Union Budget 2015

Provisions of Finance Bill 2015

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1st March 2015

Dear reader,

The Union Budget for the year 2015-16 was presented by the Finance Minister in the parliament yesterday, i.e. 28th Feb 2015. This being the first full budget by the new government, expectations were running high.

The Hon'ble FM started with a confident note laying a roadmap to roll out GST on 1st April 2016, necessary to fuel India's growth story. The latest CPI inflation rate is 5.1%, and the wholesale price inflation is negative; the current account deficit for this year is expected to be below 1.3% of GDP; based on the new series, real GDP growth is expected to accelerate to 7.4%. In the coming 2 years, GDP growth is expected to be in double digit. The foreign exchange reserves have increased substantially. This is also reflected in the surge in the stock markets, being second in the world in the past one year.

Significant announcements were made by the Hon'ble Finance Minister in his speech. He emphasized on curbing black money generation and coming down heavily on tax evaders. Further, in line with international practice, the FM proposed to incentivize plastic money instead of cash transactions. Quoting of PAN shall become mandatory for sale transactions greater than 1 lakh. Implementation of GST is proposed to be made effective from 1st April 2016. Direct Tax Code (DTC) will never see the light of the day as the jurisprudence on the 1961 Act has matured enough and most of the DTC proposals have already been incorporated. The Schemes announced highlighted the need for development of skilled labour, entrepreneurial growth (Make in India), tourism development, direct transfer of subsidy and investment through savings, even offering return on metal (gold) deposits to dealers and consumers. Sovereign gold bonds and gold monetization scheme were announced.

He proposed to reduce Corporate Tax from 30% to 25% over the next 4 years. However, on review of the fine print, it was noticed that no reduction is made in the Finance Bill. Wealth tax Act is proposed to be abolished. However, a surcharge on super-rich @ 2% is proposed to be introduced. Emphasis was given on stability of tax regime and clear focus was seen on promoting foreign investments. On the indirect tax front, excise duty has been increased from 12.36% to 12.50% and service tax from 12.36% to 14%. Close co-ordination and data sharing between CBDT and CBEC will be established.

UNION BUDGET 2015-16
KEY HIGHLIGHTS & ANNOUNCEMENTS:

The highlights and key announcements of the Union Budget 2015-16 are:

- The objective of this Budget is to improve quality of life and to pass benefits to common man.
- Indian Govt has 3 major achievements: Jan Dhan Yojana, Coal Auction and Swacch Bharat programme
- Incremental change is not going to take us anywhere, will need to think in terms of quantum jump
- Under Swacch Bharat Yojana, 50 lakh toilet already built, 6 crore toilet targeted
- Government will encourage new start ups and entrepreneurship
- Government is still firm on achieving fiscal deficit target of 3 % of GDP eventually
- Real GDP expected to accelerate to 7.4%
- Current FOREX reserves $340 billion, Second best stock market in Asian economy
- Government will utilize vast postal network for increasing access to institutional banking
- Roadmap to achieve Fiscal deficit of 3% of GDP in three years: Target is 3.9% in 2015-16, 3.5% in 2016-17, 3% in 2017-18.
- National Insurance scheme called PM Suraksha Bhima Yojana, offering coverage of 2 lakh rupees for just premium of Rs.12 per year. [WOW!]
- Rs. 5300 crore allocated for micro irrigation
- Target of 8.5 lakh crores credit to be given to farmers in 2015-16
- Target of 8.5 lakh crore of credit for agricultural sector
- Unclaimed deposits of Rs 3,000 crore in PPF and Rs 6000 crore in EPF; to create senior citizens welfare fund from this corpus
- Atal Pension Yojana to provide defined pension according to contribution; 50% contribution to be from Govt.
- Increased Budgetary allocation to Roads & Railways
- 5 Ultra Mega power projects, of 4000 MW announced
- Initial sum of Rs 150 Cr to create world class IT hub to take advantage of our competitiveness
- Start-ups: mechanism for techno-financial incubation for start ups; government sets aside Rs 1000 crore
- National Infrastructure Fund will try to leverage Infrastructure companies ; Tax free bonds for Roads , Railways & irrigation
- Renewable energy target will be increased to 1,75,000 MW
- Highest ever allocation for MGNREGA, by increasing it this year by 5,000 crore rupees
- EPF & ESI has hostage rather than client ; ESI should be made optional to employees
- GST will be put in place state of art internationally indirect tax system by April 1st 2016: FM
- An addition of 1,000 crores for Nirbhaya Fund
- Government proposes to increase visa-on-arrival to 150 countries to increase tourism

- Initial outlay of Rs 75 crore for development of electric vehicles
- For better regulation a merger of FMC & SEBI is being currently worked out
- National Skill Mission to be launched through skill development and entrepreneurship ministry, to develop employability of youth, especially below 25 years of age
- Section 6 of FEMA to be amended
- Committee to be set up to plan the celebration of the 100th birth anniversary of Deen Dayal Upadhyaya
- Propose to set-up an IT based student financial aid system under PM Vidya Laxmi scheme
- The new Pradhan Mantri Vidya Lakshmi Programme will ensure no student misses out on higher education opportunities due to lack of funds
- Government announces AIIMS institutions in J& K, Punjab, Himachal Pradesh and Assam.
- Government is pursuing policy of MakeInIndia in defense not only to cater our needs but also for export
- Defense budget has been enhanced to 2,46,727 crore rupees, an approx. increase of Rs. 25,000 crore
- Direct Tax collection is going to be 14.49 lakh crore rupees
- Basic rate of Corporate Tax to be reduced from 30% to 25% in next 4 years and will be accompanied by reducing exemptions.
- Exemptions to individual tax payers will remain
- Non-filing of returns or filing of returns with inadequate information may attract 10 year Jail term. Even concealment of income will be prosecutable with rigorous imprisonment
- Government to enact a comprehensive law on black money stashed abroad
- Benami property transaction bill will be introduced to tackle black money transaction in real estate soon
- Quoting of PAN is mandatory for any purchase made more than Rs. 1 Lakh.
- Defer the applicability of GAAR for 2 years; will only apply prospectively after Apr 2017.
- Reduced Royalty fees on Technical Services to 10% from 25%.
- Wealth Tax Abolished, instead super rich will pay extra 2% extra surcharge for people with income over 1 Crore. This will lead to additional 9,000 crore to Tax kitty.
- Excise duty on Leather footwear reduced to 6%
- Fuel excise duty will remain unchanged; change in tobacco excise duty.
- Consolidated Service Tax increased from 12.36% to 14%.
- Increased in deduction for Health insurance from Rs. 15000 to Rs. 25000. For senior citizens increased to 30,000.
- Additional deduction of Rs 50,000 for contribution to pension fund and new pension scheme
- Tax exemption for transport allowance increased from Rs 800 to Rs 1600 per month.
- Individual tax payer will benefit to the extent Rs.4,44,200/- from the exemptions announced
- Direct tax proposals will lead to 8315 crore loss and an increase of Rs. 23,000 crore in indirect tax gains.

Contents

DIRECT TAX PROPOSALS

I. TAX RATES FOR AY 2016-17

1. Income Tax Rates (For Assessment Year 2016-17)

The Income Tax Slab Rates are different for different categories of taxpayers.

The tax structure can be summarized as below:

Individuals (Resident Individuals) and HUF

- Other than Senior Citizen and Super Senior Citizen

Upto Rs. 2,50,000	NIL
Rs. 2,50,00 1 to Rs. 5,00,000	10 per cent
Rs. 5,00,001 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Senior Citizen (60 years or more but below the age of 80 years)

Upto Rs. 3,00,000	NIL
Rs. 3,00,00 1 to Rs. 5,00,000	10 per cent
Rs. 5,00,00 1 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (80 years and above)

Upto Rs. 5,00,000	NIL
Rs. 5,00,00 1 to Rs. 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

Surcharge: The amount of Income-Tax computed as above, shall be increased by surcharge @ 12% of such Income-Tax in case, the person has taxable income exceeding Rs. 1 Crore.

Cess: 3% cess on tax in all cases

Rebate: The rebate under Section 87A inserted by Finance Act, 2013 being Rs.2,000/- for individual resident assessee, whose Taxable Income does not exceed Rs.5,00,000/- to continue. In other words, such assessee shall be entitled to compulsory tax rebate of Rs.2,000/- subject to limit of their tax liability.

Firms – Tax rate 30%. Cess 3% on tax, Surcharge @ 12%, if Taxable Income exceeds Rs. 1 Crore.

Domestic Company - Tax Rate 30%, Cess 3% on tax

Taxable Income	**Surcharge**
Upto Rs. 1 Crore	NIL
> Rs.1 Crore <Rs.10 Crores	7 per cent
> Rs.10 Crores	12 per cent

Foreign Company - Tax Rate 40%, Cess 3% on tax

Taxable Income	**Surcharge**
Upto Rs. 1 Crore	NIL

> Rs.1 Crore <Rs.10 Crores	2 per cent
> Rs.10 Crores	5 per cent

Marginal Relief on Surcharge

The amount payable as Income Tax and Surcharge on Total Income exceeding Rs.1Crore (or Rs.10 Crores for certain companies) shall not exceed the total amount payable as Income Tax on Total Income of Rs. 1 Crore (or Rs. 10 Crores) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crores).

2. Abolition of levy of wealth-tax under Wealth-tax Act, 1957

Currently, Wealth-Tax is levied on an individual or HUF or company, if the net wealth of such person exceeds Rs.30 lakh on the valuation date, i.e. last date of the previous year. For the purpose of computation of taxable net wealth, only few specified assets are taken into account.

It is proposed to abolish the levy of Wealth-Tax from assessment year 2016-17.

II. CHARITABLE TRUSTS

3. Definition of charitable purpose

As per section 11 of the Act, income derived from property held under trust wholly for charitable purposes shall not be included in the total income of such trust.

Section 2(15) of the Act defines charitable purpose to include relief of the poor, education, medical relief, preservation of environment and preservation of monuments and advancement of any other object of general public utility.

It is now proposed to include 'yoga' as a specific category in the definition of charitable purpose.

First Proviso to section 2(15) of the Act makes a distinction between the trusts who are claiming exemption of the ground of advancement of any other object of general public utility" with other charitable purposes. It is mentioned that a Trust whose object is advancement of any other object of general public utility shall not be regarded as a Charitable Purpose, if it involves the carrying on any activity in the nature of trade, commerce or business, irrespective of the nature of use or application, or retention, of the income from such activities. Second Proviso to this section provide that the first proviso shall not apply if the aggregate receipts from such object of general public utility doesn't exceed Rs. 25 lacs in the previous year.

It is now proposed to substitute the above two provisos by a new proviso which reads as follows:

"Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- *such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- *the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;";*

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

Comments:

- *The inclusion of word 'yoga' after the word education imply that trusts which are engaged in yoga activities may carry on activity in the nature of trade, commerce or business. As discussed above, the Proviso below the definition of charitable purpose' is restricting carrying on trade, commerce or business only to such trusts which are claiming exemption on residuary clause, i.e. any other object of general public utility' Thus, it implies that trusts engaged in yoga activities are not restricted to carry on trade, commerce or business.*
- *The amendment in the proviso is going to affect small trusts and may benefit bigger trusts. For instance, a trust having Dharamsala will be treated as carrying on any other object of general public utility. Now if such trusts were having gross receipts of say Rs. 20 lacs, they were exempted by the Second Proviso earlier. Now, they will no longer be exempted if their entire income is from dharamsala activities, because now they can only have 20% of income in the nature of trade, commerce or business. On the other hand, bigger trusts were earlier allowed a cap of Rs. 25 lacs receipts from activities in the nature of trade, commerce or business. Now they have unlimited cap, provided they are doing other charitable activities and the receipts from dharamsala activities is not more than 20% of their gross receipts.*

4. Accumulation of income for future charitable activities – Information required to be given within time

Under the provisions of section 11 of the Act, the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust should apply at least 85% of its income for charitable purposes in India. In other words, only 15% of the income can be accumulated indefinitely by the trust or institution.

If such trusts intend to accumulate beyond 15% of their income, they can do so as per section 11(2) of the Act. As per section 11(2) of the Act, a Trust may accumulate beyond 15% of their income for future charitable activities, provided such Trust specifies by notice in writing to the AO in Form No. 10, the purpose of accumulation of income and period of accumulation. It is further provided that the period of accumulation cannot exceed five years. If the accumulated income is not applied in accordance with these conditions, then such income is deemed to be taxable income of the trust or institution.

In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act by the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.

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

Comments:

- *Rule 17 of Income Tax Rules provides that the notice is required to be given to the Assessing Officer in Form no. 10 before the expiry of time limit u/s 139(1) for furnishing return of income. However, the charging section 11(2) never provided such time limit for furnishing such form. There has been some litigations whether the Rule Making authority has power to prescribe time limit for furnishing Form No. 10 to the AO and if there is no such power, then, is there any time limit for furnishing Form No. 10 to the AO and can such form be submitted after the completion of assessment? In the landmark judgment in CIT Vs. Nagpur Hotel Owners' Association case, the Apex Court held that*

compliance of furnishing Form No. 10 can be done at any time before completion of assessment proceedings and the Rule making authorities have no power to prescribe time limit, since the Act doesn't prescribe time limit.

- *The proposed amendment seems to have been made to overcome the judgment of Apex Court in aforesaid case. Thus, if an assessee intends to take benefit u/s 11(2), it has to file Form No. 10 within the due date of filing the return as well as file return within due date.*

5. Furnishing of return of income by Government financed educational institution or hospital

Under the existing provisions of section 139, all entities whose income is exempt under clause (23C) of section 10, other than those referred to in sub-clauses (iiiab) and (iiiac) of the said clause, are mandatorily required to file their return of income.

It is proposed to amend the Act in order to provide that entities covered under clauses (iiiab) and (iiiac) of clause (23C) of section 10 shall be mandatorily required to file their return of income.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments

- *Under the provisions of section 10 of the Act, exemption under sub-clause (iiiab) and (iiiac) of clause (23C), subject to specified conditions, is available to such university or educational institution, hospital or other institution which is wholly or substantially financed by the Government. These institutions financed by Government were not required to file the return. Now the proposed amendment have mandated these institutions too to file their returns.*

6. Orders passed by the prescribed authority under section sub-clauses (vi) and (via) of clause (23C) of Section 10 made appealable before Income-tax Appellate Tribunal

The existing provisions contained in sub-section (1) of section 253 of the Income-tax specify orders that are appealable before ITAT. Order passed by the prescribed authority under sub-clauses (vi)and (via) of clause (23C) of section 10 is not included in this sub-section.

It seems to be drafting error in the Act. A comparable order u/s 12A of the Act for refusal to register a charitable trust is appealable before the Appellate Tribunal. The decision of the prescribed authority to refuse to grant approval can have significant implications for the educational or medical institution under the Income-tax Act.

Accordingly, it is proposed to amend the said sub-section (1) of section 253 so as to provide that an assessee aggrieved by the order passed by the prescribed authority under sub-clause (vi) or (via) of section 10(23C) may appeal to the Appellate Tribunal.

This amendment will take effect from 1st day of June, 2015.

III. CURBING BLACK MONEY GENERATION

7. Curb on purchasing or giving advance for purchase of immovable assets

It is widely believed that large volume of black money transactions occur in transfer of immovable properties. In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by banking channels, if the amount is twenty thousand rupees or more. Similar amendments have been made in section 269T to provide that no

person shall repay any advance received in relation to immovable property otherwise than by banking channels if the amount is twenty thousand rupees or more.

Consequential amendments in section 271D and section 271E has been made to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

These amendments are proposed to be effective from 1st day of June, 2015.

Comments:

- *The existing provisions contained in section 269SS and 269T of the Income-tax Act provide that no person shall take or repay from/to any person any loan or deposit otherwise than by banking channels if the amount of such loan or deposit is twenty thousand rupees or more. In case of such violation, entire amount of loan taken or repaid is liable for penalty.*
- *The proposed amendment intend to treat advance received or repaid in cash in relation to immovable property at par with the cash loan taken or repaid.*
- *The amendment in the present form will have far reaching implications. It is also expected to hit chit funds, who usually show cash received from depositors as advance against properties.*
- *It is important to note that the proposed amendment in the present form shall affect only advance received or repaid in relation to transfer of immovable property. However, when the transaction doesn't involve advance, and entire consideration is paid in at the time of transfer of immovable property, then in our opinion, section 269SS wouldn't apply.*

IV. TAX INCENTIVES

8. Allowance of balance 50% additional depreciation

Under the existing provisions of section 32(1)(iia) of the Act over and above the general depreciation allowance, additional depreciation of 20% of the cost of new plant or machinery acquired and installed by the manufacturing and power sector, is allowed as a deduction. The additional depreciation is restricted to 50% when the new plant or machinery acquired and installed by the assessee, was put to use for the purposes of business or profession for a period of less than one hundred and eighty days in the previous year.

Non-availability of full 100% of additional depreciation for acquisition and installation of new plant or machinery in the second half of the year may motivate the assessee to defer such investment to the next year for availing full 100% of additional depreciation in the next year. To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments:

- *The issue of allowance of balance additional depreciation was a matter of dispute with the tax authorities. The Hon'ble Delhi Tribunal in the case of Cosmos Films Ltd 139 ITD 628, the Cochin Tribunal in Apollo tyres Ltd 45 Taxmann.com 337 and the Mumbai Tribunal in MMTC Rolling Mills (P) Ltd ITA No 2789/m/2012 dated 13/5/2013 have held that the extra depreciation allowable under section 32(1)(iia) is an extra incentive which has been earned and calculated in the year of acquisition but restricted for that year to 50 per cent on account of usage; the said earned incentive must be made available in the subsequent year. However in the case of Brakes India Ltd 144 ITD 403 , the Hon'ble*

Chennai Tribunal took a contrary view and held that the provisions of Section 32 do not provide for carry forward of residual additional depreciation.

- *This proposed amendment seeks to rest the controversy by providing that the balance additional depreciation will be available in the subsequent years. The issue of allow ability of claim in earlier years remains unresolved.*

9. Incentives for the State of Andhra Pradesh and the State of Telangana

In order to encourage the setting up of industrial undertakings in the backward areas of the State of Andhra Pradesh and the State of Telangana, it is proposed to provide following new Income-tax incentives:-

(A) Additional Investment Allowance

It is proposed to insert a new section 32AD in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset as specified therein acquired and installed by an assessee, if—

(a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and

(b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

On sale or otherwise transfer of the plant or machinery within a period of 5 years, deduction allowed shall be deemed to be income chargeable as business profits in the year of sale or transfer. However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganisation but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.

(B) Additional Depreciation at the rate of 35%

Under the existing provisions contained in Section 32(1)(iia) of the Act, additional depreciation of 20% is allowed in respect of the cost of plant or machinery acquired and installed by by the manufacturing and power sector.

In order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward area in the State of Andhra Pradesh or the State of Telangana, it is proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after the 1st day of April, 2015.

This higher additional depreciation shall be available in respect of acquisition and installation of any new machinery or plant for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020. The eligible machinery or plant for this purpose shall not include the machinery or plant which are currently not eligible for additional depreciation as per the existing proviso to section 32(1)(iia) of the Act.

These amendments will apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments:

- *Section 32AD is a newly inserted incentive provision to encourage industrialization and spur growth of the backward areas of the State of Andhra Pradesh and the State of Telangana. Such units can avail benefits of the proposed insertion of Section 32AD @ 15% as also benefit of deduction available under Section 32AC @ 15% (if the cost of new assets exceeds Rs 25 crores). Moreover it is also proposed to*

provide a higher additional depreciation of 35% to such units. Thus the overall benefit for new units with cost of new assets (as defined therein) exceeding Rs 25 crores the overall benefit under Section 32AC, 32(1)(iia) and proposed Section 32AD will be 65% and those will cost of new assets Rs 25 crores or less will be 50%.

- *This deduction shall be available over and above the existing deduction available under Section 32AC of the Act. Section 32AC of the Act provides that, where a company engaged in the business of manufacture or production of any article or thing acquires and installs new assets as specified therein, and the amount of actual cost of such new assets acquired and installed during any previous year exceeds Rs 25 crores, 15% thereof is allowed as deduction. Accordingly, if an undertaking is set up in the notified backward areas in the States of Andhra Pradesh or Telangana by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC of the Act as well as under the proposed section 32AD if it fulfills the conditions such as investment above a specified threshold specified in the said section 32AC and conditions specified under the proposed section 32AD.*
- *It may be noted that benefit of Section 32AC is available only to company but that of the proposed Section 32AC is available to all assessees*

10. Deduction for employment of new workmen

The existing provisions contained in section 80JJAA of the Act, inter alia, provide for deduction to an Indian company, deriving profits from manufacture of goods in a factory. The quantum of deduction allowed is equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Clause (a) of sub-section (2), inter alia, provides that no deduction under sub-section (1) shall be available if the factory is hived off or transferred from another existing entity or acquired by the assessee company as a result of amalgamation with another company. Explanation to the section defines "Additional wages" to mean the wages paid to the new regular workmen in excess of hundred workmen employed during the previous year.

With a view to encourage generation of employment, it is proposed to amend the section so as to extend the benefit to all assessees having manufacturing units rather than restricting it to corporate assessees only. Further, in order to enable the smaller units to claim this incentive, it is proposed to extend the benefit under the section to units employing even 50 instead of 100 regular workmen.

Accordingly, it is proposed to amend sub-section (1) of the aforesaid section. It is also proposed to amend clause (i) of the Explanation so as to provide "additional wages" to mean the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.

These amendments will take effect from the assessment year 2016-17 and subsequent assessment years.

V. MINIMUM ALTERNATE TAX

11. Rationalising the provisions of section 115JB

Section 86 of the Act provides that no income-tax is payable on the share of a member of an AOP, in the income of the AOP in certain circumstances.

However, under the present provisions, a company which is a member of an AOP is liable to MAT on such share also since such income is not excluded from the book profit while computing the MAT liability of the member. In the case of a partner of a firm, the share in the profits of the firm is exempt in the hands of the partner as per section 10(2A) of the Act and no MAT is payable by the partner on such profits.

Section 2(14) provides that any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be capital asset. Consequently, the income arising to a Foreign Institutional Investor from transactions in securities would always be in the nature of capital gains. Under the provisions contained in Section 115AD, long term gains arising on transfer securities are chrargeable at the rate of 10% and short term gains (on which STT is chargeable) at the rate of 15%.However there is no exclusion of such capital gains from the levy of MAT under Section 115JB.

It is proposed to amend the section 115JB so as to provide that the share of a member of an AOP, in the income of the AOP, on which no income–tax is payable in accordance with the provisions of section 86 of the Act, should be excluded while computing the MAT liability of the member under 115JB of the Act. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also proposed to be added back to the book profit for the purpose of computation of MAT.

It is also proposed to amend the provisions of section 115JB so as to provide that income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor, shall be excluded from the chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also proposed to be added back to the book profit for the purpose of computation of MAT.

These amendments will apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments:

- *The proposed amendments seeks to exclude income from share in an AOP of a member company which is otherwise not taxable from computation of book profits and levy MAT, providing a much awaited relief. Further , FIIs will not be required to pay any MAT on transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable), proving them much awaited relief. The amendment seems to be prospective.*
- *However no such relief is allowed to Indian Companies and they shall continue to pay MAT on long term/ short-term capital gains chargeable to STT which is otherwise exempt /chargeable at a lower rate.*

12. Amount of tax sought to be evaded for the purposes of penalty for concealment of income under clause (iii) of sub-section (1) of section 271

Under the existing provision contained in Section 271(1)(c) of the Act penalty for concealment of income or furnishing inaccurate particulars of income is levied on the "amount of tax sought to be evaded", which has been defined,inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.

In cases where tax is chargeable under book profits under Section 115JB or 115JC, the Courts have held that penalty under Section 271(1)(c) cannot be levied where the concealment of income occurs under the income computed under general provisions, as by virtue of deeming fiction book profits is deemed to be the total income.

Tax paid under the provisions of section 115JB or 115JC over and above the tax liability arising under general provisions is available as credit for set off against future tax liability.

Understatement of income and the tax liability thereon under general provisions results in larger amount of such credit becoming available to the assessee for set off in future years. Therefore, where concealment of income, as computed under the general provisions, has taken place, penalty under

Section 271(1)(c) should be leviable even if the tax liability of the assessee for the year has been determined under provisions of section 115JB or 115JC of the Act.

Accordingly, it is proposed to amend section 271 of the Act so as to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC. Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.

This amendment will apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments:

- *The amendment seeks to nullify the decision of the Delhi High Court in the case of Nalwa Sons Investment Ltd wherein the Court held that the issue of concealment would have repercussion only when assessment would have been done under normal procedure. When assessment was made on income computed under Sec 115JB and tax had been paid on income so computed, no penalty could not be imposed even if the loss determined by the assessee is reduced, as by deeming fiction book profits is deemed to be the total income. Special Leave Petition of the department Civil Appeal No(s). 18564/2011 dt. 04.05.2012 against the decision of the Delhi High Court has been dismissed by the Hon'ble Supreme Court.*

VI. INTERNATIONAL TAX AMENDMENTS

13. Companies and their residential status

Existing Provisions

As per the existing provisions of Section 6 of the Act, a company is said to be a resident in India, if it is an Indian Company or during that year the control and management of its affairs is situated wholly in India.

Budget Proposals

It is proposed to amend the provisions of Section 6 of the Act, to provide that a company shall be resident of India if it is any Indian Company and its **place of effective management *at any time*** in that year is in India. It is proposed to define the term "Place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of the entity as a whole are, in substance made.

Comments

- *The concept of control and management is proposed to be replaced by the place of effective management. The POEM test i.e. the Place of Effective Management Test for determining the residency of corporates is a concept that has evolved from the OECD Model. The OECD Model Commentary has always been considered to have a highly persuasive value. The fact that the Finance Minister has drawn reference from the Model Commentary for the purposes of defining the term, further strengthens the its value.*
- *Consequent to the proposed amendments, if at any time during the year, the company's key management and commercial decisions are taken in India, it shall be deemed to be a resident if India. The requirement of complete control and management of its affairs during that year is proposed to be replaced by the concept of effective management at any time during the year.*

- *The proposed amendment aims at aligning the conditions for residence with that mentioned in the Double Tax Avoidance Agreements. It is pertinent to note that special care should be taken for determining the residential status in cases of countries with which India does not have a Double Tax Avoidance Agreement.*

14. Power of CBDT to prescribe the manner and procedure for computing period of stay in India

Section 6(1) is proposed to be amended to enable CBDT to prescribe rules for determination of period of stay in India of an Indian citizen, being a member of crew of a foreign going vessel leaving India. The basic reason for prescribing rules is to avoid uncertainty in the manner and basis of calculation for number of days present in India for determining the residential status of the crew members.

The amendment will take place retrospectively from 1st April 2015.

15. Indirect transfer of assets – much needed clarifications issued

The Finance Minister has proposed significant amendments in provisions relating to indirect transfer of assets by way of amendments in the Act and circulars/ notifications to be issued subsequently. Much of the amendments proposed were suggested as part of report suggested by the Expert Committee under the leadership of Dr Shome.

The following amendments shall however apply prospectively from AY 2016-17 and are proposed to be made by insertion of Explanations 6 and 7 to Section 9(1)(i) of the Act.

- Share or interest in a foreign entity shall be deemed to derive its value substantially from assets located in India, if on the **specified date**, the **value** of Indian assets:
  - Exceed Rs. 10 crores; and
  - Represents at least 50% of the value of assets owned by the company or entity.
- **Value** of an asset shall mean the fair market value (FMV) of such asset, without reduction of liabilities, if any, in respect of the asset.
- Specified date of valuation shall be the date on which the accounting period of the company or entity ends preceding the date of transfer. Where, however, the book value of the assets as on the date of transfer exceeds at least 15% of the book value of the assets as on the last Balance Sheet date, the date of transfer shall be the specified date of valuation.
- Manner of determination of FMV of Indian assets vis-ä-vis global assets of the foreign company shall be prescribed in the rules. Further, the gains arising from the transfer of share or interest shall be determined on proportional basis.
- Reporting obligation has been cast on the Indian concern through or in which Indian assets are held by the foreign company or the entity. Non-compliance will attract penalty of 2% of the transaction value; where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern.

Following exemptions have also been provided:

- Transfer of share or interest in a foreign entity if the transferor, along with its Associated Enterprises (AE) neither holds the right of control or management nor holds voting power or share capital or interest exceeding 5% in the direct holding company or foreign entity. In case where foreign entity is not directly holding the Indian assets, the transferor must not also hold any participation rights which entitle it to exercise control or management over the direct holding company or entity.
- In case of amalgamation or demerger, subject to certain conditions.

Comments:

- *Detailed guidelines have now been issued to provide much needed clarity to provisions relating to indirect transfer of assets.*
- *These proposals help in promoting ease of doing business for the foreign investors as also minimising the disputes during the assessment stage.*
- *The above proposal clears the ambiguities surrounding taxation of portfolio investors acquiring less than 5% voting power (shares) in a foreign entity holding shares of an Indian company.*

16. Payment of interest by PE engaged in banking business to its head office

Existing provisions

As per the provisions of Section 9(1)(v) of the Act, the interest payable by a person resident in India to a person resident outside India is deemed to accrue or arise in India except where such interest is payable in respect of debt incurred or moneys borrowed and used for the purposes of a business or profession carried on by such person outside India or for the purpose of earning any income from any source outside India.

In the absence of any specific provision to the effect for assessees engaged in banking business, the interest paid by the Permanent establishment in India to its head office abroad was not deemed to accrue or arise in India.

Budget Proposals

The Finance Bill, proposes to insert an explanation to sub clause (c) of Section 9(1)(v) to clarify that any in case of a non-resident being person engaged in banking business, the interest payable by the permanent establishment in India to its head office/ or any permanent establishments abroad or any other part of such non-resident outside India shall be deemed to accrue or arise in India. Such permanent establishment in India shall be deemed to be a distinct and independent entity and the provisions of the Act relating to the computation of total income, determination, collection and recovery of tax shall apply accordingly.

Comments

- *As a result of the proposed amendments the ruling laid down by the Special Bench of the ITAT in the case of Sumitomo Mitsui Banking Corporation vs. DDIT 19 taxmann.com 364 [2012] in this regard shall stand reversed. The ruling had laid down that "The said interest, cannot be taxed in India in the hands of assessee bank, a foreign enterprise being payment to self which cannot give rise to income that is taxable in India as per the domestic law" However, pursuant to the insertion of the proposed explanation to Section 9(1)(v), the same shall no longer hold good.*
- *Further, the permanent establishment in India shall not be allowed a deduction of the interest paid to its head office u/s 40(a)(ia) of the Act, in case where tax u/s 195 of the Act is not deducted at the time of making such payments.*

17. Fund managers in India not to constitute business connection of offshore funds

New proposal – Section 9A inserted

The proposed insertion of Section 9A in the Act seeks to facilitate relocation of fund managers of offshore funds in India by modifying "business connection" principles in respect of fund managers operating from India. The sub-section proposes that, subject to certain conditions, activities undertaken and services provided by a fund manager in India to offshore funds will not constitute a "business connection" or result in "permanent establishment" of an offshore fund being constituted in India.

Conditions required to be complied with by the offshore fund:

- The fund is established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit.
- Not a person resident in India, but is a resident of a country or specified territory with which India has signed a DTAA.
- The aggregate investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund.
- The fund and its activities are subject to applicable investor protection guidelines in the country or territory where it is a resident or is incorporated.
- Has a minimum of 25 members who are directly or indirectly not connected persons (as defined in GAAR provisions – Section 102(4))
- The fund should have a broad-based membership.
    - Any member of the fund along with connected persons shall not have participation interest, directly or indirectly, in the fund exceeding 10%.
    - Ten or less members along with their connected persons shall have participation interest, directly or indirectly, in the fund less than 50%.
- The fund shall not invest more than 20% of its corpus in any entity.
- The fund shall not invest in any associate entity.
- The monthly average of the corpus of the fund shall not be less than 100 crores.
- The fund shall not carry on or control and manage any business in India or from India. Further, the fund should not engage in any activity which constitutes a business connection in India.
- The remuneration paid to the fund manager in respect of fund management activity is not less than the arm's length price.

Conditions required to be complied with by the fund manager:

- He must not be an employee of the fund or a connected person of the fund.
- He is registered as a Fund Manager or an Investment Advisor under the SEBI Regulations and is acting in the ordinary course of business as a fund manager.
- He along with his connected persons is not entitled to more than 20% of the profits accruing or arising to the fund from the transaction carried out through the fund manager.

The fund shall be required to furnish a statement of compliance of the aforesaid conditions within 90 days of the end of the financial year.

The above section shall not have any effect on the scope or on determination of total income of the fund manager. Also, the operation of the new Section shall not result in exclusion of any income from the total income of the fund which would have been so included irrespective of whether or not the fund manager constituted a business connection.

Comments:

- *This proposal comes as a huge relief for offshore funds and is in line with practice followed in other international jurisdictions including UK, USA and Singapore. The proposal will help in establishing India as a centre for fund management.*
- *Fund investors generally prefer management teams that are closer to the asset for both investment identification and preservation of value. The above proposal shall provide much needed respite in addressing such structuring concerns.*
- *The above proposal was long overdue. The Finance Ministry vide letter dated 9th Sept 2013 had nudged CBDT to issue a clarification on this issue. SEBI too had requested to introduce "safe harbour" rules in the last year's budget and sought a clear distinction between a fund and a fund manager. However, no such clarification was issued.*

  As a result, presence of an onshore fund manager increased the risk of the fund being treated as having a Permanent Establishment or a business connection in India. Once a business connection is established, the fund becomes liable to be taxed @ 40%.

- *Allowing portfolio managers and their teams to be physically based in India will increase job opportunities and reverse the talent drain.*
- *The term "arm's length price" for remuneration to the fund manager has not been defined and reference may be drawn to Transfer Pricing Regulations.*
- *Stringent conditions have been imposed and only large broad based funds may qualify for the benefit.*

18. Reduction in tax rate on income by way of Royalty and FTS in case of non-residents

Existing:

Section 115A of the Act provides for special rate of tax in case of non-resident taxpayer where the total income includes any income by way of Royalty and Fees for technical services (FTS) received from Government or an Indian concern under an agreement entered into after 31 March 1976 and which are not effectively connected with permanent establishment, if any, of the NR in India. A rate of tax of 25% was provided by the Finance Act 2013.

Proposed:

Section 115A is now proposed to be amended to reduce the rate of tax on royalty and FTS payments made to non-residents to 10%

Comments:

- *The proposed amendment provides a much needed relief for payments made to non-residents for royalties and FTS. It is generally observed that in case of agreements entered into with non-residents, the payments are required to be made net of taxes. As a result, the effective tax rate of tax is close to 33% in the hands of the Indian assessee.*
- *Tax rate of 25% on gross payments implied a presumption of profit element of 63% in the transaction; which was not fair and in many cases, resulted in Indian companies finding it difficult to implement new technology.*
- *A tax rate of 10% on royalties and FTS is in line with international practice as can be inferred from the recent Double Taxation treaties entered into by India.*

19. Enabling the Board to notify rules for foreign tax credit

Pursuant to the DTAA entered into by India with various countries or territories under Section 90 or 90A of the Act, the Indian taxpayer is entitled to credit of the taxes paid in the foreign country from the taxes paid in India on a doubly taxed income.

The Income Tax Act does not provide for any mechanism for granting of credit of such taxes paid outside India. Accordingly, Section 295(2) is proposed to be amended to enable CBDT make rules to provide for the procedure of granting tax credit of the income tax paid in any country or territory outside India.

VII. DEMERGERS – COST OF ACQUISITION

20. Cost of acquisition of a capital asset in the hands of resulting company to be the cost for which the demerged company acquired the capital asset

Under Section 47(vib) of the Act ,any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer if the resulting company is an Indian company. In such cases the cost of such asset in the hands of resulting company should be cost of such asset in the hands of demerged company as increased by the cost of improvement, if any,

incurred by the demerged company. Further, the period of holding of such asset in the hands of resulting company should include the period for which the asset was held by the demerged company.

Under the existing provisions of the Income-tax Act, there is no express provision to this effect. Accordingly, it is proposed to amend Section 49(1)(iii)(e) to include such transfers and to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.

This amendment will apply in relation to the assessment year 2016-17 and subsequent assessment years.

Comments:

- *The amendment sets right the cost of assets transferred in the hand of the demerged company . However as far a speriod of holding is concerned there is no proposed amendment in Explanation 1 to Section 2(42A) regarding period of holding.*

VIII. BENEFITS FOR INDIVIDUAL TAX PAYERS

21. Amendments proposed in the Chapter of VIA

Tax benefits under section 80C for the girl child under the Sukanya Samriddhi Account Scheme

Section 80C of the Income Tax Act, 1961 provides for deduction in respect of certain payments from the total income of an assessee being an individual or HUF.

It is proposed to amend Section 80C so as to include within its ambit any sum paid or deposited during the previous year in the Sukanya Samriddhi Account Scheme.

Consequent to above it is proposed to insert a new clause (11A) in Section 10 of the Act to provide that interest accrued on such deposits under the scheme and any withdrawals there from in accordance with the rules shall not be included in the total income of the assessee.

This amendment has a retrospective effect from 01.04.2015 and therefore any deposits made under the scheme during the previous year 2014-15 will be eligible for deduction under Section 80C for the assessment year 2015-16.

Raising the limit of deduction under 80CCC

Section 80CCC allows for deduction to an individual assessee in respect of contribution by the assessee to certain pension funds or to keep in force a contract for any annuity plan of LIC.

The maximum amount to be allowed as deduction under this section is proposed to increase by Rs. 50,000/-, i.e, in aggregate the ceiling of deduction would be Rs. 1,50,000/-.

This amendment will take effect from the assessment year 2016-17 and subsequent assessment years.

Comments:

- *The said amendment does not seek to provide any additional benefit to the assessee as the maximum amount allowable as deduction u/s 80 CCE (which limits the aggregate deduction to be allowed under Sections 80C, 80CCC and Sub- section (1) of Sec 80CCD) remains unchanged at Rs. 1,50,000/-.*

Additional deduction under 80CCD

It is proposed to delete Sec 80CCD(1A) which restricts deduction u/s 80CCD(1) to Rs. 1 Lakh. In addition to the enhancement of the limit u/s 80CCD(1), a new sub-section (1B) to be inserted w.e.f.

A.Y. 2016-17 so as to provide for an additional deduction up to Rs.50,000/- for contributions made by any individual assesses under the NPS.

These amendments will take effect from the assessment year 2016-17 and subsequent assessment years.

Comments:

- *Therefore, maximum amount allowable as deduction in computing total income under Section 80CCD (1) will now be restricted to 10% of salary/ gross receipts, as the case may be. However, this will be subject to restriction of Rs.1,50,000/- allowable as an aggregate deduction under Section 80CCE, i.e deduction under Section 80C + Section 80CCC + Sub- section (1) of Sec 80CCD <= Rs.1,50,000/-.*
- *However, by proposed inclusion of Sub-section (1B), an assessee will be eligible to claim a further deduction of Rs.50,000 apart from deduction already claimed. This deduction would not be allowed on amount on which a deduction has already been claimed and allowed under Sub-section (1) of Section 80CCD.*

Amendment in section 80D relating to deduction in respect of health insurance premia

It is proposed to raise the limit of deduction from Rs.15,000/- to Rs. 25,000/- where payment is being made for other than senior citizens; and from Rs. 20,000 to Rs. 30,000 in case of senior citizens. Further, a new clause is proposed to be inserted wherein any medical expenditure incurred for a 'very senior citizen' (age of 80 years or more) for which no amount has been paid for insurance on the health of such person would be allowed as deduction subject to a maximum ceiling limit of Rs. 30,000.

However, an assessee can claim an aggregate maximum amount of Rs. 30,000/- in respect of the two aforesaid payments.

Similarly, it is proposed to raise the limit of deduction from Rs.15,000/- to Rs. 25,000/- in the cases where health insurance is paid for the parents of the individual. (Rs. 30,000/- where the parent is a senior citizen). Further, a new clause is proposed to be inserted wherein any medical expenditure incurred in the aforesaid cases for a 'very senior citizen' (age of 80 years or more) for which no amount has been paid for insurance on the health of such person would be allowed as deduction subject to a maximum ceiling limit of Rs. 30,000.

However, an assessee can claim an aggregate maximum amount of Rs. 30,000/- in respect of the two aforesaid payments.

These amendments will come into effect from the assessment year 2016-17.

Raising the limit of deduction under section 80DD and 80U for persons with disability

The government considering the rising cost of medical care and special needs of a disabled seeks to amend the existing provisions of Section 80DD (1) so as to raise the limit of deduction from Rs. 50,000/- to Rs. 75,000/- in case of expenditure in respect of a person with disability and that in case of person with severe disability, to Rs. 1,25,000/- from earlier limit of Rs. 1,00,000/-.

Further, under section 80U in case of an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability, limits are accordingly proposed to be modified to Rs. 50,000/- for persons with disability and Rs. 75,000/- for persons with severe disability.

These amendments will take effect from the assessment year 2016-17 and subsequent assessment years.

Raising the limit of deduction under section 80DDB

In order to claim deduction under section 80DDB, the assessee was required to furnish a certificate in the prescribed form, from a prescribed specialist working in a Government hospital. The requirement of a certificate from a doctor working in a Government hospital caused undue hardship to the persons intending to claim the deduction.

Therefore, it is now being provided that the assessee will be required to obtain a prescription from a specialist doctor for the purpose of availing this deduction.

Further, a higher limit of deduction of up to Rs. 80,000/-, for the expenditure incurred in respect of the medical treatment of a "very senior citizen" is proposed to be inserted in the said section.

These amendments will take effect from the assessment year 2016-17 and subsequent assessment years.

Tax benefits for Swachh Bharat Kosh and Clean Ganga Fund

It is proposed to provide that donations made by any donor to the Swachh Bharat Kosh and donations made by domestic donors to Clean Ganga Fund will be eligible for a deduction of hundred per cent from the total income under section 80G of the I.T.Act,1961.

However, any sum spent in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor.

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

One hundred per cent deduction for National Fund for Control of Drug Abuse

The National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been brought under the ambit of Section 80G and accordingly, any contribution made to this fund is eligible for 100% deduction.

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

IX. TDS RELATED AMENDMENTS

22. Section 192 – procedural requirements increased

It is proposed to introduce sub-section (2D) to Section 192 of the Act to provide that the deductor for the purpose of estimating income of the deductee or for computing the TDS under sub section (1) obtain from the deductee the evidence or proof of particulars of prescribed claims (including claims for set-off of loss) under the provisions of the Actin such form and manner as may be prescribed.

23. TDS on time deposits in a co-operative bank

It is proposed to amend section 194A of the Act to expressly provide that with effect from 1st June 2015, co-operative banks shall be liable to deduct TDS from payment of interest to its members on time deposits.

24. TDS on Recurring deposits with banks

As per the present provisions, the definition of "time deposits" provided in section 194A of the Act excludes 'Recurring Deposits' from its scope. Therefore, payment of interest on recurring deposits by banking company or a co-operative bank is currently outside the scope of TDS.

It is now proposed to amend the definition of time deposits so as to include recurring deposits within its scope for the purpose of TDS. However, the threshold limit of 10000/- to continue.

This amendment will take effect from 1st June 2015.

25. TDS applicability when deposits in different branches of a bank

As per the present provisions, interest income for the purpose of TDS by a banking company or a co-operative bank or public company shall be computed with reference to branch of these entities. In other words, if a person is having time deposits in five branches of a bank, and receiving interest below threshold limit from each branch, he is not liable to be deducted TDS.

It is now proposed that the computation of interest income of a deductee should be made with reference to the income credited or paid by the banking company etc having CVS. as a whole and not by individual branch of such bank.

This amendment will take effect from 1st June 2015.

26. TDS on payments to transporters

Under the existing provisions of section 194C of the Act payment to contractors is subject to tax deduction at source (TDS) at the rate of 1% in case the payee is an individual or Hindu undivided family and at the rate of 2% in case of other payees if such payment exceeds Rs. 30,000 or aggregate of such payment in a financial year exceeds Rs. 75,000. Prior to 1.10.2009, section 194C of the Act provided for exemption from TDS to an individual transporter who did not own more than two goods carriage at any time during the previous year. Subsequently, Finance (No.2) Act, 2009 substituted section 194C of the Act with effect from 1.10.2009, which *inter alia* provided for non- deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if the contractor furnishes his Permanent Account Number (PAN) to the payer.

Because of the aforesaid amendment all transporters, irrespective of their size, are claiming exemption from TDS under the existing provisions of sub-section (6) of section 194C of the Act on furnishing of PAN.

It is now proposed to amend the provisions of section 194C of the Act to expressly provide that the relaxation under sub-section (6) of section 1 94C of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to an contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Act (i.e a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.

This amendment will take effect from 1st June, 2015.

27. Extension of eligible period of concessional tax rate u/s 194LD

Existing:

The existing provisions of Section 194LD provide for lower withholding tax rate @ 5% in case of interest payable at any time on or after 1st June 2013 but before 1st June 2015 to FIIs and QFIs on their investment made in Govt securities and rupee denominated corporate bonds provided the rate of interest does not exceed the rate notified by Central Govt in this regard.

Proposed:

Section 194LD is proposed to be amended to provide that the concessional rate of 5% withholding tax on interest payment shall be available for interest payable upto 30th June 2017.

The objective of the proposed amendment is to bring the benefit of the lower rate of withholding tax in line with Section 194LC, in respect of interest payable on external commercial borrowings (ECB) by an Indian company.

28. Payments to Non Residents

Under the existing provisions contained in Section 195 of the Act, requirement of obtaining/furnishing Form 15CB/Form 15CA related to sum chargeable under the provisions of the Act.

It is proposed to cover the scope of Section 195 to include within the ambit any sums, whether or not chargeable under the provisions of the Act. The form and manner of furnishing information shall be prescribed.

It is proposed to introduce Section 271-I to levy a penalty of Rs 1,00,000 in case of non-furnishing or furnishing of incorrect information under the proposed sub-section (6) of Section 195 of the Act.

It is further proposed to amend the provisions of section 273B to provide that no penalty shall be imposable if it is proved that there existed reasonable cause for non-furnishing or incorrect furnishing of the information.

Comments:

- *The proposed amendment seeks to cover all payments to non-residents and foreign companies, whether or not chargeable under the provisions of the Act. For that matter even payments made through credit cards or for personal purposes or in the course of travel abroad, may be covered.*
- *Penal provisions are very harsh.*

29. Procedural amendments in TDS provisions

It is proposed to amend the provisions of section 200A of the Act so as to enable computation of fee payable u/s 234E of the Act at the time of processing of TDS statement u/s 200A of the Act.

Amendments have been proposed for processing of TCS return and filing of correction statement in line with TDS provisions.

These amendments will take effect from 1st June 2015.

30. Withdrawal from Employees Provident Fund Scheme

It is proposed to insert a new provision in Act for deduction of tax at the rate of 10% on premature taxable withdrawal from EPFS. However, it is also proposed to provide a threshold limit of 30000/- for applicability of aforesaid provision. Further non furnishing of PAN by employees would attract TDS at maximum marginal rate.

These amendments will take effect from 1st June2015.

31. Enabling of filing of Form 15G/15H for payment made under life insurance policy

The Finance (No.2) Act, 2014, inserted section 194DA in the Act with effect from 1.10.2014 to provide for deduction of tax at source at the rate of 2% from payments made under life insurance policy, which are chargeable to tax. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year is less than Rs. 1,00,000. In spite of providing high threshold for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including the payment made under life insurance, will be nil. The existing provisions of section 197A of the Act inter alia provide that tax shall not be deducted, if the recipient of the certain payment on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No.15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. It is, therefore, proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194DA also eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

This amendment will take effect from 1st June, 2015.

32. Relaxing the requirement of obtaining TAN for certain deductors

Under the provisions of section 203A of the Act, every person deducting tax (deductor) or collecting tax (collector) is required to obtain TAN and quote the same for reporting of tax deduction/collection to the Income-tax Department. However, currently, for reporting of tax deducted from payment over a specified threshold made for acquisition of immovable property (other than rural agricultural land) from a resident transferor under section 194-IA of the Act, the deductor is not required to obtain and quote TAN and he is allowed to report the tax deducted by quoting his Permanent Account Number (PAN).

The obtaining of TAN creates a compliance burden for those individuals or HUF who are not liable for audit under section 44AB of the Act. The quoting of TAN for reporting of TDS is a procedural matter and the same result can also be achieved in certain cases by mandating quoting of PAN especially for the transactions which are likely to be one time transaction such as single transaction of acquisition of immovable property from non-resident by an individual or HUF on which tax is deductible under section 195 of the Act. To reduce the compliance burden of these types of deductors, it is proposed to amend the provisions of section 203A of the Act so as to provide that the requirement of obtaining and quoting of TAN under section 203A of the Act shall not apply to the notified deductors or collectors.

This amendment will take effect from 1st June, 2015.

X. ASSESSMENT PROCEDURE

33. Simplification of approval regime for issue of notice for re-assessment

Section 151 of the Act provides for sanction from certain authorities before issue of notice for reassessment of income under section 148. Under certain specified circumstances, the Assessing Officer is required to obtain sanction before issue of notice under section 148. Section 151 specifies different sanctioning authorities based on- (i) whether scrutiny under sub-section (3) of section 143 or section 147 has been made earlier or not, (ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and (iii) the rank of the Assessing Officer proposing to issue notice.

To bring simplicity, it is proposed to provide that no notice under section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

This amendment will take effect from 1st day of June, 2015.

34. Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned.

Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person

notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Disputes have arisen as to the interpretation of the words "belongs to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, it is proposed to amend the aforesaid section to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

This amendment will take effect from the 1st day of June, 2015.

Comments

- *Let us illustrate this with an example. Say, a property broker has been searched. A diary was found which contain certain entries which show that A has sold property to B, in which 30% of the transaction value is out of books. This document belong to the property broker, though the entries therein relate to A and B. There has been disputes that A or B cannot be proceeded u/s 153C because the diary doesn't belong either to them. Now, the proposed amendment seeks to add that even information contained in the seized document can be basis to proceed u/s 153C.*
- *However, one should take note that the proposed amendment shall prima-facie affect only when incriminating entries are found. To recall, an amendment was made in Finance Act 2014, to provide that if the AO is satisfied that the books of accounts or documents or assets seized or requisitioned have a bearing on the determination of undisclosed income of other person, then he shall proceed against such person u/s 153C. In other words, if no incriminating entries are found, then the AO is not obliged to proceed u/s 153C*

35. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue

Under the existing provisions contained Section 263(1) of the Income-tax Act, if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one.

In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which, should have been made;
(b) the order is passed allowing any relief without inquiring into the claim;
(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

This amendment will take effect from 1st day of June, 2015

Comments:

- *The term 'erroneous' and 'prejudicial to the interests of the revenue' has always been a subject matter of litigation. The proposed amendment seeks to dilute the settled law and give sweeping powers to the Commissioners to revise cases in the garb of inadequate inquiry. What constitutes ' inquiries or verification which, should have been made' is very subjective and may differ from person to person. This may open a pandora box of litigation in time to come.*
- *The amendment is proposed to be prospective.*

36. Avoidance of appeal when identical issue is pending at Supreme Court in assessee's case

Section 158A of the Income-tax Act provides that during pendency of proceedings in his case for an assessment year an assessee can submit a claim before the Assessing Officer or any appellate authority that a question of law arising in the instant case for the assessment year under consideration is identical with the question of law already pending in his own case before the High Court or Supreme Court for another assessment year and if the Assessing Officer or any appellate authority agrees to apply the final decision on the question of law in that earlier year to the present year, he will not agitate the same question of law once again for the present year before higher appellate authorities. The Assessing Officer or any appellate authority before whom his case is pending can admit the claim of the assessee and as and when the decision on the question of law becomes final, they will apply the ratio of the decision of the High Court or Supreme Court for that earlier case to the relevant years case also.

There is presently no parallel provision for revenue to not file appeal for subsequent years where the Department is in appeal on the same question of law for an earlier year. As a result, appeals are filed by the revenue year after year on the same question of law until it is finally decided by the Supreme Court thus, multiplying litigation.

Accordingly, it is proposed to insert a new section 158AA so as to provide that notwithstanding anything contained in this Act, where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court, in an appeal or in a special leave petition under Article 136 of the Constitution filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal under sub-section (2) or sub-section (2A) of section 253, direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

This amendment will take effect from the 1st day of June, 2015.

XI. REITs / AIFs

37. Taxability of capital gains on sale of the units acquired by the Sponsor

Existing Provisions

As per the provisions of Section 47(xvii) of the Act *any transfer of a capital asset, being share of a special purpose vehicle (defined in section 10(23FC)) to a business trust in exchange of units allotted by that trust to the transferor* shall not be regarded as transfer for the purposes of computation of capital gains tax thereon. However, capital gains shall be computed in respect thereof at the time of disposal of such units by the sponsor. Section 49 of the Act provides that the cost of acquisition of

such units shall be determined with reference to the cost of acquiring the shares of the SPV, and the holding period in respect thereof shall include the holding period of such units.

Second proviso to section 111A provides that the preferential capital gains tax regime (consequential to the levy of STT) available to the other unit holders of the business trust shall not be available to the sponsor in respect of these units at the time of transfer.

Budget Proposals

The Finance Bill, 2015, proposes that the sponsor would get the same tax treatment on offloading of units acquired in lieu of shares of the SPV (i.e. units acquired under the initial offer on listing of units) as would have been available had he transferred the underlying shareholding through an IPO.

Further, it is proposed to levy STT on the sale of such units acquired in lieu of shares of the SPV and allow taxability of the capital gains accruing to the sponsor at the time of such sale at the concessional rate of 15%/ NIL u/s 111A and 10(38) of the Act respectively.

Comments

- *The sponsor holding the shares of the SPV has the following exit options: -*
    - *Through the IPO route or*
    - *Sale of such shares in lieu of the units of the REIT.*
- *The proposed amendments seek to bring both the options at par with each other, and extend the preferential capital gains tax regime to the sponsors selling their units acquired in lieu of their shareholding in the SPV. This shall provide a fillip to REITs and shall help in attracting more funds in a transparent manner into the real estate sector.*
- *The long term capital gain accruing to the sponsor though exempted u/s 10(38) of the Act shall continue to form part of the book profits for the purposes of computing MAT u/s 155JB of the Act.*

38. Taxability of rental income derived by the business trust/ REIT from assets held

The existing provisions of Section 10(23)(FC) accord a pass through status only to the interest income received or receivable by the business trust from a special purpose vehicle. The Finance Bill, 2015 proposes to also provide a pass through status to the rental income derived by the REIT's from assets directly held by them. The rental income shall be exempt in the hands of the REIT and taxable in the hands of the unit holders to the extent attributable to the income distributed to them. Accordingly, no TDS shall be deducted on payment of the rent to the business trust, and it is proposed to amend section 194I so as to specifically exclude the rent paid to the REITs' from within its ambit.

It is proposed to provide for TDS at the rate of 10%/ rates in force on payments of such rental income to the resident/ non-resident unit holder.

39. Pass through status to Category I and Category II Alternate Investment Funds

Existing Provisions

The existing provisions provide a pass through taxation regime only for VCC/ VCF registered under the SEBI (VCF) Regulations 1996, i.e. the income is taxable in the hands of the investors instead of the VCC/ VCF.

Budget proposals

It is proposed to amend the Act to put in place a specific regime for taxation of Category I and Category II AIF's, providing the manner of taxation of the income of such investment fund and their investors. Chapter XII FB enumerating the following salient features and provisions relating to AIF's is proposed to be inserted: -

- Income under the head profits and gains from business or profession shall be chargeable to tax in the hands of the investment funds. Any other income being income from other sources or income under the head capital gains is proposed to be exempt in the hands of the AIF.
- Income distributed to the unit holders of the investment fund, to the extent not chargeable to tax or exempt in the hands of the investment fund, shall be taxable in the hands of the unit holders under the same head and in the same proportion as would have been chargeable in the hands of the investment fund. It is proposed to introduce Section 194LBB to provide for deduction of tax at the rate of 10% at the time of distribution of such income to the unit holder.
- Any loss of the investment fund, not set off against any other head of income shall not be passed on to the investors. Instead the same is proposed to be carried forward by the investment fund for set off in the subsequent years.
- The provisions of Chapter XII D (Dividend Distribution Tax) and XII E (Tax on distributed income) do not apply to income paid by the investment fund to its unit holders.
- It is proposed to amend the provisions of Section 139(1) requiring the investment funds to file their return of income for income/ losses incurred by them.

The amendments are proposed to be effective from 1st April, 2016.

XII. AUDITOR'S INDEPENDENCE

40. Certain accountants not to give reports/certificates

Section 44AB, section 80-IA, section 92E, section 115JB, etc mandates the taxpayers to furnish audit reports and certificates issued by an 'accountant'.. Explanation below section 288(2) of the Act defines an 'accountant' as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2) of the Companies Act, 1956.

Section 141(3) of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor.

It is proposed to amend section 288 of the Act to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of Section 141(3) of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company. On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of non-company is also proposed to be provided.

However, it is proposed to provide that the ineligibility for carrying out any audit or furnishing of any report /certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding as authorised representative on behalf of that assessee.

It is further proposed to provide that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.

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

Comments:

- *This is a welcome amendment to ensure that only persons who are truly independent carry out attest function under the provisions of the Act.*

- *The proposed definition of accountant will may disqualify existing Chartered Accountants carrying out tax audit, certifications etc. under the Act in case of both companies and non-companies.*

XIII. SETTLEMENT COMMISSION

41. Settlement Application for other years when 148 notice has been received

An assessee may approach Settlement Commission at any stage of case relating to him. The term "case" has been defined in section 245A(b) of I.T. Act to mean any proceeding for assessment of any assessment year or years, which may be pending before the AO on the date of fling application u/s 245C(1). The *Explanation* to the said clause provides for deemed commencement of proceedings under different situations.

Clause (i) of the *Explanation* to clause (b) of section 245A provides that the proceeding for assessment or reassessment under section 147 of the Act is deemed to commence from the date of issue of notice under section 148 of the Act. It has been observed that issue relating to escapement of income is often involved in more than one assessment year. In such case the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice under section 148 has been issued. Therefore, to take the proceeding for all other assessment years where there is escapement, the assessee becomes eligible only after notice under section 148 has been issued for all such assessment years.

In order to obviate the need for issue of notice in all such assessment years for commencement of pendency, it is proposed to amend clause (i) of the said *Explanation* to provide that where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 of the Act or in response to notice under section 142 of the Act.

The existing provision contained in clause (*iv*) of the *Explanation* provides that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

Date of commencement and conclusion of proceedings

It is proposed to amend clause (*iv*) of the *Explanation* to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the date on which a return of income is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made.

Time limit for rectification of order by Settlement Commission

The existing provision contained in sub-section (6B) of section 245D of the Income-tax Act provides that the Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4).

There is no provision for additional time where the assessee or the Commissioner files an application for rectification towards the end of the limitation period. Accordingly, it is proposed to amend sub-section (6B) of section 245D of the Income- tax Act to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4),-

(a) at any time within a period of six months from the end of month in which the order was passed;

(b) on an application made by the Principal Commissioner or Commissioner before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

Immunity from prosecution order should be speaking

The existing provision contained in sub-section (1) of section 245H of the Income-tax Act provides that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, immunity from prosecution.

As immunity is provided from prosecution by the Settlement Commission, it is proposed to amend sub-section (1) of section 245H of the Income-tax Act so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it.

Abatement of proceedings before AO - when

The existing provision contained in sub-section (1) of section 245HA of the Income-tax Act provides for abatement of proceedings in different situations.It is proposed to amend sub-section (1) of section 245HA of the Income-tax Act to provide that where in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order under sub-section (4) of section 245D was passed.

Life time opportunity – to include assessee and certain controlled entities

The existing provision contained in section 245K of the Income-tax Act, provides that where an application of a person has been allowed to be proceeded with under sub-section (1) of section 245D, then such person shall not be subsequently entitled to make an application before Settlement Commission. It further provides that in certain situations the person shall not be entitled to apply for settlement before Settlement Commission.

The restriction is presently applicable to a person. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement Commission only once for any person. Accordingly, it is proposed to amend section 245K of the Income-tax Act to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,-

(i) where such person is an individual, any company in which such person holds more than fifty percent. of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent of the profits at any time, or any Hindu undivided family in which such person is a karta;

(ii) where such person is a company, any individual who held more than fifty percent. of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;

(iii) where such person is a firm or association of person or body of individual, any individual who was entitled to more than fifty percent. of the profits in such firm, association of person or body of individual, at any time before the date of application before the Settlement Commission by such person;

(iv) where such person is an Hindu undivided family, the karta of that Hindu undivided family.

Appropriation of seized cash

The existing provision contained in section 132B of the Income-tax Act, provides that the asset seized under section 132 or requisitioned under section 132A may be adjusted against the amount of existing liability under the Income-tax Act, the Wealth-tax Act etc. and the amount of liability determined on completion of assessment.

It is proposed to amend section 132B of the Income-tax Act to provide that the asset seized under section 132 or requisitioned under section 132A may also be adjusted against the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C.

Interest where additional income is disclosed before the Settlement Commission under section 245C

The existing provision contained in sub-section (4), *inter alia*, provide that where on an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced accordingly. However, in case an application is filed before the Settlement Commission under section 245C declaring an additional amount of income-tax, there is no specific provision in section 234B for charging interest on that additional amount.

Accordingly, it is proposed to insert a new subsection (2A) so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section. Further, where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.

Effective date

These amendments will take effect from 1st day of June, 2015.

XIV. OTHERS

42. Amendments in Direct taxes

Global Depository Receipts

As per the Depository Receipts Scheme, 2014, DR's can be issued against the securities of listed, unlisted or private or public companies against underlying instruments being debt instruments, shares or units. Both sponsored issues and unsponsored deposits and acquisitions are permissible. Since the tax benefits were intended to be provided in respect of sponsored GDR's and listed companies only, it is proposed to restrict the provisions of Section 115ACA only to such GDR's as defined in the earlier depository scheme.

Deferment of provisions relating to General Anti Avoidance Rule ("GAAR")

It is proposed that implementation of GAAR be deferred by two years and GAAR provisions be made applicable to the income of the financial year 2017-18 (Assessment Year 2018-19) and subsequent years

by amendment of the Act. Further, investments made up to 31.03.2017 are proposed to be protected from the applicability of GAAR by amendment in the relevant rules in this regard.

Raising the threshold for specified domestic transaction

The threshold limit for applicability of Transfer Pricing Regulations for specified domestic transactions u/s 92BA of the Income Tax Act,1961 is proposed to increase from Rs.5Crore to Rs. 20 Crore.

This amendment will take effect from the assessment year 2016-17 and subsequent assessment years.

Exemption to income of Core Settlement Guarantee Fund (SGF) of the Clearing Corporations

It is proposed to exempt the income of the Core SGF arising from contribution received and investment made by the fund and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository.

However, where any amount standing to the credit of the Fund and not charged to incometax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

This amendment will take effect from assessment year 2016-17 and subsequent assessment years.

Raising the income-limit of the cases that may be decided by single member bench of ITAT

It is proposed to amend sub-section (3) of section 255 of the Act so as to provide that a bench constituted of a single member may dispose of a case where the total income as computed by the Assessing Officer does not exceed fifteen lakh rupees from the present limit of five lakh rupees.

This amendment will take effect from 1st day of June, 2015.

Tax neutrality on merger of similar schemes of Mutual Funds

It is proposed to provide tax neutrality to unit holders upon consolidation or merger of mutual fund schemes provided that the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than equity oriented fund. It is further proposed that the cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee. It is also proposed to define consolidating scheme as the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and consolidated scheme as the scheme with which the consolidating scheme merges or which is formed as a result of such merger.

These amendments will take effect from assessment year 2016-17 and subsequent assessment years.

Interest under Section 234B

Section 234B of the Act provides that where the total income is increased pursuant to assessment u/s 147 or section 153A, the assessee shall be liable to interest at the rate of 1% on the amount of increase in total income for the period commencing from the date of assessment and ending on the date of reassessment u/s 147 or 153A

It is proposed to amend the provisions of Section 234B, to provide that such interest shall be levied for the period commencing from 1st April next following the financial year until the date of determination of total income u/s 147 or 153A

43. Amendments proposed in FEMA

Regulating Capital Account transactions

Section 6 of FEMA provides that RBI may prescribe rules for Capital Account transactions. Sub-section (3) lists several capital account transactions – inflow of investment, outflow of investment, loans, guarantees, immovable property, etc. The Finance Bill proposes to amend Section 6 so as to provide that the RBI may in consultation with Central Government prescribe any class or classes of capital account transactions involving debt instruments which are permissible; and the conditions which may be placed on such transactions. It is proposed to provide that the Central Government or the RBI shall not impose any restrictions on drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

It is proposed to further provide that the Central Government may in consultation with RBI prescribe any class or classes of capital account transactions not involving debt instruments which are permissible.

The meaning of debt instruments will be determined by the Central Government.

Power to seize assets in India equivalent of undisclosed assets held abroad

A new section 37A is proposed to be inserted. It provides that if any person holds any foreign exchange, foreign security or any immovable property outside India in contravention of section 4 of FEMA, the equivalent value of property in India can be seized. This power of seizure under FEMA is in addition to the penal action under Income-tax Act and FEMA. It is proposed to provide that if the Authorised officer has "reason to believe" that the foreign asset is "suspected to have been held in contravention of FEMA …" the consequences of seizure will follow.

Comments

- *It may be noted that this section is proposed to apply to both residents and non-residents. For example, an Indian resident acquires foreign property in contravention of the FEMA. He subsequently becomes a non-resident. That does not make his foreign property legal as far as FEMA is concerned. If such a person has Indian property, it can be seized.*

- *Seizure of property should not take place based on suspicion. Seizure should happen only if the contravention is established. If at all property has to be seized, it should be provisional. The provisions of Prevention of Money Laundering Act (PMLA) are far more stringent that FEMA. However PMLA also provides that property can be seized provisionally. Only after the crime in respect of which the guilt is established, the seizure becomes final. Till that time the seizure is not final. Under FEMA, there is no such provision.*

- *While giving Budget Speech, lot of emphasis was given by Hon'ble Finance Minister that person holding undisclosed foreign assets will be dealt very harshly in future. For instance imprisonment of 10 years, income tax on maximum marginal rate, no option of going into settlement commission, penalty u/s 271(1)(c) at maximum rate, etc. It has been stated that date of opening of foreign bank account to be mentioned in the return. Non filing of return or furnishing of inaccurate particulars or not furnishing required particulars in the return may make the assessee liable for prosecution of seven years. However, many of these harsh measures mentioned in the Budget Speech are not forming part of the Bill. It was further mentioned in the speech that Benami Prohibition Act will be introduced.*

INDIRECT TAX PROPOSALS

I. PROPOSED AMENDMENTS UNDER SERVICE TAX REGIME

1. Change in Service Tax Rate

The Service Tax rate is being increased from 12% plus EC and SHEC to flat 14%. The Cess portion which was earlier 3% shall be subsumed in the revised rate of Service Tax. Thus, effective increase in Service Tax rate will be from existing rate of 12.36% (inclusive of cesses) to 14%. However, this revised rate shall be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

2. Swachh Bharat Cess

A new Chapter called the "Swachh Bharat Cess" has been introduced by the BJP government, which shall come into force from a date to be notified by the Central Government in this regard and will not have immediate effect. This is an enabling provision being made to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% of the ***value*** of such taxable services with the objective of financing and promoting Swachh Bharat initiatives as promoted by our Hon'ble Prime Minister.

It may be noted that the provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.

3. Broadening of tax base

Section 66D, which provides the list of services covered under the Negative List has been reviewed by the government, in a sense, to exclude certain services from the negative list categories, with a view to bring more services within the tax net. The proposed amendments in this section are discussed below.

Section 66D(j) which covers admission to entertainment events or access to amusement facility is being omitted. Therefore, service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places shall now fall within the ambit of Service tax. Similarly, service by way of admission to entertainment event of concerts, non-recognized sporting events, pageants, music concerts, award functions, where the amount charged is more than `500/- for right to admission to such an event shall also be chargeable to Service tax. Consequent to the omission of Section 66D(j) the definition of "amusement facility" and "entertainment event" provided under Section 65B(9) and Section 66B(24) has also been omitted.

However, the existing exemption to service by way of admission to entertainment events, namely, "exhibition of cinematographic film, circus, recognized sporting events, dance, theatrical performances including drama and ballets, by way of the Negative List entry shall be continued, irrespective of the amount charged for such service, through the route of exemption. For this purpose a new entry is being inserted in Notification No. 25/2012-ST, dated 20.6.2012.

Section 66D(f) which exempts "any process amounting to manufacture or production of goods" has been modified and shall now be read as "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing / job work for production of potable liquor for a consideration. In this context, the definition of the term "process amounting to manufacture or production of goods" [section 65B (40)] is being amended with a consequential amendment in S. No. 30 of notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit.

Presently, services provided by the Government or a local authority, excluding certain services specified under clause (a) of section 66D, are in the Negative List. Service tax applies on the "support service" provided by the Government or local authority to a business entity. An enabling provision is being made, by amending [section 66D (a)(iv)], to exclude all services provided by the Government or local authority

to a business entity from the Negative List. Consequently, the definition of "support service" [section 65B(49)] is being omitted.

It may however be noted that as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any other entry in the Negative List, shall be liable to Service Tax.

These amendments shall come into effect from a date to be notified by the Central Government in this regard after the enactment of the Finance Bill, 2015.

4. Amendment to Notification No. 25/2012-ST dated 20-06-2012

Notification No. 25/2012-ST dated 20-06-2012 deals with taxable services which are exempt from the whole of service tax. The government with a view to bring more revenue to the central exchequer has made certain amendments to this notification, which is discussed as under:

In respect of S. No. 12 of the said notification, exemption presently available on specified services of construction, erection, commissioning, installation, repairs. Renovation etc. provided to the Government, a local authority or a governmental authority shall be limited only to,-

- a historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;
- canal, dam or other irrigation work; and
- pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

Therefore exemption to other services presently covered under S. No. 12 of notification No. 25/12-ST is being withdrawn. In other words, the following services, which earlier formed part of S. No.12 of the said notification, shall now be taxable –

- a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
- a structure meant predominantly for use as (i) an educational, (ii) a clinical or (iii) an art of cultural establishment; and
- a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to Section 65B(44).

In respect of S. No. 14 of the said notification, exemption in respect of services by way of construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn. The other elements covered under S. No. 14 shall continue to be exempted.

In respect of S. No. 16 of the said notification, services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, shall now be exempted where amount charged is upto Rs 1,00,000 for a performance. However, there was no such ceiling limit earlier.

In respect of S. No. 20 and 21 of the said notification, exemption to transportation of food stuff by rail, or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is, however, separately exempted, and shall continue to be so. Therefore, it means that foodstuff including tea, coffee, jiggery, milk products, sugar, edible oil, fruits, vegetables and eggs are no longer exempt and hence service tax shall be levied thereupon.

S. No. 32 of the said notification, which earlier exempted services by way of making telephone calls from (a) Departmentally run public telephone; (b) Guaranteed public telephone operating only local calls; and (c) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued, has now been withdrawn and hence taxable.

In respect of S. No. 29 of the said notification, exemptions are being withdrawn on the following services: (a) services provided by a mutual fund agent to a mutual fund or assets management company,
(b) distributor to a mutual fund or AMC and (c) selling or marketing agent of lottery ticket to a distributor. Further, Service Tax on these services shall be levied on reverse charge basis.

All the above changes in notification No. 25/12-ST, dated 20.6.2012 shall come into effect from the 1st day of April, 2015.

5. New exemptions granted

Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables.

Service provided by a Common Effluent Treatment Plant operator for treatment of effluent.

Life insurance service provided by way of Varishtha Pension Bima Yojna.

Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or association of persons consisting of such exhibitor as one of its members.

Any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from service tax. The scope of this exemption is being widened to include all ambulance services.

Service provided by way of admission to a museum, zoo, national park, wild life sanctuary, and a tiger reserve.

Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is already exempt from service tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is, however, widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).

6. Switchover from negative list to exemption notification

Service by way of right to admission to:

- exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet;
- recognized sporting events;
- concerts, pageants, award functions, musical or sporting event not covered by the above exemption, where the consideration for such admission is upto ' 500 per person;

have been omitted from negative

These changes shall be brought into effect from the date the amendments being made in the Negative List, concerning the service by way of admission to entertainment events, come into effect.

7. Reverse Charge Mechanism w.e.f 01-04-2015

Man power supply and security services, which were earlier under the ambit of partial reverse charge, where service is provided by an individual, HUF or a partnership firm to a body corporate, has been brought within the ambit of full reverse charge.

Upon withdrawal from the exemption notification no. 25/2012-ST dated 20-06-2012 at S. No. 29, Services provided by mutual fund agents, mutual fund distributors and agents of lottery distributor are being brought under reverse charge consequent to withdrawal of the exemption on such services. Accordingly, Service Tax in respect of mutual fund agents and mutual fund distributors services shall be paid by assets management company or, as the case may be, by the mutual fund receiving such services. In respect of sub-agents of lottery, Service Tax shall be paid by the distributor or selling agent of lottery.

8. Changes in Cenvat Credit Rules, 2014

Prior to amendment to Rule 4(7) of CCR, 2014, CENVAT credit on input service in respect of service tax paid under reverse charge mechanism was allowed upon payment of value of input service and the service tax thereof as indicated in invoice, bill or challan. Rule 4(7) has been amended to allow credit of service tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider.

Time limit of for availment of CENVAT credit of duty paid on inputs and service tax paid on input services by manufacturer or the provider of output service shall be increased from 6 months to 1 year. Such credit shall not be taken after 1 year of the date of issue of invoice, bill or challan.[w.e.f. 01.03.2015]

CENVAT Credit in respect of inputs shall be available even if the said inputs are received in the premises of the job worker, in case such goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service. [w.e.f. 01.03.2015]

CENVAT Credit in respect of Capital Goods shall be available even if the same are in the premises of the job worker in case, such are sent directly to the job worker on the direction of the manufacturer or the provider of output service.

9. Procedural changes in the Finance Act, 1994

Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. The illustration incorporated in this section to exemplify the scope of this provision is read as under –

- "The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax."
- Section 67 deals with valuation of taxable services for charging service tax. For the purpose of valuation the meaning of the term "consideration" has been widened to also include the following:
- any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
- any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'
- Earlier, the meaning of consideration included "any amount that is payable for taxable services provided or to be provided."

Section 73(1) deals with service of notice for recovery of service tax where the tax has not been levied or paid or short levied or short paid or erroneously refunded. In this connection, a new sub section 1B has been inserted to provide that recovery of the service tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73 and the existing sub section 4A, which provided for reduction in penalty where true and complete details of transactions were available on specified records, has been omitted. Therefore no relaxation from reduction of penalty is available to assessee in so far as section 73 is concerned.

Section 76 earlier provided for penalty for failure to pay service tax which was `100 per day during which such failure continued or 1% p.m, whichever was higher, starting with the first day after the due date till the actual date of payment, subject to 50% of service tax payable. With a view to rationalise penalty, Section 76 has been substituted with a new section 76, which provides that in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, penalty shall be levied in the following manner –

- penalty not to exceed 10% of service tax amount involved in such cases;
- no penalty is to be paid if service tax and interest is paid within 30 days of issuance of notice under section 73 (1);
- a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the service tax, interest and reduced penalty is paid within 30 days of such order; and
- if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

Section 78 which dealt with penalty for suppressing etc. of value of taxable services has been completely substituted by a new section 78 which provides that penalty in such cases shall now be in the following manner –

- penalty shall be hundred per cent of service tax amount involved in such cases;
- penalty equal to 15% of the service tax amount is to be paid if service tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;
- a reduced penalty equal to 25% of the service tax amount determined by the Central Excise Officer, by an order, is to be paid if the service tax, interest and reduced penalty is paid within 30 days of such order; and
- if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

A new section 78B has been inserted as a transitory provision in line with amendments made to Section 76 and 78 which provides that amendments made to section 76 and 78 shall be applicable on cases where notice has not been served, or in case where notice has been served under section 73(1) or proviso thereto, but no order is issued under section 73(2) before date of enactment of Finance Bill, 2015. However in respect of cases covered under Section 73(4A), which has now been omitted, if no notice is served under section 73(1) or proviso thereto, but no order is issued under section 73(2) before date of enactment of Finance Bill, 2015, penalty shall not exceed 50% of the amount of service tax.

10. Changes in Abatements on certain services w.e.f 01-04-2015

Service tax, at present, is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. A uniform abatement is now being prescribed for transport by rail, road and vessel and Service Tax shall therefore be payable on 30% of the value of such service subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.

Service Tax is currently payable on 40% of the value of air transport of passenger for economy as well as higher classes, e.g. business class. The abatement for classes other than economy has been reduced from 60% to 40% and now Service Tax would be payable on 60% of the value in case of higher classes.

Abatement under chit fund services has been withdrawn. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would, however, be entitled to take Cenvat Credit.

11. Amendments to Service Tax Rules

In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator. In this regard appropriate amendments have been made in rule 2 of the Service Tax Rules, 1994 and notification No. 30/2012-ST dated 20.6.2012. This change comes into effect immediately i.e. w.e.f. 1.3.2015.

Rule 4 regarding registration has been amended whereby the CBEC, by way of an order, shall specify the conditions, safeguards and procedure for registration in service tax.

Invoices can now be digitally signed and issued along with the option of presentation of records in electronic form. The conditions and procedure in this regard has not yet been specified.

Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to amendment in section 73 for enabling such recovery.

In respect of certain services like money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately. Amendments to this effect have been proposed in the Service Tax Rules. These amendments shall come into effect as and when the new service tax rate comes into effect.

12. Miscellaneous amendments

Services, excluding few specified services, provided by the government have been included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term "government" has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term "government" is being incorporated in the Act.

The intention in law has been to levy Service Tax on the services provided by: (i) chit fund foremen by way of conducting a chit; (ii) distributors or selling agents of lottery, as appointed or authorized by

the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way

for organizing and conducting a lottery. However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld. An Explanation is being inserted in the definition of "service" to specifically state the intention of the legislature to levy service tax on activities undertaken by chit fund foremen in relation to chit, and distributors or selling agents of lottery in relation to lotteries.

Existing exemption, vide notification No. 42/12-ST dated 29.6.2012, to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption has become redundant in view of the amendments made in law in the previous budget, in the definition of "intermediary" in the Place of Provision of Services Rules, making the place of provision of a service provided by such agents as outside the taxable territory.

Section 80 that provided for waiver of penalty in certain cases has been done away with.

Section 86, dealing with Appeals to Appellate Tribunal, has been amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section 35EE of the Central Excise Act.

II. PROPOSED AMENDMENTS UNDER CUSTOMS

13. Automobiles

The validity period for exemption granted to specified goods for use in the manufacture of hybrid and electrically operated vehicles is being extended by one more year up to 31st March, 2016.

The tariff rate of Basic Customs Duty on Commercial Vehicles is being increased from 10% to 40%. The effective Basic customs duty on such Vehicles is being increased from 10% to 20%. However, customs duty on such vehicles in Completely Knocked Down (CKD) condition and electrically operated vehicles of heading 8702 including those in CKD condition will continue to be at 10%.

Concessional customs duties of Nil Basic Customs Duty, 6% excise/CVD and Nil SAD on specified goods for use in the manufacture of Electrically operated vehicles and Hybrid motor vehicles, presently available upto 31 .03.2015, are being extended upto 31 .03.2016.

14. Electronics/ Hardware

Basic Customs Duty on Black Light Unit Module for use in the manufacture of LCD/LED TV panels is being reduced from 10% to Nil, subject to actual user condition.

Basic Customs Duty on Organic LED (OLED) TV panels is being reduced from 10% to Nil.

15. Miscellaneous

Certificate required to produce by the importer for import of life saving drugs or medicines as prescribed in the condition No.10 of notification No.12/2012-Customs, shall be valid for a period of one year in case of patients who have to import such drugs and medicines on a regular basis.

Notifications No.13/2012-Customs and No.14/2012-Customs both dated 17th March, 2012 exempt Education Cess and Secondary & Higher Education Cess leviable as CVD on imported goods are being rescinded. Now both Ecess and SHEcess are leviable as CVD.

16. Clarification

It is being clarified that in case of import of bulk drugs used in the manufacture of the specified drugs, there is no need to separately issue certificate under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 for the purposes of availing of the CVD exemption under notification No.12/2012-Central Excise, if the procedure as laid down in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 1996 is already followed by the importer for availing exemption / concession from BCD on the said goods.

17. Amendments in the Customs Act, 1962:

Section 28 **(Recovery of duties not** levied or short-levied or erroneously refunded) is being amended so as to:

- Insert a proviso in sub-section (2) thereof to provide that in cases **not involving** fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, no penalty shall be imposed if the amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified

in the notice, is paid in full within 30 days from the date of receipt of the notice and the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded;

- Provide that in cases **involving** fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable shall be 15% instead of the present 25%;
- Insert Explanation 3 to provide that where a notice under clause (a) of subsection (1) or sub-section (4) of section 28, as the case may be, has been served but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded if the payment of duty, interest and penalty under the proviso to sub-section (2) or under subsection (5), as the case may be, is made in full within 30 days from the date on which such assent is received.

Section 112 provides for penalty for improper importation of goods, etc. Section 112 is being amended so as to substitute sub-clause (ii) of clause (b) to provide that any person who acquires possession of or is in any way concerned with or in any other manner deals with any dutiable goods, other than prohibited goods, which he knows or has reasons to believe are liable to confiscation under section 111, shall, subject to the provisions of section 114A, be liable to a penalty not exceeding 10% (previously 100%) of the duty sought to be evaded or Rs.5000, whichever is greater. It is also being provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this section shall be 25% of the penalty so determined.

Section 114 provides for penalty for attempt to export goods improperly, etc. Section 114 is being amended so as to substitute clause (ii) to provide that any person who, in relation to any dutiable goods, other than prohibited goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall, subject to the provisions of section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded or Rs.5000, whichever is greater. It is also being provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this section shall be 25% of the penalty so determined.

Proviso to clause (b) of section 127A provide that when any proceeding is referred back, whether in appeal or revision or otherwise (earlier appeal or revision, as the case may be), by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement".

Certain Sections and phrases of provisions relating to Settlement Commission have been redundant. So the same has been omitted from the Act.

III. PROPOSED AMENDMENTS UNDER EXCISE LAWS

18. Amendments in Central Excise Act, 1944

Section 3A empowers the Central Government to charge exci-se duty on the basis of capacity of production in respect of notified goods, is being amended so as to insert an Explanation to provide that factor relevant to production includes factors relevant to production, so as to enable the Central Government to specify more than one factor relevant to the production of such goods.

SECTION 11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

- The Finance Bill, 2015 made the following amendments in Section 11A of the Act.:

a) sub-sections (5), (6) and (7) are omitted- Remove from the statute the category of cases where extended period of time applies but the transactions are recorded in the specified record.
b) Explanation 1 to the section is also amended to provide definition of the relevant date in respect of the cases where a return is not filed on the due date and where only interest is required to be recovered.
c) a new sub-section has been inserted wherein the provisions of Section 11A shall not apply to cases where the non-payment or short payment of duty is reflected in the periodic returns filed and that in such cases recovery of duty shall be made in such manner as may be prescribed in the rules.

Section 11AC- Penalty for short-levy or non-levy of duty in certain cases is being substituted so as to rationalize the penalty as follows:

- in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of excise duty, in the following manner-

a) in addition to the duty as determined under sub-section (10) of section 11A, a penalty not exceeding 10% of the duty so determined or 5000 whichever is higher shall be payable;
b) if duty and interest payable thereon under section 11AA is paid either before issue of show cause notice or within 30 days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of said duty and interest shall be deemed to be concluded;
c) if duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the penalty so imposed shall be payable, provided that such reduced penalty is also paid within 30 days of the date of communication of such order; and
d) if the duty amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if duty, interest and reduced penalty is paid within 30 days of such appellate order.

- in cases involving fraud or collusion or wilful mis-statement of suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of excise duty, in the following manner-

a) in addition to the duty as determined under sub-section (10) of section 11A, a penalty equal to the duty so determined shall be payable. In respect of cases where the details relating to such transactions are recorded in the specified record for the period beginning with 8th April, 2011 and upto the date of assent to the Finance Bill, 2015, the penalty payable shall be 50% of the duty so determined.
b) if duty and interest payable thereon under section 11AA is paid within 30 days of communication of show cause notice, the amount of penalty payable shall be 15% of the duty demanded, provided that such reduced penalty is also paid 30 days of communication of show cause notice and all proceedings in respect of said duty and interest shall be deemed to be concluded;
c) if duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the duty so determined, provided that such reduced penalty is also paid within 30 days of the date of communication of such order; and
d) if the duty amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if duty, interest and reduced penalty is paid within 30 days of such appellate order.

Under the section 31, when any proceeding is referred back, whether in appeal or revision or otherwise (earlier " appeal or revision, as the case may be"), by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement.

Section 32(3) (appointment of chairman, vice chairman and other members of settlement commission) has been omitted as the sub section become redundant.

Section 32B of the Act enables Vice Chairman or Member of the Settlement Commission to officiate as Chairman in the absence of the Chairman of the Settlement Commission.

Certain sections and phrases of provisions relating to settlement commission has been redundant. So the same has been omitted from the Act.

Sub-sections (4) and (5) of section 37 are being amended so as to increase the penalty from Rs. 2,000 to Rs. 5,000.

S.No.205A of notification No.12/2012-CE dated 17-3-2012. exempts railway or tramway track construction material of iron and steel from payment of excise duty on the value of rails, subject to condition that such rails have suffered excise duty and no credit of duty paid on them is taken under the CENVAT Credit Rules, 2004. This exemption is being made applicable retrospectively for the period from 17.03.2012 to 02.02.2014.

In the Central Excise Act, the Third schedule shall be amended in the manner specified in the fourth schedule.

19. Ease of doing business and movement towards GST

Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being subsumed in Basic Excise duty. Consequently, Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being fully exempted. The standard ad valorem rate of Basic Excise Duty is being increased from 12% to 12.5% and Specific rates of Basic Excise Duty on petrol, diesel, cement, cigarettes & other tobacco products (other than biris) are also being suitably changed. However, the total incidence of various duties of excise on petrol and diesel remains unchanged. Other basic excise duty rates (ad valorem as well as specific) are not being changed. Education Cess and Secondary & Higher Education Cess levied on imported goods as a duty of customs, however, will continue.

20. Amendments in the first schedule to the Central Excise Tariff Act, 1985

Excise duty on cut tobacco is being increased from Rs.60 per kg to Rs.70 per kg.
Duty of excise on cigarettes is being increased by 25% for cigarettes of length not exceeding 65 mm and by 15% for cigarettes of other lengths. Increase in are also proposed on cigars, cheroots and cigarillos.

21. Petroleum

The Schedule Rates of the additional duty of excise and custom(in case of imported motor spirit) levied on Petrol and high speed diesel oil are being increased from Rs. 2 to Rs. 8 per litre. The effective rates of the Additional Duty of Excise & Custom for above mentined product increased from Rs. 2 to Rs. 6 per litre. Edu Cess and S&HCess, presently applicable on petrol and High speed diesel, are being exempted.

22. Food Processing Sector

Excise duty of 2% without CENVAT credit or 6% with CENVAT credit is being levied on condensed milk put up in unit containers. Consensed milk is also being notified under Section 4A of the central excise act for the purpose of valuation with reference to the retail sale price with an abatement of 30%.

23. Automobiles

Excise duty on chassis for ambulances is being reduced from 24% to 12.5% subject to actual user condition.
Concessional excise duty of 6% on specified goods for use in the manufacture of electrically operated vehicles and hybrid vehicles, presently available upto 31 .03.2015, is being extended upto 31.03.2016.

24. Swachh Bharat and Energy Sector

The Schedule Rate of Clean Energy Cess, levied on coal, lignite and peat, is being increased from ' 100 per tonne to ' 300 per tonne. The effective rate of Clean Energy Cess is being increased from '100 per tonne to `200 per tonne. The increase in rate of Clean Energy Cess will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.
Excise duty on sacks and bags of polymers of ethylene, other than for industrial use, is being increased to 15%.

25. Miscellaneous

Full exemption from excise duty is being extended to captively consumed intermediate compound coming into existence during the manufacture of Agarbattis. Agarbattis attract NIL excise duty.

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