SIRC OF ICAI

SEMINAR ON CLAUSE BY CLAUSE ANALYSIS OF FINANCE BILL - 2013

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CHENNAI
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CLAUSE BY CLAUSE ANALYSIS – DIRECT TAXES

PERSONAL TAXATION

Rates of Income Tax

There is no change in the rates of income tax and additional surcharge and the same remains as follows:

Individual being a resident in India who is of the age of 80 years or more at any time during the previous year:

Where the total income does not exceed Rs.5,00,000/-	NIL
Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.10,00,000/-	20% of the amount by which the total income exceeds Rs.5,00,000/-
Where the total income exceeds Rs.10,00,000/-	Rs.1,00,000/- plus 30% of the amount by which the total income exceeds Rs.10,00,000/-

Individual being a resident in India who is of the age of 60 years or more but less than the age of 80 years at any time during the previous year:

Where the total income does not exceed Rs.2,50,000/-	NIL
Where the total income exceeds Rs.2,50,000/- but does not exceed Rs.5,00,000/-	10% of the amount by which the total income exceeds Rs.2,50,000/-
Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.10,00,000/-	Rs.25,000/- plus 20% of the amount by which the total income exceeds Rs.5,00,000/-

Where the total income exceeds Rs.10,00,000/-	Rs.1,25,000 plus 30% of the amount by which the total income exceeds Rs.10,00,000/-

Other Individuals and HUFs

Where the total income does not exceed Rs.2,00,000/-	NIL
Where the total income exceeds Rs.2,00,000/- but does not exceed Rs.5,00,000/-	10% of the amount by which the total income exceeds Rs.2,00,000/-
Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.10,00,000/-	Rs.30,000/- plus 20% of the amount by which the total income exceeds Rs.5,00,000/-
Where the total income exceeds Rs.10,00,000/-	Rs.1,30,000 plus 30% of the amount by which the total income exceeds Rs.10,00,000/-

Surcharge on individuals and HUF is proposed to be levied at 10% where the income of the assessee is above Rs.1 crore. "Education Cess" and "Secondary and Higher Education Cess" shall continue to be levied at the rate of 2% and 1% respectively, of income tax including surcharge wherever applicable.

Insurance Premium

Section 10(10D) of the Income Tax Act places a limit whereby if the premium paid exceeds 10% of the sum assured, the sums received from such policy will be brought to tax. It is proposed to insert a new sub-clause so as to provide that in case of a person suffering from any disability or severe disability referred to in section 80U or suffering from a disease or ailment specified in Rule 11DD made under section 80DDB, the same will not be brought to charge if the premium paid in any year or years does not exceed 15% of the sum assured. This amendment will be effective in respect of policies issued on or after 01.04.2013.

Section 10(10D) is also sought to be amended to lend clarity to the meaning of the term keyman insurance policy. The term keyman insurance policy is presently defined in the Act as follows:

"Life insurance policy taken by a person on the life of another person who is or was the employee of the first mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person"

It is proposed to amend Explanation (1) so as to provide that the term keyman insurance policy will also include a policy which has been assigned to a person during its term with or without consideration and shall continue to be treated as a keyman insurance policy for the purpose of section 10(10D) which effectively means that even such assigned policies will be subjected to tax. This amendment it apparently appears is clarificatory and hence would be retrospective in operation. Corresponding amendments are also proposed in section 80C to allow the deduction in such cases.

It may be noted that this amendment has been proposed to overcome the decision of the Delhi High Court in *CIT v Rajan Nanda [2012] 205 Taxman 138 (Delhi)* where it has been held that after assignment of keyman policy, it becomes ordinary policy and receipt of maturity amount of keyman insurance is therefore not taxable.

Transfer of Immovable Property – Deemed Income of Recipient

It is proposed to amend section 56 to provide that where immovable property is received by an individual or HUF, without or for inadequate consideration, the stamp duty value of which exceeds Rs.50000/-, the whole of the stamp duty value if it is received without consideration or the excess of such stamp duty value over such consideration would be taxable as income from other sources.

It is also proposed to amend section 56(2) and to provide in section 43CA that if the date of agreement fixing the value of consideration for transfer and the date of registration are not the same the stamp duty value should be taken on the basis of the date of agreement.

Investment in Shares / Mutual Funds – Deduction for small Investors

Section 80CCG presently provides that where a resident individual has acquired listed equity shares in accordance with a scheme notified by the Central Government, a deduction shall be allowed at 50% of the amount invested but not exceeding Rs.50,000/- in a year and in a case where the GTI of the individual does not exceed Rs.10 lakhs. It is proposed to increase this limit of Rs.10 lakhs to Rs.12 lakhs and also proposed that the deduction will be allowed for three consecutive years beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of an equity oriented fund were first acquired. This amendment it is proposed will be effective from assessment year 2014-15.

Deduction for Health Insurance / Preventive Health Check-up

Section 80D provides that the whole of the amount paid in the previous year out of the income of the assessee, being an individual, to effect or to keep in force an insurance on his health or the health of his family or any contribution made towards the Central Government Health Scheme or any payment made on account of preventive health check-up of the assessee or his family, as does not exceed in the aggregate Rs.15,000/-, is allowed to be deducted in computing the total income of the assessee.

It is proposed to amend the said clause so as to allow the benefit of deduction u/s.80D within the said limit, in respect of any payment or contribution made by the assessee to any other health scheme which may be notified by the Central Government.

This amendment is proposed to take effect from assessment year 2014-15

Deduction for Interest payable on Housing Loan

It is proposed to insert a new section 80EE to provide that in case of an individual the interest payable on loan taken by him from any financial institution for the purpose of acquisition of residential property shall be allowed as a deduction. Such deduction should not exceed Rs.1,00,000/- and will be allowed in computing the income for the assessment year 2014-15 and if the amount of deduction in assessment year 2014-15 is less than Rs.1 lakh the balance amount shall be allowed in the assessment year 2015-16. This deduction will be allowed only if the loan is sanctioned on or after 01.04.2013 but on or before 31.03.2014, the loan does not exceed Rs.25 lakhs, the value of the property does not exceed Rs.40 lakhs and the assessee does not have any other residential house on the date of sanction of the loan. This amendment is proposed to be effective from assessment year 2014-15

Deduction for Contribution to certain Funds

Section 80G as it presently stands allows deduction in respect of donations made by an assessee to certain funds and institutions at 50% of the amount of donations except in the case of donations made to certain funds and institutions specified in sub-section (1)(i) where deduction is allowed at the rate of 100%. In the case of donations made to National Children’s Fund, the deduction was allowed at 50% of the amount donated. It has been proposed to allow 100% deduction in respect of the sums paid to National Childen’s Fund and the same would take effect from assessment year 2014-15.

Contribution to Political Parties – Deduction only if by Cheque

It is proposed to insert a new proviso to section 80GGB relating to deductions in respect of contributions given by companies to political parties and section 80GGC relating to deductions in respect of contributions given by any person to political parties to provide that deduction shall not be allowed under the said sections if the contribution is made by way of cash. This amendment is proposed to be effective from assessment year 2014-15.

Rebate for Individuals having Total Income upto Rs.5 Lakhs

It has been proposed to insert a new section 87A with effect from assessment year 2014-15 to provide that an assessee being an individual resident in India and whose total income does not exceed Rs.5,00,000/- shall be entitled to a deduction of an amount equal to 100% of the amount of income tax (as computed before allowing deductions under Chapter VIII) on his total income or an amount of Rs.2,000/- whichever is less.

Consequential amendments to provide reference for the proposed new section have been proposed in section 87

CORPORATE TAXATION

Rates of Income Tax

There is no change in the rates of income tax and additional surcharge for corporate assessees. However it is proposed to change the levy of surcharge in the case of domestic companies and companies other than domestic companies as follows:

	Where income is above Rs.1 crore but not above Rs.10 crores	Where income above Rs.10 crores
	Rate of surcharge	
Domestic Companies	5%	10%
Companies other than Domestic Companies	2%	5%

In other cases (including sections 115-O, 115TA, 115R, 115QA etc) the levy of surcharge has been increased from 5% to 10%

Deduction for investment in assets

It is proposed to insert a new section 32AC whereby for the assessment year 2014-15 a deduction of 15% of the aggregate amount of actual cost of new assets acquired and installed during the FY 2013-14 will be allowed as a deduction if the cost of such assets exceeds Rs.100 crores. It is also proposed to provide for a deduction of 15% of the aggregate amount of actual cost of new assets acquired and installed during the period beginning from 01.04.2013 to 31.03.2015 as reduced by the deduction allowed if any for AY 14-15. This deduction would also be available only if the aggregate value of new assets acquired and installed between 01.04.2013 and 01.04.2015 exceeds Rs.100 crores.

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

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;
(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
(iii) any office appliances including computers or computer software;
(iv) any vehicle;
(v) ship or aircraft; or
(vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

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

This amendment is proposed to take effect from assessment year 2014-15.

Bad Debt for Banks

It is proposed to amend section 36(1)(vii) of the Act. The proposal is to insert an explanation to section 36(1)(vii) to clarify that the account referred to therein will only be an account in respect of provision for bad and doubtful debts under clause (viia) and such account shall refer to all types of advances including advances made by rural branches. It would therefore mean that for an assessee to which clause (viia) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

This amendment is proposed to tax effect from assessment year 2014-15.

This amendment is apparently made to set at rest the controversy whereby a doubt arose whether section 36(1)(viia) is to be limited to the amount by which the bad debt exceed the credit in the provision for bad and doubtful debts made u/s.36(1)(viia) or whether section 36(1)(vii) applies to all provisions made relating to rural branches. It may be noted that the Supreme Court in *Catholic Syrian Bank Ltd v CIT [2012] 343 ITR 270 (SC)* and in *DCIT v Karnataka Bank Ltd [2012] 349 ITR 705 (SC)* has held that the deduction on account of provision for bad and doubtful debts u/s.36(1)(viia) is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of bad debts. The deductions permissible u/s.36(1)(vii) should not be negated by reading into this provision, the limitation of section 36(1)(viia).

Royalty / Fees etc charged by State Government not allowable as Deduction

It is proposed to amend section 40 to provide that any amount paid by way of royalty, license fee, service fee, privilege fee, service charge or any other fee or charge by whatever name called which is levied or appropriated directly or indirectly by a State Government undertaking by the State Government, will not be allowed as a deduction in computing profits and gains of business or profession. This amendment will take effect from the assessment year 2014-15.

Stamp duty valuation for transfer of business assets

A new section 43CA is sought to be inserted on the same lines as section 50C to provide that the stamp duty valuation shall be deemed as full value of consideration even when the asset sold is not in the nature of a capital asset but is in the nature of stock in trade. This amendment will take effect from assessment year 14-15 and will effectively nullify the decisions in *CIT v KAN Construction & Colonizers Pvt Ltd [2012] 208 Taxman 478 (All), CIT v Tiruvengadam Investments (P) Ltd [2010] 320 ITR 345 (Mad)* and *ACIT v Excellent Land Developers (P) Ltd [2010] 1 ITR 563 (Trib) (Delhi).*

Deduction for Infrastructure Development – Extension of Time

Under the existing provisions of section 80-IA(4)(iv) a deduction of profits and gains is allowed to an undertaking which, -

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2013;
(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2013;
(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2013.

In order to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

These amendments it is proposed to take effect from assessment year 2014-15.

Deduction for Wages of Additional Workmen

Section 80JJAA of the Income Tax Act as it presently stands provides for a deduction of 30% of additional wages paid to the new regular workmen employed in any previous year in its industrial undertaking by a company engaged in manufacture or production of an article or thing. The deduction is available for three assessment years including the assessment year relevant to the previous year in which the workmen were employed. Further no deduction would be allowed under this section if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking.

The said tax incentive u/s.80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas actually it is being claimed for other employees in other sectors also. In order to overcome this it is proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to an Indian company deriving profits from manufacture of goods in its factory. The deduction shall be available at 30% of the 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 the workmen were employed.

It has also been proposed to provide that the deduction shall not be available under this section 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.

These amendments are proposed to take effect from assessment year 2014-15.

Additional Income Tax on Distributed Income by Company for Buy Back of Unlisted Shares

It has been proposed to insert new Chapter XII-DA consisting of sections 115QA, 115QB and 115QC relating to special provisions for tax on distributed income of domestic company for buy-back of shares.

Existing provisions of Section 2(22)(e) provide the definition of dividends for the purposes of the Income-tax Act. Section 115-O provides for levy of Dividend Distribution Tax (DDT) on the company at the time when company distributes , declares or pays any dividend to its shareholders. Consequent to the levy of DDT the amount of dividend received by the shareholders is not included in the total income of the shareholder.

The consideration received by a shareholder on buy-back of shares by the company is not treated as dividend but is taxable as capital gains under section 46A of the Act. A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it.

In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains.

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

In order to curb such practice it is proposed to amend the Act, by insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares.

These amendments are proposed to take effect from 01.06.2013.

Dividend Distribution Tax on units of Mutual Funds

Section 115R of the Income Tax Act as it presently stands provides that any amount of income distributed by the specified company or a Mutual fund to its unit holders shall be chargeable to tax and under clause (ii) thereof such specified company or Mutual Fund shall be liable to pay additional income tax on such distributed income at the rate of 12.5% on income distributed to any person being an individual or a HUF by a fund other than a money market mutual fund or a liquid fund.

It has been proposed to amend clause (ii) of sub-section (2) by increasing the rate of tax to 25%. Further it has been proposed to amend the said sub-section to provide that any income distributed by a mutual fund under an infrastructure debt scheme to a non-resident (other than a company) or a foreign company shall be liable for payment of additional income tax at the rate of 5% on the income distributed. It is also proposed to define the expression “infrastructure debt fund scheme”

These amendments are proposed to take effect from 01.06.2013

GENERAL ANTI AVOIDANCE RULE (GAAR)

The General Anti Avoidance Rule (GAAR) was introduced in the Income-tax Act by the Finance Act, 2012. The substantive provisions relating to GAAR are contained in Chapter X-A (consisting of sections 95 to 102) of the Income-tax Act. The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof are contained in section 144BA. The provisions of Chapter X-A as well as section 144BA would have come into force with effect from 1st April, 2014.

A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government with broad terms of reference including consultation with stakeholders and finalising the GAAR guidelines and a road map for implementation. The Expert Committee's recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR. The major recommendations of the Expert Committee have been accepted by the Government, with some modifications. Some of the recommendations accepted by the Government require amendment in the provisions of Chapter X-A and section 144BA.

In order to give effect to the recommendations the following amendments have been made in GAAR provisions currently provided in the Act:-

(A) The provisions of Chapter X-A and section 144BA will come into force with effect from April 1, 2016 as against the current date of April 1, 2014. The provisions shall apply from the assessment year 2016-17 instead of assessment year 2014-15.

(B) An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision of section 96 providing that it should be "the main purpose or one of the main purposes" has been proposed to be amended accordingly.

(C) The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The current provisions of section 97 which provided that these factors would not be relevant has been proposed to be amended accordingly.

(D) An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A. The current provisions as contained in section 97 are proposed to be amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.

(E) The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision of section 144BA, that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service is proposed to be amended accordingly.

(F) The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The current provisions of section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been proposed to be amended accordingly.

(G) The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years. The provisions of section 144BA are proposed to be amended accordingly.

(H) The two separate definitions in the current provisions of section 102, namely, “associated person” and “connected person” will be combined and there will be only one inclusive provision defining a ‘connected person’. The provisions of section 102 have been proposed to be amended accordingly.

The GAAR provisions will apply even if the provisions are less beneficial than the Double Taxation Avoidance Agreement.

Where an order is passed pursuant to a search or requisition and where the GAAR provisions have been invoked no approval of the JCIT is required before passing the order u/s.153A

Where the GAAR provisions are invoked no appeal shall lie before the Commissioner of Income Tax (Appeals) nor can an application be made before the Dispute Resolution Panel. An appeal in such a case will lie directly before the Income Tax Appellate Tribunal.

Similarly the AAR will not be permitted to entertain an application where there is an impermissible avoidance transaction as contemplated by Chapter X-A

Consequential amendments in other sections relating to procedural matters are also proposed. These amendments are proposed to take effect from assessment year 2016-17.

PROCEDURAL AMENDMENTS

Adjustment of Seized Cash – Not against Advance Tax

The existing provisions contained in section 132B of the Income-tax Act, *inter alia*, provide that seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default.

It has been proposed to insert a new Explanation to provide that “existing liability” does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act.

This amendment has been proposed to overrule the following decisions where it has been held that amount of advance tax payable by the assessee could be adjusted from the amount lying with the department in the assessee’s own account consequent to search and seizure operation.

Vishwanath Khanna v UOI & Ors [2011] 335 ITR 548 (Delhi)
Ram Sarda v DCIT [2012] 50 SOT 121 (Rajkot)

This amendment is proposed to take effect from 01.06.2013.

Non payment of Self Assessment Tax – Return of Income Defective

Section 139(9) of the Income Tax Act deals with defective return of income and the Explanation below the said sub-section gives the conditions to be fulfilled for not treating the return of income as defective.

It has been proposed to insert a new clause (aa) in the said explanation to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return of income.

This amendment is proposed to take effect from 01.06.2013

Special Audit not Merely on Basis of Complexity of Accounts

Section 142(2A) of the Income Tax Act provides that if at any stage of the assessment proceedings, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary to do so, may with the previous approval of the Chief Commissioner of

Income Tax or the Commissioner of Income Tax direct the assessee to get his accounts audited by an accountant and furnish a report of such audit.

It has been proposed to amend the said sub-section by substituting the following for the words "the nature and complexity of the accounts of the assessee"

"the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee"

This amendment has probably been proposed since revenue is losing almost all the cases whenever a direction for special audit is challenged before the High Court, as the complexities are not proved. In a recent decision of the Delhi High Court in *DLF Commercial Projects Corporation & Anr v ACIT [2012] 83 CCH 34 (Delhi)* it has been held that the twin conditions of "nature and complexity of the accounts" and the "interest of the revenue" are the prerequisites for exercise of power of directing Special Audit u/s.142(2A) of the Act. A ritualistic or mechanical approval given by the CCIT for special audit u/s.142(2A) cannot be upheld.

This amendment is proposed to take effect from 01.06.2013.

Time limit for completion of assessment and reassessment

It has been proposed to amend some clauses of Explanation 1 in section 153 which provides for the computation of period of limitation for the purposes of section 153.

Clause (iii) of the said Explanation provides for the exclusion of time where the Assessing Officer directs for a special audit u/s.142(2A). However the said clause does not provide for the exclusion of time in case the direction of the Assessing Officer is set aside by the Court.

So, it has been proposed to substitute clause (iii) in the aforesaid Explanation 1 so as to provide that the period, commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited u/s.142(2A) and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section or where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

Clause (viii) of the Explanation provides for exclusion of the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less, in computing the period of limitation for the purposes of section 153.

However at times more than one reference for exchange of information is made in one case and the replies from the foreign Competent Authorities are also received in parts. In such cases, there will always be a dispute for counting the period of exclusion i.e. whether it should be from the date of first reference for exchange of information made or from the date of last reference. Similar dispute also arise with regard to the date on which the information so requested is received.

With a view to clarify the above situation, it is proposed to amend the aforesaid clause (viii) so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

These amendments are proposed to take effect from 01.06.2013

Liability of Partners of Firm in Liquidation

Section 167C of the Income Tax Act deals with the liability of partners of limit liability partnership in liquidation. The said section provides that where any tax is due from a limited liability partnership in respect of any income of any previous year or from other person in respect of any income of any previous year during which such other person was a limited liability partnership cannot be recovered, then, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation the affairs of the limited liability partnership.

It has been proposed to insert an Explanation to the said section so as to clarify that the term “tax due” includes penalty, interest and any other sum payable under the Act.

This amendment is proposed to take effect from 01.06.2013

Liability of Directors of Private Company in Liquidation

Similar amendment has been proposed in section 179 of the Income Tax Act which provides for liability of directors of private company in liquidation.

These amendments are proposed in order to overcome the following decisions of the high courts where it has been held that tax for the purpose of section 179 does not include penalty since what is contemplated in section 179 is the tax component and the directors cannot be called upon to pay the penalty of the company u/s.179

Dinesh T Tailor v TRO & Ors [2010] 326 ITR 85 (Bom)
Maganbhai H. Patel 26 taxmann.com 226 (Guj)
H Ebrahim & Ors v DCIT & Anr [2011] 332 ITR 122 (Kar)

TDS

Rates of Deduction of Tax at Source

The rates for deduction of income-tax at source during the financial year 2013-14 from incomes other than "Salaries" will remain the same except that in case of certain payments made to a non-resident (other than a company) or a foreign company, in the nature of income by way of royalty or fees for technical services, the rate shall be 25% of such income.

Further the amount of tax so deducted, in the case of a non-resident person (other than a company), shall be increased by a surcharge at the rate of 10% of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds Rs.1 crore. The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge at the rate of 2% of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds Rs.1 crore but does not exceed Rs.10 crore and it shall be increased by a surcharge at the rate of 5% of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds Rs.10 crores. No surcharge will be levied on deductions in other cases.

TDS on Immovable Property Transactions

It has been proposed to insert a new section 194-IA to provide that any person being a transferee (other than the person referred to in section 194LA) who is responsible for paying the resident transferor, any sum by way of consideration for transfer of any immovable property (other than agricultural land) shall be liable to deduct tax at 1% at the time of payment or credit, whichever is earlier. Further no deduction is required to be made if the consideration for the transfer of the immovable property is less than Rs.50 lakhs.

It has also been proposed to provide an explanation defining the terms "agricultural land" and "immovable property"

This amendment it is proposed to have effect from 01.06.2013

OTHER AMENDMENTS

Definition of Agricultural land

Section 2(1A) of the Income Tax Act is sought to be amended to provide that income derived from any building in the vicinity of land and used as a dwelling house, store house or other building in connection with such land being agricultural land will not be assessable to tax and will be exempt as agricultural income provided the land is situated in any area within a distance measured aerially not being more than 2 km from the local limits of any municipality or cantonment board and which has a population of more than 10000 but not exceeding 1 lakh or not being more than 6 kms from the local limits of any municipality or cantonment board and which has a population of more than 1 lakh but not exceeding 10 lakh or not being more than 8 kms from the local limits of any municipality or cantonment board and which has a population exceeding 10 lakhs. Similar amendments are proposed in section 2(14) so as to provide that agricultural land will be subject to the exemption not being treated as a capital asset if the land is within the limits as specified and already stated in the context of the amendment in section 2(1A). These amendments are proposed to be effective from assessment year 2014-15 onwards.

This amendment is also proposed to nullify the following decisions where it has been held that distance of the agricultural land belonging to the assessee has to be measured in terms of the approach by road and by a straight line distance on horizontal plane as per crow's flight

CIT v Satinder Pal Singh [2010] 188 Taxman 54 (P&H)
Laukik Developers v DCIT [2007] 105 ITD 657 (Mum)
C.Lyall & Co (Constt) Pvt Ltd v IAC [1989] 33 TTJ (Delhi) 68
ITO v Ashok Shukla [2012] 139 ITD 666 (Indore)

Tax Residency Certificate

It has been proposed to amend sections 90 and 90A by inserting sub-section (5) so as to provide that the certificate of being a resident in a country outside India or specified territory outside India, as the case may be, referred to in sub-section (4) shall be necessary but not sufficient condition for claiming any relief under the agreement referred to therein. This position was earlier mentioned in the memorandum explaining the provisions in Finance Bill, 2012 in the context of insertion of sub-section (4) in sections 90 and 90A.

These amendments are proposed to take retrospective effect from assessment year 2013-14

Royalty Income of Non Resident Assessees

Section 115A(b) of the Income Tax Act as it presently stands provides for the rates at which tax is payable by a non-resident (not being a company) or a foreign company on the income by way of royalty or fees for technical services. Various sub-clauses of the said clause provide for different rates of tax based on the date of agreement under which such income is received by the non-resident (not being a company) or a foreign company.

The majority of tax treaties that India has entered into allow India to levy tax on gross amount of royalty at rates ranging from 10% to 25% whereas the tax rate as per section 115A is 10%. In some case this has resulted in taxation at a lower rate of 10% even if the treaty allows the income to be taxed at a higher rate. In order to correct this anomaly, it has been proposed to substitute sub-clauses (A), (AA), (B) and (BB) of the said clause (b), so as to provide that income by way of royalty or fees for technical services shall be taxable at a uniform rate of 25% if it has been received under an agreement entered after 31.03.1976.

This amendment is proposed to take effect from assessment year 2014-15.

Dividends received by Indian Companies from Specified Foreign Companies

The existing provisions of section 115BBD provides for taxation of dividends received by an Indian company from specified foreign companies at the rate of 15% for the previous year relevant to assessment year beginning on the 1st day of April 2012 or beginning on the 1st day of April, 2013. The above provision for introduced as an incentive for attracting repatriation of income earned by residents from investments made abroad subject to certain conditions.

It has been proposed to amend section 115BBD to extend the applicability of this section for one more year i.e for financial year 2013-14, subject to the same conditions as provided for in section 115BBD.

This amendment it is proposed to tax effect from assessment year 2014-15

Taxation of Securitisation Trusts

Section 161 of the Income-tax Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust. The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act. The taxation at the level of trust due to existing provisions was considered to be restrictive particularly where the investors in the trust are persons which are exempt from taxation under the provisions of the Income-tax Act like Mutual Funds.

In order to facilitate the securitisation process, it is proposed to provide a special taxation regime in respect of taxation of income of securitisation entities, set up as a trust, from the activity of securitisation. It is proposed to amend section 10 and also insert a new Chapter XII-EA for providing a special tax regime. The salient features of the special regime are :-

(i) In case of securitisation vehicles which are set up as a trust and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

(ii) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the line of distribution tax levied in the case of mutual funds. The additional income-tax shall be levied @ 25% in case of distribution being made to investors who are individual and HUF and @ 30% in other cases. No additional income tax shall be payable if the income distributed by the securitisation trust is received by a person who is exempt from tax under the Act.

(iii) Consequent to the levy of distribution tax, the distributed income received by the investor will be exempt from tax.

(iv) The securitisation trust will be liable to pay interest at the rate of one percent. for every month or part of the month on the amount of additional income-tax not paid within the specified time.

(v) The person responsible for payment of income or the securitisation trust will be deemed to be an assessee in default in respect of amount of tax payable by him or it in case the additional income-tax is not paid to the credit of Central Government.
This amendment will take effect from 1st June, 2013.

Penalty for non furnishing of Annual Information Return

Section 285BA mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2) thereof. Sub-section (5) of the section empowers the Assessing Officer to issue notice if the annual information return has not been furnished by the due date. The existing provisions contained in section 271FA of the Income-tax Act provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is proposed to amend the aforesaid section so as to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is further proposed to provide that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

This amendment is proposed to take effect from 1st April, 2014.

SECURITIES TRANSACTION TAX (STT)

Securities Transaction Tax (STT) on transactions in specified securities was introduced vide Finance (No.2) Act, 2004. It is proposed to amend section 98 of the Finance (No.2) Act, 2004 to reduce STT rates in the taxable securities transactions as indicated hereunder:-

S.No.	Nature of taxable securities transaction	Payable by	Existing rates (in %)	Proposed rates (in %)
1.	Delivery based purchase of units of an equity oriented fund entered into in a recognised stock exchange	Purchaser	0.1	NIL
2.	Delivery based sale of units of an equity oriented fund entered into in a recognized stock exchange	Seller	0.1	0.001
3.	Sale of a futures in securities	Seller	0.017	0.01
4.	Sale of a unit of an equity oriented fund to the mutual fund	Seller	0.25	0.001

The proposed amendments in the rates of securities transaction tax will be effective from 01.06.2013 and will accordingly apply to any transaction made on or after that date.

COMMODITIES TRANSACTION TAX

A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered into in a recognised association.

It is proposed to define ‘taxable commodities transaction’ to mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.

The tax is proposed to be levied at the rate, given in the Table below, on taxable commodities transactions undertaken by the seller as indicated hereunder:-

S.No.	Taxable Commodities transaction	Rate	Payable by
1	Sale of commodity derivative	0.01%	Seller

The provisions with regard to collection and recovery of CTT, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution, filing of appeal, power to the Central Government, etc. have also been provided.

This tax is proposed to be levied from the date on which Chapter VII of the Finance Bill, 2013 comes into force by way of notification in the Official Gazette by the Central Government.

Further, it is proposed to amend section 36 of the Income-tax Act to provide that an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.

It is also proposed to insert an Explanation to provide that for the purposes of this clause, the expressions “commodities transaction tax” and “taxable commodities transaction” shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2013.

This amendment in section 36 of the Income-tax Act will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

WEALTH TAX

Section 2(ea) of the Wealth Tax Act define the term “assets”. Sub-clause (v) of the said clause (ea) includes “urban land” in the definition of “assets”. It has been proposed to amend clause (b) of Explanation 1 to section 2(ea) so as to provide that land situated in any area within the distance, measured aerially, (I) not being more than 2 kms from the local limits of any municipality or cantonment board referred to in clause (i) and which has a population of more than 10000 but not exceeding 1 lakh or (II) not being more than 6 kms from the local limits of any municipality or cantonment board referred to in clause (i) and which has a population of more than 1 lakh but not exceeding 10 lakh or (III) not being more than 8 kms from the local limits of any municipality or cantonment board referred to in clause (i) and which has a population of more than ten lakh shall be classified as urban land. An Explanation has been inserted for clarify the expression “population”

This amendment is proposed to take effect from assessment year 2014-15.