(23C)(iiac) provides exemption to hospitals or other institutions existing solely for philanthropic purposes, and not for purposes of profit and which are wholly or substantially financed by the Government.

However the phrase "substantially financed by the Government" has not been defined. This leads to differences in interpretation of this phrase and litigation between the Department and the Assessee.

To end this litigation and to bring the certainty in the interpretation of the section, the Bill proposes to amend section 10(23C) to provide that if the Government grant received by university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage of the total receipts including any voluntary contribution, of institutions, as the case may be, then such institution shall be considered as being substantially financed by the Government for that previous year. However, the percentage of government grant is not specified or prescribed in the Explanation. The percentage will be specified later on by way of amendment in the Rules.

J.2 Restriction on interplaying exemptions

The Bill proposes to amend section 11 and as per the proposal the entities which have been approved or notified for claiming benefit of exemption u/s 11 would not be entitled to claim any benefit of exemption under other provisions of section 10. However, exemption u/s 10 in respect of agricultural income and u/s 10(23C) would be available.

J.3 No depreciation on capital assets

The registered trusts or institutions are required to apply their income for charitable purpose to claim exemption. The income applied for acquiring capital assets has been considered to have applied for charitable or specified purpose at the same time the depreciation on such assets is being claimed as deduction. With a view to rationalizing this the Bill proposes to restrict the claim of depreciation in any previous year on an asset, if cost incurred on acquisition of such asset is treated as application of income for charitable purpose in any year.

J.4 Restriction on double deduction

Sections 11 to 13 are special provisions governing benefit of tax exemption for charitable trusts or institution. Section 10 contains many provisions that grants general exemption. In certain circumstances, there arose situation wherein such trusts or institution became eligible to claim benefit of exemption u/s 11 as well as section 10.

The Bill proposes that where any income is applied or accumulated to acquire capital assets and such amount is claimed as application of income in the current year or in any of the previous year then the income for this purpose shall be determined without any deduction or allowance by way of depreciation. The provisions are introduced to ensure that no undue benefits are claimed by the trusts and institution. Under current provisions the trust and institutions are claiming double benefit of deduction in form of application of income and deduction for the expenses. The amendments proposed are intended to curb such benefits.

The Bill further proposes to restrict trust or institution which has been granted registration for availing exemption u/s 11 from claiming exemption under any provision of section 10.

J.5 Retrospective grant of registration

As per existing provision of section 12A of the Act, the benefit of section 11 & 12 shall be given only after registration u/s 12AA has been granted. Where the application for registration has been made after 1st June, 2007 the registration shall be effectively for immediately following the financial year in which the application is made. The registration would be effective prospectively and not retrospective.

The above provision causes undue hardship to the trust which have not applied for the registration despite the fact they have fulfilled the substantial conditions and they would otherwise be eligible for deduction.

To mitigate such hardship the Bill proposes to insert a new proviso in sub section (2) w.e.f. 1st October, 2014 to provide that in case where a trust or institution has been granted registration u/s 12AA of the Act, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

Further it also proposes to provide that no action u/s 147 shall be taken in the case of such trust or institution for any assessment year merely for the reason that such trust or institution has not obtained the registration u/s 12AA for the said assessment year.

Third proviso proposes to provide that above two provisos shall not apply in case of any trust or institution which was refused registration or the registration was cancelled.

J.6 Cancellation of registration u/s 12AA

Section 12AA of the Act provides for procedure for registration and cancellation of the registration of the trusts or institution. As per existing provision of section 12AA of the Act, the commissioner can cancel the registration only under following two circumstances:

i. The activities of a trust or institution are not genuine or

ii. The activities are not being carried out in accordance with the objects of the trust or institution.

The registration can be cancelled only if either or both of the conditions are not satisfied and not otherwise. The power of commissioner to cancel the registration is restricted. To come over such restriction and to ensure that the income has been applied for charitable purpose and the funds are not diverted for benefit of certain class of persons, the Bill proposes to amend section 12AA by inserting sub section (4) w.e.f. 1st October, 2014.

The proposed sub section (4) provides that where a trust or institution granted registration u/s 12A and subsequently it is noticed that the activities of the trust or institution are carried out in a manner where the provisions of section 11 and section 12 do not apply or the income is applied as mentioned in section 13(1) then the commissioner or principal commissioner may by order in writing cancel the registration of such trust or institution. No registration shall be cancelled if the trusts or institution proves that there was a reasonable cause for the activities carried out in such manner.

J.7 Taxation on Anonymous Donations

Section 115BBC of the Act provides for taxation in case of anonymous dividends received by certain universities, educational institutions, hospitals and other institutions, funds and trusts referred to in section 10(23C) and section 11 of the Act.

Currently, aggregate tax of such assesses is computed as under:

i. Thirty percent of anonymous donations received by such assesses in excess of higher of (i) five percent of total donations received during the year or (ii) one lakh rupees; and
ii. Tax on total income excluding anonymous donations.

In other words, as per literal interpretation of the section, an amount equivalent to "higher of (i) five percent of total donations received during the year or (ii) one lakh rupees" is excluded from being taxed. To rectify this loophole, the section has been proposed to be amended such that the aggregate tax liability will be calculated as under:

i. Thirty percent of anonymous donations received by such assesses in excess of higher of (i) five percent of total donations received during the year or (ii) one lakh rupees; and
ii. Tax on total income excluding anonymous donations in excess of higher of (i) five percent of total donations received during the year or (ii) one lakh rupees.

K. RETURNS, ASSESSMENT AND APPEALS

K.1 Return of Income

The Bill proposes to require following entities to file return of income if the total income chargeable to tax without allowing exemption u/s 10 exceeds maximum amount not chargeable to tax –

(a) Mutual Funds (referred in section 10(23D))
(b) Securitization trust (referred in section 10(23DA))
(c) Venture capital fund / vneutre capital company (referred in section 10(23FB))

K.2 Annual Information Return

The section 285BA of the Act is proposed to be replaced by new section with few modifications. Some of the changes in the scheme of Annual Information Return is described below:

- Annual Information Return is renamed as Statement of specified financial transaction and reportable account (herein after referred as "Information Statement"). Consequential amendment has also been made in section 271FA.

- Information Statement would also need to be filed by prescribed reporting financial institutions and thereby the Government has proposed to obtain power to notify further institutions who need to comply with these requirements.

- Time period of furnishing statement as required u/s 285BA(1) in pursuance to notice given u/s 285BA(5) is reduced from maximum limit of 60 days to 30 days.

- It requires to inform in the prescribed manner any inaccuracy that may be come to the knowledge of person after filing and in relation to statement u/s 285BA(1) within 10 days of such knowledge of inaccurate information.

- Central Government shall notify –

  (a) Any other financial institution, which needs to comply with the requirements

  (b) Process of registration of the persons covered by section 285VA

  (c) Nature of information and the manner in which such information shall be maintained

(d) Due diligence to be carried out by the persons for the purpose of identification of any reportable account.

- Current legislation provides for penalty u/s 271FA if person referred u/s 285BA fails to furnish Information Statement. However, newly proposed section 271FAA proposes to levy penalty u/s 271FAA in case where inaccurate particulars are furnished by the said persons in the Information Statement in certain circumstances. Penalty in such cases would be ₹ 50,000.

K.3 Signing and verification of return of income

The existing provisions of section 140 requires signing and verification of a return. However in the context of electronic filing of return, it would be incorrect to require the Assessee or a competent person to sign an electronic return. In such a case, the words sign / signed / 'verified and signed' is proposed to be replaced with verify / verified.

K.4 Power of Survey

The provision of section 133A(3) empowers the income tax authority to retain books of accounts or documents inspected by him during the survey proceedings for the period not exceeding 10 days without approval of higher authority. The Bill proposes to increase the maximum limit of days from 10 days to 15 days without approval of higher authority.

Further, as per the existing provisions of section 133A, the income tax authorities are empowered to enter any premises or place of business or profession or any other place occupied by the person in respect of which survey is being conducted.

The Bill proposes to extend similar powers for conducting survey in respect of TDS or TCS. However, the income tax authority carrying out TDS / TCS Survey can neither impound or retain books of accounts or other documents inspected during survey in respect of TDS and TCS nor can they take inventory of stock, cash and valuable article or thing. Thus the income tax authority carrying out survey in respect of TDS and TCS shall have substantially restricted rights as compred to normal survey conducted.

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

K.5 Power to call for information

The Bill proposes to insert new section 133C which enables the prescribed income tax authority to verify the information in its possession relating to any person. The authority may issue notice to such person requiring him to furnish the information or documents relevant to any enquiry or proceeding under this Act. This provision will enable CBDT to assign certain task of collating or verifying information in centralized or more organized manner. Hon'ble Finance Minister had suggested in his speech, the advanced use of information technology to track compliances and this provision appears to be enabling CBDT to function efficiently towards such goal.

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

K.6 Reference to Valuation Officer

Currently, section 142A of the Act provides that for the purpose of making an assessment or reassessment, an Assessing Officer can make reference to Valuation Officer to estimate value of an investment, bullion, jewellery or other valuable articles referred to in section 69, section 69A and section 69B or fair market value of property referred in section 56(2) of the Act.

The Bill proposes to substitute the existing section 142A to enable Assessing Officer to make reference to Valuation Officer for estimation of value or fair market value of any asset, property or investment, for the purpose of assessment or reassessment.

For the purpose of making such estimate, the Valuation Officer is required to take into account evidences provided by the Assessee or any other evidence in the possession of or gathered by the Valuation Officer after giving opportunity of being heard to the assesse. The Valuation Officer is also proposed to be given powers to make best judgment estimate where the Assessee does not co-operate or comply with the directions of the Valuation Officer.

The Bill also proposes to introduce a time frame of six months from the end of the month in which such reference is made within which the Valuation Officer is required to furnish his valuation report to enable timely completion of assessment or reassessment.

The proposed revision to the section also clarifies that such reference to Valuation Officer can be made irrespective of whether or not the Assessing Officer is satisfied about correctness and completeness of the books of accounts of the Assessee.

Provisions relating to powers of Valuation Officer as referred in section 38A of the Wealth-tax Act, 1957, vested rights in the hands of the Assessing Officer to consider or not consider the report of the Valuation Officer for making assessment or reassessment and right of assesse opportunity of being heard are proposed to be continued.

Further, provisions of section 153 and 153B of the Act relating to time limit for completion of assessment, reassessment and assessment under search cases are proposed to be amended to exclude the time period commencing from the date on which reference is made to Valuation Officer and ending with the date on which the report of Valuation Officer is received by the Assessing Officer, from the calculation of time taken for completion of assessment or reassessment.

K.7 Restriction for carrying out Assessment u/s 153C (search cases)

As per the provisions of section 153C of the Act, where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents, seized or requisitioned from a person belong to any person other than person in whose case search u/s 132 is initiated or requisition u/s 132A is done, then assessment proceedings under this section shall be carried out by the Assessing Officer having jurisdiction over such other person.

As per the proposed amendments by the Bill, Assessing Officer having jurisdiction over such other person is required to be satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the total income of the such other person for the relevant assessment year or years (Block period) as referred to section 153A to proceed against and issue notices or make assessment or reassessment in case of such other persons.

L. TAX DEDUCTED / COLLECTED AT SOURCE AND ADVANCE TAX

L.1 TDS on payment under Life Insurance Policy

The Bill proposes to introduce new section 194DA providing deduction of tax from any payment under life insurance policy, including the sum allocated by way of bonus on such policy. The TDS shall be deductible at the rate of 2% from such payments. However, TDS shall not be deducted from the sum received under life insurance policy which otherwise exempted from tax under provisions of section 10(10D).

Further application of TDS is restricted for the payments under such policy exceeds ₹ 1 Lakh in aggregate during the financial year.

L.2 TDS on Interest on ECBs

In order to boost low cost long term foreign borrowings for Indian companies, the Bill has proposed to extend the concessional withholding tax rate of five percent u/s 194LC, to interest on any long term foreign currency bond issued to non-residents and foreign companies after 1st October 2014 but before 1st July 2017. Accordingly, it is proposed to extend the tax incentive to all types of bonds instead of only infrastructure bonds.

Further, interest on foreign currency borrowings under a loan agreement from non-residents and foreign companies was eligible to such reduced withholding tax rate of five percent if the loan agreement is entered between 1st July 2012 and 30th June 2015. The eligible date of borrowing in foreign currency under loan agreement is extended from 30th June 2015 to 30th June 2017.

The Bill has also proposed to give the benefit of reduced rate of 5% in case of external commercial borrowings by the business trusts.

The section is proposed to be applicable to any interest paid or credited on or after 1st October 2014.

Currently, the provisions of section 206AA are not applicable in respect of payment of interest on long term infrastructure bonds only, referred to in section 194LC. Since it is proposed to extend the concessional rate of TDS u/s 194LC to all types of bonds instead of only infrastructure bonds, a consequential amendment is also proposed in section 206AA, and hence, the provisions of section 206AA would not be applicable in respect of payment of interest on any long term bonds referred to in section 194LC.

It is important to note that the interest on other borrowings covered by section 194LC are yet subject to provisions 206AA.

L.3 Duty of person deducting tax

A proviso is proposed to be inserted in section 200 of the Act to enable person responsible for deduction of tax at source to file a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement of tax deduction at source. Consequential amendments have also been proposed in section 200A of the Act relating to processing of statements of tax deduction at source.

L.4 Consequences of failure to deduct or pay

Section 201(3) of the Act provides that an order u/s 201(1) of the Act, deeming a payer as assesse in default due to failure to deduct tax at source or deposit tax deducted at source cannot be passed after expiry of

(i) two years from the end of financial year in which statement of tax deduction at source is filed; and

(ii) six years from end of financial year in which payment or credit is made, where such statement of tax deduction at source has not been filed.

The Bill proposes to extend the time limit within which an Assessee can be deemed to be an Assessee in default u/s 201 of the Act to seven years from the end of the financial year in which the payment is made or credit is given, irrespective of the date of filing of statement of tax deduction at source.

M. PENALTY, RECOVERY AND PROSECUTION

M.1 Recovery of Tax Demand

Section 156 of the Act requires the Assessing Officer to issue notice of demand where any tax, interest or penalty is payable in consequence of any order passed under the Act. Section 220 requires the taxpayer to make payment of amount demanded in such notice of demand within 30 days from service of notice.

Section 220 has been proposed to be amended to provide that where any notice of demand has been served upon an Assessee and any appeal is filed or other proceedings are 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 the appeal by the last appellate authority or disposal of the proceedings.

By incorporating provisions of section 3 of Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, it also provides that no fresh notice of demand u/s 156 would need to be served on account of completion of appeal or other proceedings. In case where tax demand in respect of any assessment proceedings which are in appeal is enhanced by such appellate authority etc., then fresh notice of demand is required to be issued in case of enhanced demand only and collection proceedings initiated for recovery of demand will be continued as if it were at the time just before disposal of said appeal.

In case where tax demand is reduced after disposal of appeal etc., no fresh notice of demand is required to be issued for the reduced amount. But the department is bound to issue intimation in this regard for reduced demand to Assessee along with Tax Recovery Officer (TRO), if certificate has been issued to TRO for recovery and collection proceedings shall be continued from the same stage as it were just before the disposal of appeal, but for the reduced amount only.

No proceedings initiated by the department for recovery of tax dues (including penalty, interest, etc.) after disposal of appeal shall be considered as invalid if the same was confirmed or enhanced or reduced in such appeal. Such proceedings shall be considered as valid based on original notice of demand only. No fresh notice is required to be issued after disposal of appeal for recovery of tax dues even though it is reduced or enhanced in appeal or proceedings.

If there is reduction in tax dues after disposal of appeal, and if penalty proceedings were also initiated, then, excess of penalty over the amount by which tax dues were reduced shall not be recovered, or otherwise to be refunded on application by the Assessee within time limit prescribed.

The above said amendments also has an effect that the demand determined under the original notice of demand would be considered payable from the date of issue and interest liability u/s 220(2) would commence upon expiry of the period mentioned in the original notice of demand [and not from the date of fresh notice of demand to be issued upon completion of appeal or other proceedings].

It is to be noted that purpose behind insertion of this section is to reserve the right of department to recover the interest in case where there is revival of deleted additions in subsequent appeal. There were cases where, addition made is deleted at first stage of appeal but which may revive at subsequent stage of appeal, In such a situation, it reserves the right of appellant to recover interest from very beginning and not from the period starting after first appeal.

The above provisions are applicable from 1st October, 2014.

M.2 Acceptance and Repayment of Loan & Deposits

Section 269SS triggers penalty in cases where the taxpayer takes or accepts any loan or deposit otherwise than by an account payee cheque or draft for an amount exceeding ₹ 20,000. Similarly, section 269T provides for penalty in case where the taxpayer repays any loan or deposit of more than ₹ 20,000 otherwise than by an account payee cheque or draft.

With the increase in electronic transactions and alternate payment modes with complete and transparent audit trail available, the Bill proposes to amend section 269SS and 269T to provide that payments by electronic clearing system through bank account (e.g. NEFT, RTGS, etc.) will be considered as valid mode of transfer and no penalty would be leviable u/s 269SS or 269T.

M.3 Penalty for failure to furnish TDS / TCS Statements

Amendment is made to section 271H in relation to penalty for failure to furnish statements such as 24Q, 26B, 26Q, 27A, 27Q etc. as required u/s 200(3) and proviso to 206C(3) or for furnishing inaccurate information in the said statements.

Currently, the law provides for automatic penalty in case of failure to file TDS / TCS statements or file inaccurate statement. However, the amendment proposes that the penalty be levied only if directed by the Assessing Officer in this regard. Penalty provisions are penal in nature and therefore it should not be automatic but can be levied only upon proper adjudication of the circumstances and the Assessing Officer must reach to conclusion that the case is fit for penalty.

M.4 Prosecution on non-compliance to notice u/s 142(1)

Section 276D provides for prosecution as specified therein in case where there is willful failure to comply with requirements as asked in notice u/s 142(1) in relation to documents and accounts or where there is willful failure to comply with direction issued u/s 142(2A) of the Act. The penalty under the current provisions is in form of rigorous imprisonment or fine or both. However, the amendment proposed in section 276D mandates that in case of non-compliance as aforesaid, it shall attract imprisonment as well as fine. Thus, in case where there is wilful non-compliance to the notice issued u/s 142(1) or direction issued u/s 142(2A) and if the Assessing Officer initiates prosecution, the Assessing Officer shall not have discretion to relieve him with fine only but would have to mandatorily prosecute the defaulter.

M.5 Provisional Attachment

Section 281B deals with Provisional attachment to protect revenue in certain cases. Section 281B(1) provides for power of assessing officer to attach property in case where he is of the opinion that for the purpose of protection of interest of revenue it is necessary to do, at the time of assessment proceedings or reassessment proceedings, with prior approval of appropriate authority.

Subsection (2) to section 281B provides that attachment order passed u/s 281B(1) above, shall cease to have effect after expiry of 6 months from the date of order.

Under the current provision, the period of attachment can be extended, with prior approval of officer of the rank of Chief Commissioner or Commissioner or Director General or Director by reasons recorded in writing, by a period which he thinks fit subject to total period accumulated together at maximum of 2 years in whole.

However, through amendment, it proposed that the attachment order shall be valid at least for the period of 60 days after passing an order of assessment or reassessment for provisional attachment so that the revenue authorities can exercise their powers to recover demand based on such order out of attached property.

N. OTHER IMPORTANT ANNOUNCEMENTS

N.1 Direct Tax Code

Direct Tax Code Bill (DTC) 2009 was first introduced in August 2009 to replace and simplify the five decade old direct tax regime. This underwent several revisions with the introduction of DTC 2009, DTC 2010 and recently introduced DTC 2013.

While the Direct Tax Code Bill introduced in 2010 has lapsed with the dissolution of 15th Lok Sabha, the Government proposes to review the DTC Bill recently introduced in March 2014. The Government would consider the comments received from the stakeholders in reviewing the DTC.

N.2 Greater use of information technology

The Finance Minister expressed that the focus of any tax administration is to broaden the tax base. It has been proposed to make greater use of information technology techniques to achieve this objective.

N.3 Special Economic Zones

The finance minister also stated that effective steps would be undertaken to revive and operationalize Special Economic Zones ('SEZs'). However, no amendment has been proposed under the Bill in this regards.

N.4 Policy of refraining from making any retrospective amendments

The finance minister mentioned that although the right of the government to undertake retrospective legislation is unquestionable, such power has to be exercised with extreme caution and judiciousness.

Indicating government's desire to provide a stable, predictable and investor friendly taxation regime, no retrospective amendments have been proposed under the Bill. The Finance Minister has also mentioned that ordinarily no retrospective amendments will be made if it creates a fresh liability.

N.5 Respite in case retrospective amendments of 2012

Finance Act 2012 had come with a plethora of retrospective amendments such as taxation of indirect transfer of capital assets situated in India i.e. transfer of capital assets outside India whose value is substantially derived from capital assets situated in India was also brought to Indian income tax net.

Since the amendments were introduced with a retrospective effect from AY 1962-63, various cases have surfaced before different judicial authorities.

In his budget speech, the Finance Minister mentioned that the government desires to provide a 'stable and predictable taxation regime' to encourage investments and development of the economy. As an endeavor towards the same, it has been proposed to set up a High Level Committee constituted by CBDT to scrutinize all fresh cases arising out of the retrospective amendments in respect of indirect transfers, before any action is initiated in such cases.

N.6 High Level Committee

A High Level Committee has been proposed to be set up to interact with the trade and industry on a regular basis to identify areas where clarity in tax laws is required. It is further proposed that based on the recommendations of the Committee, Central Board of Direct Taxes and Central Board of Excise and Customs will issue necessary clarifications on tax issues within a period of two months. This measure also proposes to contribute in reducing litigations on tax matters.

N.7 Advance Ruling for residents

Authority for Advance Rulings ('AAR') is a quasi-judicial authority set up since 1993 for providing certainty or clarity by way of rulings on questions of law or fact in relation to Indian Income tax liability arising from certain transactions.

Advance Rulings delivered by AAR are binding on the tax payers as well as the income tax authorities unless there is change in facts of the transactions or provisions of the Act. Hence, advance rulings provide clarity and certainty to the tax payers with respect to tax liability arising in a particular transaction, and enables them identify tax costs associated with proposed transactions and avoid long drawn and expensive litigation.

Currently, the benefit of advance rulings can be availed only where a transaction involves non-residents or in relation to questions relating to impermissible avoidance arrangements and by certain other notified persons such as public sector undertakings. Thus, benefits of advance rulings currently are not available to resident tax payers where no non-resident is involved or where the question does not relate to impermissible avoidance arrangement.

The Finance Minister, in his budget speech, has proposed to enable resident taxpayers to obtain an advance ruling in respect of their income tax liability above a defined threshold. While no amendments have been proposed by the Bill, necessary legislative amendments to give effect to the above is proposed to be moved in the current session of the Parliament.

N.8 Settlement Commission

Settlement Commission is a body set up for resolution of disputes between tax payers and income tax department in relation to income tax and wealth tax. The settlement mechanism enables tax payers in certain cases who have evaded taxes or unintentionally defaulted, to make application to the Commission and clear its defaults by making a settlement. An application can be made to the Settlement Commission only once in a lifetime of a tax payer.

It has been proposed in the budget speech to enlarge the scope of income tax Settlement Commission. However, this would still continue to be once-in-a-lifetime opportunity for any taxpayer. While no amendments have been proposed by the Bill, necessary legislative amendments to give effect to the above is proposed to be moved in the current session of the Parliament.

O. SERVICE TAX

O.1 Rate of Service Tax

The rate of service tax is not changed and remains same at 12%.

O.2 Legislative Changes

Amendment in Finance Act, 1994

(i) Amendment in section 66D - Negative list of service

- The service tax presently leviable on sale of space or for time for advertisement in broadcast media, radio television etc. is further extended to internet website, out of home media & all other medias except print media.[section 66D(g)]
- Service tax is proposed to be levied on Radio Taxi or Radio cab whether or not air conditioned [section 66D(o)(vi)] However Abatement provided to Rent a Cab Service would be available

(ii) Amendment in section 73
Central Excise Officer shall determine the amount of Service Tax due within:

(a) 6 months from the date of the notice where it is possible to do so in respect of limitation specified as 18 months in sub-section 1

(b) Within 1 year from the date of the notice in respect of cases other than the above.

O.3 Changes in Service Tax Payable under RCM

(i) The Service Tax in respect of services provided by recovery agent to a banking company or a financial institution or a non-banking financial company is payable 100% by service recipient. This is effective from 11th July, 2014.

(ii) The services provided by director to the body corporate are also covered under RCM in addition to service provided by director to the company.

(iii) Taxable portion in respect of transportation of goods in vessel is reduced from 50% to 40%.

O.4 Changes in Abatements

Name of Service	Existing Rate	Revised Rate
(i) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business		
• Service Provider	60%	50%
• Service Recipient	40%	50%
i.e. 1st October, 2014.		
(ii) Service Tax credit has been allowed for input services of renting of motor car in similar line of business i.e. Sub-Contractor providing services to main Contractor. Similarly tour operator service providers are also allowed to avail credit for service tax paid by other tour operator for providing services.		

O.5 Amendment in Exemption Notification for exemption/withdrawal of various services

The following amendments are made in Mega Exemption Notification 25/2012 dated 20.06.2012 (as amended from time to time)

Exemptions proposed

(i) Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental.

(ii) The exemption is extended to transportation, by rail or a vessel, of cotton, ginned or baled covered in clause 20.

(iii) The exemption is extended to transportation, by Goods Transportation Agency, of chemical fertilizer, organic manure and oil cakes covered in clause 21.

(iv) The services in respect of life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees are exempted.

(v) The services provided to the educational institutions in respect of transportation of students catering services including mid-day meal, security or cleaning & housekeeping services performed in such educational institution, Services relating to admission to or conduct of examination by such institution are exempted. All other services other than services specified above would be taxable. For example services provided by tour operator, renting of rooms to educational institution etc. would be taxable.

Withdrawal of Exemptions proposed

(i) The existing exemption in respect of services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India is withdrawn.

(ii) The exemption in respect of services of renting of immovable property made by an educational institution is withdrawn.

(iii) The exemption in respect of passenger transportation provided by air conditioned contract carriage is withdrawn. As a result any service provided for transport of passenger by air conditioned contract carriage will attract Service Tax.

(iv) Exemption in respect of services provided by Radio Taxi is withdrawn

O.6 Services Provided to the SEZ:

The procedure for obtaining Form A-1 (application for authorization of services for exemption from service tax under SEZ Act) for various services provided to the SEZs is simplified. – Notification no. 07/2014

O.7 Change in Rate of Interest payable on delayed payment of service tax:

Presently, flat rate of interest at 18% p.a is payable on delayed payment of service tax. The revised rates as under are applicable from 1st October, 2014.

Period of delay	Rate of simple interest
Up to six months	18%
More than six months and up to one year	18% for the first six months of delay and 24%, for the delay beyond six months.
More than one year	18%. for the first six months of delay; 24 %for the period beyond six months up to one year and 30% for any delay beyond one year.

O.8 Changes in Service Tax Rules:

Presently, the service tax payable in excess of ₹ 1 Lac is payable electronically (through internet banking). Now all payments of service tax are to be paid electronically (through internet banking). The ceiling of ₹ 1 Lac is removed. The Assistant Commissioner may consider request made by the Assessee for manual payment on case to case basis. This is effective from 1st October, 2014.

O.9 Changes in Point Of Taxation Rules:

Amendment in Rule 7:

The service tax payable under RCM, will became payable from date of payment or first day that occur immediately after three months from the date of invoice. Hence the period of six month is now reduced to three months. This is effective from 1st October, 2014.

O.10 Change in Service Tax Values & Rules:

The service portion in respect of services provided under the works contract in respect of the finishing and other services is increased from 60% to 70%. This is effective from 1st October, 2014.

O.11 Changes in Place of Provision Rules

(i) The definition in Rule 2 of the term "intermediary" is amended so as to include services provided by intermediary for supply of goods will also be subjected to service tax (Commission Agent). This is effective from 1st October, 2014.

(ii) Amendment in Rule 4 clarifies that the rule is not intended to apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory.

P. EXCISE

P.1 Legislative

I. Amendment in Central Excise Act, 1944:

(1) New section 15(A) & 15(B) are inserted so as to prescribe the third party sources shall furnish the periodical information in the prescribed manner. Further penal provisions are prescribed for failure to furnish the information.

(2) Assessee will now have to deposit mandatorily 7.5% of the aggregate amount of the demand along with the stay application and appeal to be filed to tribunal. In case of rebate of claim for export consignment the same is to be deposited at 10%.However the maximum deposit amount should not exceed ₹ 10 crores. Consequential amendments are also made in the Customs & Service Tax laws.

(3) Stay of recovery in appeal:

Presently the validity period of the stay is prescribed at six months. The proposal is to remove this validity to reduce the complications. This is consequent upon Tribunal taking view in a recent pronouncement that the Stay gets automatically vacated after 6 months.

(4) Presently the tribunal is given discretionary power to refuse the admission of the appeal where the duty involved is upto ₹ 50,000. This limit is enhanced to ₹ 2,00,000. Consequential amendments are made in the Customs laws.

II. Amendment in CENVAT Credit Rules:

The Definition of the place of the removal of goods is specified in newly inserted Rule 2(qa) of The CENVAT Credit Rules, 2004 , which is as under:

(i) a factory (or any other place or premises of production or manufacture of the excisable goods)

(ii) a warehouse (or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty)

(iii) a depot, premises of a consignment agent (or any other place or premises from where the excisable goods are to be sold after their clearance from the factory)

Amendment in Rule 4 now introduces time limit for availment of CENVAT credit in respect of input service. The limit proposed is prescribed as six months from the date of the invoice. Earlier there was no specific time limit provided in the rules. This is an important amendment for availment of the CENVAT credit. Changes will be effective from 1st September, 2014.

Amendment in Rule 6: Re credit of CENVAT Credit reversed on account of non-receipt of export proceeds are now allowed if said export proceeds is received within specified period or extended period.

Amendment in Rule 12A: The said rule is amended to prohibit the transfer of the transfer of the input credit of service tax taken by large tax payers after 10th July, 2014 from one unit to another unit.

III. Amendment in Central Excise Rules, 2002.

(i) Presently, the Excise duty in excess of ₹ 1 Lac is required to be paid electronically (through internet banking). The amendment now proposes all payments of excise duty to be paid electronically (through internet banking). The ceiling of ₹ 1 Lac is removed. The Assistant Commissioner may consider request made by the Assessee for manual payment on case to case basis. This is effective from 1st October, 2014. [Rule 8(1B) inserted]

(ii) Penalty at the rate of 1% per month prescribed for delay in payment of the Excise duty beyond period of one month.[Rule 8(3A) substituted]

IV. Amendment in Central Excise (Determination of Value) Rules, 2000:

The proviso is inserted in Rule 6 now allows the duty to be charged on price which is less than the cost without any deemed value to be attributed to the transaction if it is not the sole consideration for sale of such excisable goods and no additional consideration is flowing directly or indirectly from the buyer to such assesse.

The above amendment is made to overcome the incorrect interpretation made from the decision of the honorable Supreme Court in the case of Fiat India Limited.

P.2 Rate of Excise Duty

Basic rate of excise duty of 12% unchanged

Item – Description	Rates
Unmanufactured Tobacco	Excise duty on Unmanufactured Tobacco and Tobacco increased from 50% to 55%. Additional duty increased from 10% to 15%.

<table>
<tr><th>Item – Description</th><th>Rates</th></tr>
<tr><td>Cigars, Cheroots & Cigarettes</td><td>
<table>
<tr><th>DESCRIPTION (length in mm)</th><th>₹ per 1000 Sticks (Existing Rate)</th><th>₹ per 1000 Sticks (New Rate)</th></tr>
<tr><td>Non filter not exceeding 65</td><td>669</td><td>1150</td></tr>
<tr><td>Non-filter exceeding 65 but not exceeding 70</td><td>2027</td><td>2250</td></tr>
<tr><td>Filter not exceeding 65</td><td>669</td><td>1150</td></tr>
<tr><td>Filter exceeding 65 but not exceeding 70</td><td>1409</td><td>1650</td></tr>
<tr><td>Filter exceeding 70 but not exceeding 75</td><td>2025</td><td>2250</td></tr>
<tr><td>Filter exceeding 75 but not exceeding 85</td><td>2725</td><td>Tariff Omitted</td></tr>
<tr><td>Other</td><td>3290</td><td>3290</td></tr>
</table>
</td></tr>
<tr><td>Chewing Tobacco and Jarda</td><td>Excise duty on Chewing Tobacco and Jarda per kg. is increased from 60% to 70% & on pan Masala from 12% to 16%</td></tr>
<tr><td>Clean Energy Cess</td><td>Rate of Clean energy cess is increased form 50 per tonne to ₹ 100 per tonne</td></tr>
<tr><td>Branded Petrol</td><td>Excise duty is being reduced from ₹7.5 per liter to ₹ 2.35 per liter</td></tr>
<tr><td>Liquefied Propone, Liquefied Butane, their mixture and Liquefied Petroleum Gas (LPG)</td><td>Full exemption for supply to NDEC customers by IOCL, BPCL or HPCL</td></tr>
<tr><td>Process of Pasting labels and Packing</td><td>Excise duty is being attracted at concessional rate at 6%</td></tr>
</table>

Item – Description	Rates
DDT	Supply of DDT by Hindustan Insecticides Limited to the National Vector Borne Diseases Control Programme is fully exempted from excise duty
Plastic waste or scrap reprocessed	Supply of plastic scrap or waste for reprocess from EOU/ SEZ to DTA is being exempted
Backsheet and EVA sheet for manufacture of solar photovoltaic cell	Full exemption from excise duty is being provided for used of specific purpose
Safety matches	Concessional rate of 6% is levied to carry out process of Pasting of labels and Packing in units manufacturing safety machines
Sports Gloves	Excise duty is levied at 2% without CENVAT Credit or 6% with CENVAT Credit
Writing or Printing paper for education text books	Uniform 6% excise duty is leviable from optional excise duty 2% without CENVAT Credit or 6% with CENVAT Credit
Security Threads and Security Fiber	Full exemption of excise duty is being provided on supply to Security Paper Mills, Housangabad and Bank Note Paper Mill India Private Limited, Mysore
Polyester Staple Fiber (PSF), Polyester Filament Yarn (PFY) & Polyethylene terephthalate (PET)	Excise duty at 2% (without CENVAT) or 6% (with CENVAT) is being leviable on manufacture of PSF, PFY and its intermediate product "Tow" from plastic scrap has been full exempted from excise duty.
Footwear	Exemption remains continue on footwear of retail price upto ₹ 500 per pair and reduction from 12% to 6% on retail price exceeding of ₹ 500 per pair
Solar tempered glass	Full exemption on used in manufacture of solar photovoltaic cells, solar power generating equipment or systems and flat plate solar collectors
Unbranded precious metal	Excise duty on Unbranded articles are being full exempted from rate of 1%
Forged steel ring	Excise duty is reduced from 12% to Nil for the Forged steel ring is being used in manufacture of wing operated electricity generators
Flat Copper wire	Fully exemption on flat copper wire used in manufacture of PV ribbons for use in manufacture of solar cells
	Excise duty is increased from 10% to 12% on winding wires of copper

Item – Description	Rates
Machinery	Excise duty has been reduced from 10% to 6% on Machinery used in preparation as well as packing of meat and agriculture products.
	Full exemption on machinery, equipment for setting up of solar energy production project
	Full exemption on machinery and equipment for setting up of compressed biogas (Bio – CNG)
	Excise duty is attracted at concessional rate at 2% without CENVAT or 6% with CENVAT on hand operated sewing machine
Metal Core PCB and LED driver	Excise duty is reduced from 12% / 10% to 6% on Metal core PCB and LED driver used in manufacture of LED lights and fixtures and LED lamps
	Full exemption on the parts consumed within factory for production of non-conventional energy devices
Smart Cards	Uniform rate of 12% is being applicable from optional 2% without CENVAT or 6% with CENVAT
Tractors parts	Excise duty is being exempted on parts of tractors removed to their any manufacture branches
Reverse osmosis	Excise duty is being fully exempted other than household type filter on reverse osmosis membrane element for water filtration or purification equipment
	Excise duty is reduced from 12%/10% to 6% on reverse osmosis membrane element used in household type filter for water filtration or purification equipment.
Delhi Metro Rail Corporation	Instead of Director (Rolling Stock, Electrical & Signaling), the Director (Electrical) is being authorized to issue requisite certificate to avail Nil excise duty benefit in respect of Phase – I & II projects.
HIV / AIDS drugs	Fully exemption on supply of HIV/ AIDS drugs and kits under National AIDS control Programme funded by the Global Fund to AIDS, TB and Malaria.
National Technology Research Center	Supply any goods to National Technology Research Center is being fully exempted.
Plant & Equipment	Plant and Machinery supplied prior to 2008 for UN projects is now transferable after complying with the prescribed conditions. These are mainly payment of excise/customs after allowance of depreciation as

Item – Description	Rates
	per the prescribed rates.
Matches	Intermediate goods manufactured and used in captive consumption for further manufacture of matches is being fully exempted
Clearance of goods from EOU to DTA	Fully exemption of Education cess and Secondary & higher education cess on goods are being cleared from EOU to DTA
Mineral water & aerated water	Excise duty is reduced to 5% on mineral water and aerated water containing sugar or flavored
Unit of Measure	Change in measure of unit from **a) Per KG to Per Unit** • Parts of Electric motors and generators solely • Radio broadcasting or television parts, • Radar, monitor and projectors • Spectacles, goggles • Unassembled watch or clock • Producer gas or water gas generators with or without purifiers • Printed books, newspaper and product of printing industry **b) Per Unit to Per KG** • Natural rubber, synthetic rubber • Labels • Raw skins of sheep or lambs

Q. CUSTOMS

Q.1 Legislative Amendments

Amendment made in section 46 so as to restrict the filing of manual Bill of Entry on import of Goods. Further filing of Bill of Entry prior to filing of Import report allowed for import through land route.

Q.2 Amendment in Customs Tariff Act

Section 83B is being amended so as to provide for the levy of safeguard duty on inputs cleared into DTA as such, or are used in manufacture of final products & cleared into DTA. This is effective from 11th July, 2014

Q.3 Increase in Custom Tariff Rates

Item description	Rates
Polystyrene (other than molding powder)	BCD: 1.15% to 7.5%.
Metallurgical coke	BCD: Nil% to 2.5%
Stainless steel flat products	BCD: 5% to 7.5%.
Specified telecommunication products not covered under the ITA(Information Technology Agreement)	BCD: Nil to 10%.
Bauxite	Export duty: 10% to 20%

Q.4 Reduction in Custom Tariff Rates

Item description	Rates
Certain specified inputs for manufacture of soaps and Oelochemicals subject to actual user condition	BCD: 7.5% to Nil
Crude glycerin	BCD: 12.5% to 7.5%
Crude glycerin for use in the manufacture of soaps	BCD: 12.5% to Nil
Ethyl Alcohol and other Spirits, Denatured, of any Strength	BCD: 7.5% to 5%
Propane	BCD: 5% to 2.5%
Ethane and Other goods	BCD: 5% to 2.5%
Ethylene, Propylene and Butadiene	BCD: 5% to 2.5%
Ortho-Xylene	BCD: 5% to 2.5%
Methyl Alcohol	BCD: 7.5% to 5%
Coal tar pitch	BCD: 10% to 5%

Item description	Rates
Dolomite for metallurgical use	BCD: 5% to 2.5%
Limestone for metallurgical use	BCD: 5% to 2.5%
Naphthalene	BCD: 10% to 5%
Reformate and other goods	BCD: 10% to 2.5%
Raw materials for manufacture of Spandex yarn	BCD: 5% to Nil
Forged steel rings	BCD: 10% to 5%
Machinery, equipments, etc. Required for initial setting up of compressed biogas plant	BCD at concessional rate of 5%
Machinery, equipment, etc. required for initial setting up of solar energy production projects	BCD : Reduced to 5% CVD: Reduced to Nil
Inputs required by caustic soda or caustic potash units and membranes and by industrial plants based on membrane cell technology	BCD: 7.5% & 5% to 2.5%
LCD and LED TV panels of below 19 inches	BCD: 10% to Nil
Color picture tubes for manufacture of cathode ray TVs	BCD: 10% to Nil
E-book readers	BCD: 7.5% to Nil
Battery waste and battery scrap	BCD: 10% to 5%
Ships imported for breaking up	BCD: 5% to 2.5%

Q.5 Rationalization of Customs Tariff Rates

Item Description	Rates
Anthracite, Bituminous, Steam, Coking & Other Coal	The rates of all of these have been Rationalized to BCD @ 2.5% and CVD @ 2% in order to avoid testing costs & resultant litigation
Half-Cut, Broken, Cut, Polished, Lab-grown Diamonds & Colored Gemstones	The BCD rate has been affixed to 2.5%

Q.6 Withdrawal of Exemption from Custom Tariff

Item Description	Exemption on duty Withdrawn
Certain Electronic Goods	EC & SHEC leviable on CVD
Portable X-ray Machine / System	CVD

Q.7 Items Fully Exempted From Custom Tariff

Item Description	Duty Exempted
Specified raw materials used in the manufacture of Solar Backsheet and EVA sheet for use in manufacture of solar PV cells or Modules	BCD
Flat copper wire for use in the manufacture of PV ribbons for solar PV cells or module	BCD
Security fiber, security threads and M-feature imported by Bank Note Paper Mill India Private Limited (BNPMIPL)	BCD
Raw materials required for manufacture of security threads and security fiber subject to actual user condition	BCD
Pre-forms of precious and semi-precious stones	BCD
Specified parts of LCD and LED panels for TVs.	BCD
Goods imported by National Technical Research Organization (NTRO).	BCD
De-oiled soya extract & groundnut, sunflower, canola, mustard, rice bran, palm kernel oil cakes/oil meals	BCD
Inputs/components used in the manufacture of Personal Computers (laptops/desktops) and tablet computers Subject to actual user condition	SAD
Specified inputs (PVC sheet & Ribbon) used in the manufacture of smart cards	SAD
Parts and raw materials required for use in the manufacture of wind operated electricity generators	SAD
Liquefied Natural Gas - LNG (conditional)	BCD & CVD
Specified goods imported for use in the manufacture of textile garments for export	BCD & CVD
Specified HIV/AIDS drugs and diagnostic kits imported under National AIDS Control Programme	All customs duty

Q.8 Changes in Baggage Rules

Item Description	Change in Ceiling
Free Baggage Allowance	Raised Ceiling from ₹ 35,000 to ₹ 45,000.
Duty free allowance of Cigarettes	Reduced Ceiling from 200 to 100
Duty free allowance of Cigars	Reduced Ceiling from 50 to 25
Duty free allowance of Tobacco	Reduced Ceiling from 250 gms to 125 gms

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