SALIENT FEATURES OF THE FINANCE BILL, 2015

Direct Taxes

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2015

ABOUT THE AUTHOR

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He was also on the Board of Governors of the Indian Institute of Corporate Affairs of the Ministry of Corporate Affairs, Government of India. He has also held the position of 'Member of Income Tax Appellate Tribunal', in the rank of Additional Secretary, Government of India.

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INTRODUCTION

The Finance Minister, Mr. Arun Jaitley presented his second Budget for the year 2015-16 on 28th February, 2015.

The focus in this Budget has been to lay down the road map for the next four years of this Government, the devolution of the more financial powers to the State and introducing social security scheme for all. The fiscal deficit target of 4.1% has been maintained. However, the plan to bring down the fiscal deficit to 3% in next year is proposed to be extended to three years. The fiscal deficit for the Financial Year 2015-16 accordingly has been proposed at 3.9% as against 4.1% for the current Financial Year 2015-16 and 3.5% for the Financial Year 2016-17.

Some of the salient features of the Budget which can have a far-reaching implication other than the Jan Dhan Yojana are introduction of the Jan Suraksha Scheme. Under this Scheme there will be an accidental death insurance of Rs.2 lakh for a premium of just Rs.12 per year. In addition thereto, there will be a Jeevan Jyoti Bima Yojana which will cover natural and accidental deaths of Rs.2 lakh for just a premium of Rs.330 per year for the age group 18-50. These two schemes will ensure that in case of any eventuality, the family is not left high and dry.

Further the launch of Pension Yojana, which will provide a defined pension, depending on the contribution, whereby the Government will also contribute 50% of the premium subject to maximum of Rs.1000 each year for a period of five years will also go a long way in ensuring social security to the old people.

On the financial side, the Scheme to monetize the gold will go a long way in bringing the huge investment of gold in circulation. The Scheme envisages deposit of gold in

the bank on which one can earn interest in the metal account and at the same time allowing the jewelers to obtain loans in their metal account. This is just like money which is deposited with the bank by the depositor and lent or advanced to the borrower. This scheme will encourage all temples having substantial gold to deposit such gold in metal account and earn interest in gold. The introduction of the Sovereign Gold Bond will also help in dissuading people from keeping idle gold and investing money in the Sovereign Gold Bond, since the same will be redeemable in cash in terms of the face value of the gold at the time of redemption.

As regards the taxes, the major amendment proposed by the Finance Minister is to increase rate of service tax from 12.36% to 14%. In fact this rate will go upto 16% since the Finance Minister has a proposal to levy a Swachch Bharat Cess as service tax on all or any of the taxable service at the rate of 2% on the value of such service for the purpose of financing and promoting Swachch Bharat initiatives or for any other purpose relating thereto. This cess of 2% is in addition to the service tax leviable at the rate of 14% on taxable services and will be recoverable in the same manner as service tax. Thus the effective service tax rate can go upto 16%.

On the front of direct taxes, the expectations from this Budget were quite high both by the individual tax payers as well as by the industry. However, the Finance Minister has not made any major changes nor has given any major concession in this Budget. On the contrary, the various amendments proposed in the Finance Bill, 2015 indicate that the same are meant to make the provisions more stringent for the tax payer rather than mitigating the hardship of the tax payer.

The Finance Bill, 2015 has 188 clauses out of which 79 clauses are for amending various provisions of direct taxes. The proposed amendments relating to direct taxes are analyzed below. Unless otherwise stated all these amendments are proposed to be effective from April 1, 2015 i.e. assessment year 2016-17 relating to the income earned in the financial year 2015-16 i.e. starting from 1st April, 2015.

A. TAX RATES

1. No change in tax rates No change in threshold limit, slabs, however surcharge being increased from 10% to 12% on income above Rs.1,00,00,000

The Finance Minister has not proposed any change in the threshold limit as well as tax slabs. However, surcharge is being increased from 10% to 12% on income above Rs.1 crore. Accordingly surcharge at the rate of 12% shall be payable where the income of an individual, HUF, association of persons, body of individual and every artificial juridical person exceeds Rs.1 crore.

2. Tax Rate for individual

The tax rates applicable to an individual, HUF, association of persons, body of individual and every juridical person shall be as under:-

Income	Tax Rate
Upto Rs.2,50,000	Nil
Rs.2,50,001 - Rs.5,00,000	10%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

In the case of senior citizen (of 60 years to 80 years of age), the threshold limit shall be Rs.3,00,000. There is also no change in the threshold limit of Rs.5,00,000 in the case of very senior citizen i.e. above 80 years of age. The benefit of the rebate upto Rs.2,000 to individual resident whose total income does not exceed Rs.5 Lakh introduced by Finance Act, 2013, by way of Section 87A shall continue to be available.

3. No change in tax rate for other tax payers

The Finance Bill, 2015 has not proposed any change in the tax rates applicable to partnership firms and companies, both domestic as well as foreign companies. The tax rates applicable in the case of a partnership firm which includes LLP will be 30%.

However, surcharge at the rate of 12% as against existing rate of 10% shall be applicable in case total income exceeds Rs.1 Crore. The tax rate in the case of domestic companies shall be 30% with surcharge at the rate of 7% where the total income of the domestic company exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 12% where the total income of the domestic company exceeds Rs.10 Crore. The tax rate in respect of companies other than domestic companies shall be 40% with surcharge of 2% where the total income exceeds Rs.1 Crore but does not exceed Rs.10 Crore and surcharge at the rate of 5% where the total income of such company exceed Rs.10 Crore.

4. Increased Surcharge to be applicable on Dividend Distribution Tax

The surcharge at the rate of 12% as against 10% shall also be applicable on Dividend Distribution Tax payable under Section 115O, 115QA, 115R and Section 115TA.

5. Corporate tax rate to be reduced to 25% over the next four years

The Finance Minister in his Budget speech has proposed to reduce the rate of corporate tax from 30% to 25% over the next four years. The rationale for reducing this tax rate has been stated to meet the competition from the other major Asian economies and also considering the fact that the effective collection of corporate tax is around 23%. However, in the Finance Bill, 2015 no reduction has been proposed in the year under consideration. On the contrary with the increase in the rate of surcharge the corporate tax rate has gone up from 33.99% at present to 34.61%. Even if the proposal is to reduce the tax rate to 25% over the next four years, firstly a step should have been taken in this Budget by reducing the tax rate by 1% to 2% and in any case there was no reason to increase the existing tax rate. If one takes into account the corporate tax rate and the dividend distribution tax the effective tax rate comes to 45.67%. In case the Finance Minister wants the Indian economy to be competitive with the Asian economies he needs to take into consideration not only the simple tax rate but also the surcharge, education cess and dividend distribution tax, etc.

6. **Tax rate on Fee for Technical Services and Royalty being reduced from 25% to 10%**

As per provisions of Section 115A of the Income Tax Act, the income by way of royalty and fee for technical services in the case of a Non-resident is chargeable to tax at the flat rate of 25% i.e. on the gross amount of such income. The Finance Bill, 2015 proposes to reduce this rate to 10%. It may be interesting to note that this rate was reduced to 10% in the year 2005 to attract more investment and technology. The Finance Act, 2013 had increased this rate from 10% to 25% on the ground that as per the Double Taxation Avoidance Agreement (DTAA) entered into by India with other countries, the tax rate provided in these DTAAs are more than the tax rate of 10% under this normal provision of the Act. Considering this, it was explained that there is no justification to keep the tax rate under the normal tax provision lower than the tax rate applicable as per the DTAA. The Finance Bill, 2015, now again proposes to reduce the rate to 10% and the explanation given is to reduce the hardship faced by small entities due to high rate of tax of 25%.

B. **EXEMPTIONS/DEDUCTIONS**

1. **Limit of Deduction under Section 80CCC in respect of annuity plan being increased from Rs.1,00,000 to Rs.1,50,000**

The Finance Bill, 2015 proposes to increase deduction available under Section 80CCC in respect of contribution to certain pension funds which include annuity plan of Life Insurance Corporation or any other insurer for issuing pension from the funds from Rs.1,00,000 to Rs.1,50,000. In this regard it is to be noted that this increase from Rs.1,00,000 to Rs.1,50,000 will not mean any substantive gain in view of the overall restriction under Section 80CCE of Rs.1,50,000 in aggregate of deduction available under Section 80C, 80CCC and 80CCD(1). Since the deduction available under Section 80C is Rs.1,50,000 this increase will not mean any additional deduction.

Further it is to be noted that deduction under Section 80C in respect of payment towards Life Insurance Premium, Provident Fund, Public Provident Fund, National Saving Certificate, etc. is absolute and the amount received on maturity is not chargeable to tax. However, the amount received in respect of contribution made

under Section 80CCC by way of deduction or surrender of the annuity plan is chargeable to tax in the year in which the amount is received. Thus it is more advisable, in case the circumstances so allow, to utilize this deduction under Section 80C rather than under this Section 80CCC.

2. **Additional deduction of Rs.50,000 to all in respect of contribution to Pension Scheme under Section 80CCD**

The Finance Bill, 2015 proposes to introduce a new sub-section (1B) in Section 80CCD in respect of contribution to Pension Scheme of the Central Government. As per the provisions of Section 80CCD an employee can contribute 10% of his salary and any other person can contribute 10% of his total income to a Pension Scheme notified by the Central Government. The amount so contributed is to be limited to the overall ceiling of Rs.1,50,000 under Section 80CCE which includes other deductions available under Section 80C and 80CCC also. As per the new clause (1B) an assessee shall be allowed further deduction upto Rs.50,000 from his total income in addition to the deduction allowed under sub-section (1), in respect of the amount deposited in the Pension Scheme. This deduction is available under sub-section (1B). The overall ceiling placed under Section 80CCE does not include this sub-section (1B) of Section 80CCD. In view of these facts, this deduction of Rs.50,000 will be over and above the overall ceiling of Rs.1,50,000. This fact gets further supported from the Annexure to the Budget speech whereby computing the total deduction available under the Act to an individual tax payer of Rs.4,44,200 a sum of Rs.50,000 extra has been taken into consideration under Section 80CCD. This computation clearly shows that this benefit of Rs.50,000 is over and above the benefit of Rs.1,50,000 available under Section 80C, 80CCC and 80CCD(1).

3. **Enhanced deduction of Rs.25,000 in respect of Health Insurance Premium under Section 80D**

As per the existing provisions of Section 80D a deduction upto Rs.15,000 is allowed to an individual in respect of the amount paid to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or any payment made on account of preventive health

checkup of the assessee or his family. Further deduction of Rs.15,000 is made available in respect of the parent of the assessee. However, there is an inbuilt restriction of Rs.5,000 in respect of the preventive health checkup.

Similarly a deduction of Rs.15,000 is allowed to HUF in respect of the insurance amount paid in respect of the insurance of the health of any member of the HUF. However, the deduction is Rs.20,000 if insurance is in respect of a person who is a senior citizen.

The Finance Bill, 2015 proposes to enhance the deduction of Rs.15,000 in respect of the health insurance/medical checkup to Rs.25,000.

Further the Finance Bill, 2015 proposes to increase the deduction in respect of senior citizen from Rs.20,000 to Rs.30,000. As an additional measure the Finance Bill, 2015 proposes a deduction of Rs.30,000 in case of a very senior citizen on account of medical expenditure in respect of such very senior citizen even if no payment has been made to keep in force an insurance on the health of such person. It has been clarified that the aggregate deduction available to an individual in respect of the health insurance premium and medical expenditure shall be limited to Rs.30,000 and similarly aggregate deduction in respect of health insurance premium and medical expenditure incurred in respect of parents shall be limited to Rs.30,000. Thus in case the individual is not a senior citizen this deduction available will be Rs.25,000. In case the individual is a senior citizen the deduction available will be Rs.30,000. In the case of parents, the deduction available will be Rs.30,000 in respect of the health insurance premium/preventive health checkup with a sub-limit of Rs.5,000 for health checkup. However, in case of a very senior citizen (i.e. who is of the age of 80 years or more at any time during the relevant previous year) the eligible amount will include any payment made on account of medical expenditure.

In respect of the HUF the deduction available will be Rs.25,000. However, in case the HUF has any member who is a very senior citizen then it will be eligible for higher deduction of Rs.30,000 in respect of the medical expenditure incurred on the health of such member provided that no amount has been paid to keep in force insurance on the health of such person.

4. Higher deduction of Rs.75,000 in respect of maintenance of a disabled dependent under Section 80DD

As per the provisions of Section 80DD an individual or HUF who is a resident in India is eligible for deduction of Rs.50,000 from its gross total income in respect of the expenditure incurred for medical treatment including nursing, training and rehabilitation of a dependent being a person with disability or in respect of the amount paid or deposited with Life Insurance Corporation or any other insurer for the maintenance of such dependent.

However, deduction allowed is of Rs.1 lakh where the person is suffering with severe disability. For claiming this deduction the assessee is required to furnish a copy of the certificate issued by the medical authority in the prescribed form and the manner along with return of income.

The above provisions are being amended by the Finance Bill, 2015 so as to increase the deduction from Rs.50,000 to Rs.75,000. Further in respect of person with severe disability the deduction is being increased from Rs.1,00,000 to Rs.1,25,000.

5. Enhanced deduction in respect of medical treatment of severe disease or disablement under Section 80DDB

Under the existing provisions of Section 80DDB, a resident assessee is allowed deduction of Rs.40,000 in respect of the amount actually paid for the medical treatment of severe disease or ailment for himself or a dependent in the case of an individual or for any member of the HUF in case the assessee is HUF. The deduction, however is Rs.60,000, in case the person for whom this expenditure is incurred is a senior citizen. The above deduction is allowed subject to a certificate from a doctor working in a government hospital.

The Finance Bill, 2015 proposes to amend the above provisions so as to provide enhanced deduction in respect of a very senior citizen (i.e. above 80 years of age) of Rs.80,000. Further the condition to obtain a certificate from a doctor working in a government hospital is being relaxed to obtain prescription of such medical treatment from a specialized doctor as may be prescribed.

6. Deduction under Section 80U being increased correspondingly

The Finance Bill, 2015 proposes to make corresponding amendment in Section 80U to increase deduction in respect of a person with disability from Rs.50,000 to Rs.75,000 and in respect of persons with severe disability from Rs.1,00,000 to Rs.1,50,000.

It is to be noted that as per provisions of Section 80DD the deduction is allowed in respect of expenditure incurred on maintenance including medical treatment of a dependent who is a person with disability and severe disability whereas deduction under Section 80U is in respect of the assessee who is a person with disability and severe disability. Thus under Section 80DD the deduction is with reference to expenditure incurred whereas deduction under Section 80U is person specific i.e. if a person is suffering from disability, he will be entitled to such deduction.

7. Deposit in Sukanya Samridhi Account to be eligible for deduction under Section 80C

The provisions of Section 80C are proposed to be amended so as to include amount deposited in the Sukanya Samridhi Account Scheme as eligible deduction under Section 80C of the Income Tax Act. The Prime Minister of India, Shri Narendra Modi has announced Sukanya Samridhi Account Scheme on 22nd January, 2015 for the benefit of the girl child. The investment made in the Scheme will be eligible for deduction under Section 80C of the Act. The interest accruing on such deposit will also be exempt from income tax. The withdrawal from the said Scheme in accordance with the Rules will also be exempt from tax. As per this Scheme an account can be opened by the parent or the local guardian of the girl child of less than 10 years of age with a minimum deposit of Rs.1000 in any post office or authorized branches of the commercial banks. The maximum deposit in a year can be upto Rs.1,50,000. The money is to be deposited for 14 years in this account. Partial withdrawal upto 50% of the account balance is allowed to meet expenses of the girl child till she attains 18 years of age. The account is to remain operative for 20 years from the date of opening of the account or till marriage of the girl. Only one account per girl child can be opened. Parent can open this account for

maximum two girl child. However, in case of twins the facility will be extended to the third child. Presently interest at the rate of 9.1% per annum calculated on yearly basis will be allowed on the deposit. This interest rate is higher than the rate of interest of 8.7% on Public Provident Fund.

The corresponding amendment is being proposed to exempt the interest earned on such amount by inserting a new clause (11A) in section 10 of the Income Tax Act. This amendment is being made retrospectively i.e. with effect from the assessment year 2015-16. Accordingly an assessee can take the benefit by depositing such amount in the current year also.

8. **Swachchh Bharat Kosh and Clean Ganga Fund to be eligible for 80G deduction**

The scope of the amount eligible for deduction under Section 80G is being widened to include contribution made to (i) Swachchh Bharat Kosh (ii) Clean Ganga Fund (iii) National Fund for Control of Drug Abuse. The amount so contributed shall be eligible for deduction @ 100% on the line of Prime Minister National Relief Fund, National Defence Fund etc.

The above amendment is being made retrospectively, that is, from 1st April, 2015, Assessment Year 2015-16. The contribution made during the current Financial Year 2014-15 to Swachchh Bharat Kosh and Clean Ganga Fund will be eligible for deduction under Section 80G. However, the amendment for including National Fund for Control of Drug Abuse shall be effective from Assessment Year 2016-17 only.

Further, it has been provided that the amount eligible for deduction under this Section 80G in respect of Swachchh Bharat Kosh and Clean Ganga Fund shall be the amount other than the amount spent by a company in pursuance of the corporate social responsibility (CSR) under Section 135 of the Companies Act. Accordingly, if any amount is contributed to these two funds and shown as CSR activity, then such amount shall not be eligible for deduction under Section 80G.

It is to be noted that donation to Prime Minister National Relief Fund is eligible for CSR activity as well as deduction under Section 80G. Further, there is no such

condition that the sum spent by the assesse under CSR will not be eligible for deduction.

9. Effective exempt income can now be Rs.7,05,000

Taking into consideration all the relaxations proposed in this Budget and the deductions available under the existing law i.e. the threshold limit, deduction on account of interest on borrowed capital for self-occupied property, etc., the effective tax exempt income can be Rs.7,50,000 in case of an individual resident India as explained below:

Total income		7,05,000
Less:		
- Deduction under Section 80C	1,50,000	
- Deduction on account of interest on housing loan	2,00,000	
- Deduction on account of 80D	25,000	
- Deduction on account of interest on saving bank account under Section 80TTA	10,000	
- New Deduction under Section 80CCD – National Pension Fund	50,000	4,35,000
Taxable income		2,70,000
Tax on income of Rs.2,70,000		2,000
Rebate under Section 87A		2,000
Tax payable		NIL

* Transport allowance of Rs.19,200 per year is not being considered as this benefit will be available only to salaried employees.

In the case of a senior citizen, the effective exempt income can be Rs.7,55,000 and in the case of a very senior citizen Rs.8,35,000.

C. CHARITABLE TRUST

1. Charitable purpose to include Yoga

The definition of charitable purpose under Section 2(15) is being widened to include Yoga as one of the charitable purpose. Consequent to such amendment, charitable activities undertaken by a trust or institution like publishing books or holding programmes on Yoga or other programmes will be considered to be charitable activity and hence eligible for deduction in respect of the income applied for such purposes under Section 11 of the Income Tax Act.

2. Restriction regarding 'any other object of general public utility' to not to be charitable being redefined

As per the existing provision of Section 2(15), in view of the proviso the advancing of any other object of general public utility is not considered to be a charitable purpose, if it involves 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. The above restriction is not applicable if the total receipt from such activity is Rs.25 lakhs or less during the year.

The Finance Bill 2015 proposes to amend this proviso whereby the advancing of any other object of general public utility shall not be a charitable purpose, unless such activities undertaken in the course of actual carrying out of such advancing of any other object of general public utility and the aggregate receipts from such activities during the year do not exceed 20% of the total receipts of the trust or institution. The above amendment is being made to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time, protecting activities undertaken by the genuine organizations as the part of the actual carrying out of the primary purpose of the trust or institution.

It is to be noted that the proposed amendment will not address the controversy which has arisen consequent to the insertion of the proviso. Drawing the line and

keeping the ceiling on 20% will mean that an activity, which is otherwise charitable, will not be charitable, if per chance the receipts during the year exceed 20% and will become charitable in case the receipts from such activity are less than 20%. The amendment to the proviso has created a lot of controversy, litigation and hardship to the various institutions which are engaged in social activities which fall within the meaning of "any other object of general public utility".

The impact of this proviso inserted by the Finance Act of 2008 and amended later on is very wide and in fact is an impediment in providing valuable services at a time when the nation is looking to the role of a society in addressing the various concerns and when Companies Act also mandates carrying out the social responsibility, there is a need to encourage such trusts or institutions which by innovative ways help the society. Accordingly, the best criteria to judge a charitable purpose is to ensure that the income of such trusts or institutions is applied for purposes for which the trust or institution has been set up and under no circumstances it is allowed to be distributed or being applied for personal benefits. So long as such surplus is not being distributed and being applied for the cause of the objective of the trust or institution, it should not be a matter of concern for the tax authorities. The taxes are collected for advancement of the social welfare. Such trusts or institutions are advancing the social welfare and in turn these institutions get exemption. There should not be any concern of raising revenue from such society.

Further the ceiling of 20 per cent of the total receipts with no threshold will seriously effect the small trust and institution. It would have been better if 20% of the receipt or Rs.25 Lakh whichever is higher been the condition.

3. Filing of return and declaration for accumulation of income of charitable trust / institution in time being made mandatory

As per the provision of Section 11 of the Income Tax Act, the income of the charitable trust or institution is exempt to the extent to which it is applied during the year. In case 85% of the income cannot be applied during the year, such trusts or institutions have an option to utilize the amount in the next year or to accumulate the same for a period of five years.

The Finance Bill 2015, proposes to insert a provision that this benefit of claiming exemption in case the amount utilized during the year falls short of the 85% of the total income can be exercised only in case such trust or institution files a declaration in the prescribed form to the Assessing Officer before the due date of the filing of the return. It is being further provided that such option cannot be exercised, in case the return is not filed within the time prescribed under Section 139(1) of the Income Tax Act.

In view of the above amendment, every trust or institution which has not been able to spend 85% of its income needs to ensure that it files the return of income in time and submits the declaration in the prescribed form before the due date of filing of return of income.

Corresponding amendment is being made by inserting sub-section (9) in and Section 13 to provide that if the declaration regarding accumulation of the income is not filed before the due date specified for filing return or the return of income is not filed before the due date of furnishing the return, then the benefit of Section 11(2) to exclude any income from the total income of the previous year shall not be available.

This provision being introduced is too harsh. An income which is otherwise meant for charity and is exempt should not be made taxable merely because such trust or institution has not filed the return or declaration in time. For such default there can be separate penalty if need be. One need to keep in mind that most of the NGOs are being run by persons who are providing their services honorary and cannot accord to pay to the professionals required to comply such complex tax laws.

4. Universities and hospitals which are financed by the Government to file return of income

Section 139 is being amended to insert clause (e) in sub-section 4C to provide that universities and hospitals or other institutions which are wholly or substantially financed by the Government and whose income is exempt under Section 10(23C)(iiiab) and (iiiac) shall be mandatorily required to file the return of income.

5. Order passed under Section 10(23C), (vi) and (via) for rejection of approval to educational and medical institutions to be appealable to ITAT

As per the existing provision of Section 10(23C) clause (vi), any income received by a university or other educational institutions existing solely for educational purposes and under clause (via), any income received by any hospital or other institution existing not for the purpose of profitn is not liable for tax if such educational institutions or hospitals are approved by the prescribed authority. This approval is given by the Chief Commissioner of Income Tax (CCIT). There is no provision at present to file an appeal against the order passed by CCIT refusing approval. Accordingly, in case of a rejection by CCIT, such educational institutions or hospitals or institutions are required to file a writ petition before the High Court against such order refusing to grant approval.

The Finance Bill, 2015 proposes to amend Section 253(1) of the Income Tax Act so as to provide that such order passed by the prescribed authority shall be appealable before the Income Tax Appellate Tribunal (ITAT). This provision shall be effective from 1st June, 2015. Accordingly, the order passed by any authority refusing approval under this provision of 10(23C), (vi) or (via) shall be appealable from that day before the ITAT.

D. SALARIES

1. Increase in Transport Allowance deduction

The Finance Minister in his Budget speech has proposed to increase the transport allowance from Rs.800 to Rs.1600 per month. As per the provisions of Section 10(14)(ii) any such allowance granted to the assessee to meet his personal expenses at the place where duties of his office are ordinarily performed by him to the extent as may be prescribed are exempt.

Further in terms of Rule 2BB(2), transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty are exempt to the extent of Rs.800 per month.

Thought the Finance Minister has made it a part of the Budget speech for an increase in such allowance giving an impression that it is allowed to all. However, it is to be noted that the benefit of this is limited to the persons having salary income only and not to all tax payers. In this regard the credit of Rs.19,200 taken by the Finance Minister while computing the aggregate deduction available under the Act of Rs.4,44,2100 is only for the salaried employees. Otherwise this deduction will be only Rs.4,25,000.

E. BUSINESS

1. Clarificatory amendment regarding additional depreciation under Section 32(1)(iia)

The Finance Bill, 2015 proposes to insert a clarificatory amendment regarding additional depreciation under Section 32(1)(iia) in respect of investment in plant and machinery by the manufacturing sector and power sector acquired and installed during the year. As per the existing provision 20% of the cost of the new plant and machinery acquired and installed is allowed as additional depreciation in the year in which the new plant and machinery is acquired and installed. However, in view of the proviso to Section 32(1) the depreciation is restricted to 50% in case the asset acquired by the assessee during the previous year is put to use for a period of less than 180 days. In view of this proviso, at present there is a confusion whether additional depreciation will also get restricted to 50% and if so what happens to the balance depreciation. Whether the balance amount will be allowed in the succeeding year?

The Finance Bill, 2015 proposes to remove this confusion by inserting another proviso to the effect that the deduction for the balance 50% of the depreciation on such plant and machinery shall be allowed in the immediately succeeding previous year. This amendment is being proposed from assessment year 2016-17. The explanation given in the Memorandum says that this is being done to remove the discrimination in the matter of allowing additional depreciation. This amendment may create a controversy in respect of the balance depreciation in the earlier assessment years on the issue whether the proposed amendment is clarificatory in

nature and hence will apply retrospectively or is a substantive amendment and will apply prospectively.

2. **Additional benefit of depreciation at the rate of 35% on industries set up in backward area of the State of Andhra Pradesh and the State of Telangana**

The Finance Bill, 2015 proposes to allow additional depreciation at the rate of 35% instead of 20% allowed under Section 32(1)(iia) in respect of actual cost of the new plant and machinery acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh and the State of Telangana on or after the 1st day of April, 2015 but before 1st day of April, 2030.

3. **Additional investment allowance at the rate of 15% in respect of manufacturing undertaking or enterprise for State of Andhra Pradesh and State of Telangana**

The Finance Bill, 2015 proposes to give additional benefit by way of additional investment allowance equal to 15% of the cost of the new assets acquired and installed in respect of an undertaking or an enterprise for manufacture or production of any article or thing set up on or after the 1st day of April, 2015 in the notified backward area in the State of Andhra Pradesh and the State of Telangana. This benefit of additional investment allowance shall be available in respect of the new assets acquired and installed during the period from 1st day of April, 2015 to 31st March, 2020.

4. **Audit report to be submitted to the Commissioner of Income Tax for claiming benefit of in-house research and development under Section 35(2AB)**

As per the provisions of Section 35, expenditure incurred on scientific research is allowed as deduction while computing profit and gains of business or profession. Further weighted deduction is allowed equal to two times the expenditure incurred on in-house research to a company engaged in the business of bio-technology or any

business of manufacture or production of any article or thing other than those restricted under Eleventh Schedule. One of the conditions for allowing such deduction is that such company is required to enter into an agreement with the Department of Scientific and Industrial Research for cooperation in such research and development and also for audit of the accounts maintained for that facility. Thus the maintenance of account and audit report at present is required to be submitted to Department of Scientific and Industrial Research only.

The Finance Bill, 2015 proposes to amend this condition to provide that such company has to fulfill the condition with regard to maintenance of accounts and audit thereof and shall also be required to furnish such report in such manner as may be prescribed to the Chief Commissioner or the Commissioner of Income Tax also as against the present provision of submitting such report to the Department of Scientific and Industrial Research only.

5. **Condition for claiming deduction in respect of employment of new workmen being relaxed to 50 workmen**

As per the provisions of Section 80JJAA, an Indian company is allowed to deduct an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by it in the factory for three years starting from the year in which such employment is provided. This deduction is allowed to a company only and also in respect of the additional wages paid to the new regular workmen in excess of hundred regular workmen employed during the previous year.

The Finance Act, 2015 proposes to widen the scope of this deduction so as to extend the benefit to all assessees having manufacturing units. Further the benefit is proposed to be extended to manufacturing units in respect of the additional wages paid to new regular workmen in excess of fifty workmen employed during the year.

Under this provision, now any assessee having a manufacturing unit shall be eligible to deduction of an amount equal to thirty per cent of the additional wages paid to the new regular workmen employed by the assessee in such factory for a period of three assessment years starting from the year in which such employment is provided. The

additional wages shall be computed with reference to the new regular workmen in excess of fifty workmen employed during the previous year.

As per this provision there is a condition that an existing factory for claiming this benefit the number of regular workmen employed during the year should not be less than ten per cent of the existing number of workmen employed as on the last date of the preceding year.

It is also to be noted that this benefit is available in respect of the wages paid to the workmen and the regular workmen does not include casual workmen, workmen employed through contract labour and also any other workmen employed for a period of less than 300 days during the previous year.

'Workman' here will mean as defined in Section 2 of the Industrial Disputes Act, 1947 whereby 'workman' means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward but does not include any such person who is employed mainly in a managerial or administrative capacity; or being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

It is also to be noted that the workmen should be employed in a factory. The Finance Act, 2013 had amended this provision to substitute the word 'factory' with 'industrial undertaking' so as to restrict benefit in respect of the employment of blue collar employees in the manufacturing sector and not for other employees.

6. Threshold for applicability of domestic transfer pricing provision being enhanced from Rs.5 crore to Rs.20 crore

As per provisions of Section 92 of the Income Tax Act, income in respect of the transaction entered into with the associated enterprises is to be computed having regard to the arm's length price. This provision initially was applicable in respect of international transactions entered into where either or both of them are non-resident. However, the Finance Act, 2012 has extended the scope of this provision

to the domestic transactions entered into with associated enterprises where the aggregate of such transactions entered into by the assessee exceeds a sum of Rs.5 crore in a year by inserting Section 92BA.

The Finance Bill, 2015 proposes to enhance this threshold of Rs.5 Crore to Rs.20 Crore to determine the applicability of the arm's length price in respect of the transactions entered into by a resident with its associated enterprises. Accordingly where the aggregate of such transactions exceeds Rs.20 crore only then domestic transfer pricing provision will be applicable.

7. **Alternative Investment Funds (AIF) – Pass through status - Income other than business income to be taxed in the hands of unit holders**

The Finance Bill, 2015 proposes to introduce a new Chapter XII-B making special provision relating to tax on income of Investment Funds and income received from such Funds. As per the existing provisions, income is passed through i.e. taxable in the hands of the investors in the case of Venture Capital Fund and Venture Capital Undertaking set up as a company or a trust which are registered with SEBI. These pass through is available in respect of the income which arises to the Fund from investment in Venture Capital Undertaking.

Under the SEBI Alternative Investment Funds, Regulations these Funds have been classified into three categories as Category I, II and III. Category I invest in start-up or earlier stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the Government or the regulators consider as socially or economically desirable. Category II AIFs are funds including private equity funds or debt funds which do not fall in Category I and III and which do not undertake borrowing other than to meet day-to-day operational requirements. Category III AIFs are funds which employ diverse or complex trading strategies and may employ leverage through investment in listed or unlisted derivatives.

These funds can be set up as a trust, company, limited liability partnership or any other body corporate. Similarly, investment by these Funds can be in entities which can be a company, firm, etc. Pooled investment vehicles engaged in making

passive investments have been accorded pass through in certain countries. Accordingly it is proposed in the Finance Bill, 2015 to provide pass through status to Category I and Category II of Alternative Investment Funds irrespective of the fact whether such funds are set up as a trust, company or a limited liability firm, etc. Such funds will be taxed as under:-

(i) Income of a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments, made by the investment fund, been made directly by him.

(ii) Income in the hands of investment fund, other than income from profits and gains of business, shall be exempt from tax. The income in the nature of profits and gains of business or profession shall be taxable in the case of investment fund.

(iii) Income in the hands of investor which is of the same nature as income by way of profits and gain of business at investment fund level shall be exempt.

(iv) Where any income, other than income which is taxable at investment fund level, is payable to a unit holder by an investment fund, the fund shall deduct income-tax at the rate of ten per cent.

(v) The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund.

(vi) If in any year there is a loss at the fund level either current loss or the loss which remained to be set off, the loss shall not be allowed to be passed through to the investors but would be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI of the Income-tax Act.

(vii) The provisions of Chapter XII-D (Dividend Distribution Tax) or Chapter XII-E (Tax on distributed income) shall not apply to the income paid by an investment fund to its unit holders.

(viii) The income received by the investment fund would be exempt from TDS requirement.

(ix) It shall be mandatory for the investment fund to file its return of income. The investment fund shall also provide to the prescribed income-tax authority and the investors, the details of various components of income, etc. for the purposes of the scheme.

Corresponding amendment is being made in Section 10 by inserting clause (23FBA) to provide that income of such investment fund other than the income chargeable under the head 'Profit and gains of business or profession' shall be exempt.

Further clause (23FBB) is being added in Section 10 to provide that income accruing or arising to a unit holder of such investment fund being the proportionate of the income chargeable under the head 'profit and gains of business or profession' in the hands of investment fund shall be exempt in the hands of the unit holder.

Provision of Section 139 is also being amended to provide that every such investment fund shall furnish the return of income.

Further a new Section 194LBB is being introduced to provide that such investment fund shall at the time of credit of such income to the account of the payee or at the time of payment thereof whichever is earlier deduct tax at source at the rate of 10%.

9. Concessional tax rate to be applicable to sponsor of Business Trusts (REIT & InviT

The Finance Bill, 2015 proposes to address certain anomalies which have arisen in respect of the special taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InviT) introduced by the Finance (No.2) Act, 2014. As per the existing provisions the listed units of a business trust, when traded on a recognised stock exchange, would be liable to securities transaction tax (STT), and

the long term capital gains shall be exempt and the short term capital gains shall be taxable at the rate of 15%. In case of capital gains arising to the sponsor at the time of exchange of shares in Special Purpose Vehicle (SPV), being the unlisted company through which income generating assets are held indirectly by the business trusts, with units of the business trust, the taxation of gains is deferred. The tax on such gains is to be levied at the time of disposal of units by the sponsor. However, the preferential capital gains regime (consequential to levy of STT) available to other unit holders of business trust, is not available to the sponsor in respect of these units at the time of their transfer. For the purpose of computing capital gain, the cost of these units is considered as cost of the shares to the sponsor. The holding period of shares is included in computing the holding period of such units.

Thus under the existing provisions capital gain arising to the sponsor at the time of exchange of shares in Special Purpose Vehicle (SPV), being the unlisted company through which income generating assets are held indirectly by the business trusts, with units of the business trust, the taxation of capital gain is deferred. This provision places the sponsor at a disadvantageous tax position as compared to direct listing of shares of the Special Purpose Vehicle. The sponsor holding shares of the SPV can avail benefit of concessional tax regime on transfer of shares which are subject to levy of STT and in such a situation the long term capital gain is exempt and the short term capital gain is chargeable to tax at a concessional rate of 15%. This benefit is not available under the existing scheme.

The Finance Bill, 2015 proposes to amend this so as to extend this benefit to the sponsor and accordingly provides that the sponsor would get the same tax treatment on offloading of units under an initial offer of units as it would have been available had he offloaded the underlying shareholding through an IPO. Further the benefit of concessional tax regime on short term capital gain and exemption on long term capital gain under section 10(38) of the Act shall be available to the sponsor on sale of units received in lieu of shares of SPV which have been subject to levy of Security Transaction Tax.

Consequent amendment is being made to provide that STT shall be levied on sale of such units of the business trust which are acquired in lieu of shares of SPV, under an

initial offer at the time of listing of units of business trust on similar lines as in the case of sale of unlisted equity shares under an IPO.

Consequential amendment is also being made to Section 10(38) and Section 111A deleting the proviso which restricted the benefit of long term capital gain and short term capital gain to the sponsor at the time of sale of such units.

10. **Rental income of REIT to be pass through**

The Finance Bill, 2015 further proposes to make the rental income of such trust to be pass through and accordingly income received by way of renting or leasing or letting out in real estate by such business trust shall be exempt under section 10(23FCA). The income distributed by such trust which is in the nature of the renting or leasing or letting out shall be deemed to be the income of the unit holder and which shall be chargeable to tax in the hands of the unit holder. Accordingly Section 10(23FD) is being amended to exclude exemption to the unit holder in respect of the rental income received from such trust by inserting a reference to clause (23FCA) of Section 10. Further provision of section 115UA(3) are being amended to include income of the nature referred to in Section 10(23FCA) i.e. rental income in the hands of the REIT as income deemed of such unit holder chargeable in its hands.

Consequently the provisions of Section 194-I are being amended with effect from 1st day of April, 2015 to provide that no deduction shall be made under this section in respect of the income by way of rent paid to such trust.

11. **Income paid to unit holder in the nature of rental income to be liable for TDS**

The scope of Section 194LBA is being widened with effect from 1st day of April, 2015 to provide that income received by the unit holder from such trust in the nature of rental income shall also be liable for deduction of tax at source at the rate of 10%.

Further a new sub-section (3) is being introduced to provide deduction of tax at source in respect of such nature of income to non-resident as per the rates in force. It may be noted that sub-section (2) also provides for deduction of tax at source in

respect of payment to non-resident. These two separate sub-sections are being introduced so as to differentiate between the tax rates applicable on the nature of income.

F. CAPITAL GAIN

1. Merger of Mutual Fund Schemes not to attract capital gain

As per the existing provisions of Section 45 of the Income Tax Act, profit or gains arising on transfer of a capital asset is chargeable to tax. This includes capital assets including unit of the Mutual Funds. Accordingly even if unit or units of the Mutual Fund are swapped with another Scheme of the Mutual Fund, such swapping is considered to be transfer and capital gain is chargeable under Section 45 of the Income Tax Act.

The Finance Bill, 2015 proposes to address this issue in order to facilitate consolidation of various Schemes of the Mutual Funds by inserting clause (xviii) in Section 47 to provide that transfer by a unit holder in a consolidated scheme of the Mutual Fund made in consideration of the allotment to him being unit or units shall not be considered transfer for the purpose of Section 45 of the Income Tax Act in case such consolidation is of two or more schemes of equity oriented fund or two or more schemes of a fund other than equity oriented fund. Thus when a consolidation takes place between one equity oriented Fund with another equity oriented fund then that will not be considered to be transfer. However, consolidation has to be within the same nature of schemes i.e. equity oriented with equity oriented and other than equity oriented with other than equity oriented. This consolidation has to be in accordance with the SEBI (Mutual Funds) Regulations, 1996.

Consequential amendment is being made in Section 2(42A) by inserting sub-clause (hd) below Explanation 1 to provide that unit or units become the property of the assessee in consideration of the transfer in the Scheme of consolidation as stated hereinabove the period for which the unit or units were held in the earlier Scheme will be taken into consideration while computing the period of holding of the unit or unit.

Further amendment is also being made in Section 49 by inserting sub-section (2AD) to provide that capital assets being unit or units in a consolidated Scheme of Mutual Fund which became property of the assessee, in such case the cost of acquisition shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating Scheme of the Mutual Fund.

2. **Clarificatory amendment – Cost of acquisition of demerged company to be cost of acquisition of capital asset in the hands of the resulting company**

As per the existing provision of Section 47, clause (vib) capital asset transferred by the demerged company in a Scheme of demerger is not regarded as transfer liable for capital gain under Section 45 of the Income Tax Act.

Further as per provisions of Section 47, in all such cases the cost of acquisition in the hands of the transferee is deemed to be the cost in the hands of the transferor. However, there is no specific clause in respect of the cost of acquisition in the hands of the resulting company acquired by it from the demerged company in a Scheme of demerger.

Accordingly the Finance Bill, 2015 proposes to include such transfer in Section 49(1) to clarify that the cost of acquisition of assets acquired by the resulting company shall be the cost for which the demerged company acquired and further the period of holding such asset in the hands of the resulting company would include the period for which the asset was held by the demerged company.

G. **MINIMUM ALTERNATE TAX**

1. **Income from AOP not to be included in book profit for levy of MAT**

As per the existing provisions of section 115JB of the Act every company is required to pay tax on its book profit. The book profit means the profit computed in accordance with the provisions of the Companies Act. The book profit is required to be further adjusted by deducting certain incomes which are not chargeable to tax. Such income to be excluded includes income which is exempt under section 10. As

per the provisions of section 10(2A) the share of profit received from a partnership firm is exempt and consequently the same is to be excluded from the book profit while computing liability for Minimum Alternate Tax. There is no specific exclusion in respect of the share of profit received by a member of an association of persons (AOP) despite the fact that no tax is payable by the member of an AOP in view of the provisions of Section 86 of the Act where the AOP has paid the tax on its total income at the maximum marginal rate or any higher rate under the provisions of the Act.

The Finance Bill, 2015 proposes to make an amendment to provide that the share of a member of an AOP in the income of the AOP on which no tax is payable under Section 86 of the Act will also be excluded while computing the liability for Minimum Alternate Tax by inserting clause (iic). As a consequence, clause (fa) is being introduced to provide that expenditure relatable to such income of such AOP shall also not be deducted while computing MAT liability.

2. **Foreign Institutional Investor (FII) not to pay MAT on the income by way of capital gain**

As per the existing provisions of Section 115JB, Minimum Alternative Tax is payable on the book profit computed in accordance with the provisions of the Companies Act by all companies. This includes foreign companies. Further, as per provisions of Section 115JB, income which is not considered to be income that is exempt under Section 10 is excluded from the book profit. However, income exempt under Section 10(38) of the Act that has arisen from the transfer of a long-term capital asset being an equity share in a company or a unit of equity oriented mutual fund is not excluded from the book profit for the levy of MAT. The Finance (2) Act, 2004 has provided that income arising to the foreign institution investors who have invested in securities will be considered as income arising from capital asset and the same will be exempt in case such asset is a long-term capital asset and STT has been paid thereon.

Recently, a controversy has arisen whether these FII's are liable for MAT in respect of the long-term capital gains arising of such STT paid securities, in view of the existing provisions of Section 115JB.

In order to address this controversy the Finance Bill, 2015 proposes to insert a new clause (ii)(c) in explanation 1 to specifically exempt income of FII's arising from transactions in securities other than the short-term capital gains from the levy of MAT. Accordingly, such income will be excluded from the book profit, while computing MAT liability in case of FII's.

This amendment is being made effective from 1st April, 2016 i.e. assessment year 2016-17. This exemption shall be available to FIIs from assessment year 2016-17. The obvious interpretation of this will be that FIIs were liable for MAT in earlier years despite their income in respect of long term capitals being exempt under the normal provisions of the Act.

3. Penalty for concealment to be levied even when Minimum Alternative Tax (MAT) is payable on the book profit

As per provision of Section 271(1)(c), penalty is leviable for concealment of particulars of income as well as for furnishing inaccurate particulars of income. This penalty is leviable equivalent to 100% of the tax sought to be evaded by a reason of concealment of income or furnishing of particulars of such income. Accordingly, this penalty is computed by computing tax payable on the assessed income minus tax payable on the returned income. However, a controversy has arisen in respect of the companies which are liable to pay Minimum Alternative Tax on their book profit since the tax payable by such companies is more than the tax payable on the returned as well as the assessed income. Since tax payable on the MAT is more than the assessed income, the Delhi High Court in the case of CIT vs. Nalwa Sons Investments Ltd. (2010) 327 ITR 543 (Del), has held that no penalty can be levied in respect of addition made to the regular income. The SLP filed by the department before the Supreme Court against the judgment of Delhi High Court has been dismissed.

To overrule the above judgement, the Finance Bill, 2015 proposes to insert a new explanation 4 in place of the existing explanation 4 so as to provide that the amount of the tax sought to be evaded shall be aggregate of the difference in the tax between returned income and the assessed income under the regular provision and also difference in Minimum Alternative Tax payable as per the book profit returned and Minimum Alternative Tax payable on the book profit as assessed by inserting a formula as under:-

"(a) the amount of tax sought to be evaded shall be determined in accordance with the following formula—

(A – B) + (C – D)

where,

A = amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished;

C = amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

It has been, however, clarified by way of a proviso that the income in respect of which addition has been made both under the regular computation as well as determining book profit then such income shall not be considered in computing tax

sought to be evaded under MAT provision. It has been further clarified that where the MAT provisions are not applicable, the penalty shall be leviable with reference to the tax sought to be evaded under the normal provision.

The implication of this amendment will be that where a company files a return of income on the basis of the book profit since MAT payable is more than the tax payable under the normal provisions and the Assessing Officer makes addition under the normal provisions as well as to the book profit and still the final tax liability is on the basis of the book profit then the penalty shall be aggregate of the addition made under the normal provision as well as under the MAT provisions, of course, ignoring the double additions on the same issue. However, in such case if finally tax liability is determined on the basis of regular provision, then penalty shall be leviable in respect of the addition made under the regular provisions only. In view of the above facts, companies filing return on the basis of Minimum Alternate Tax liability on book profit, need to be over-cautious as addition to book profit besides addition to regular income can lead to penalty on the aggregate amount.

H. INTERNATIONAL TAXATION

1. Residential status of foreign company to be determined on the basis of Place of Effective Management Control (POEM)

The Finance Bill, 2015 proposes to make a major amendment regarding the residential status of a company which is not an Indian company. As per the existing provisions of Section 6(3) of the Income Tax Act a company is said to be resident in India if –

- it is an Indian company;
- during the year the control and management of its affair is situated wholly in India;

Accordingly a company continues to be a non-resident unless its control and management is wholly situated in India.

The Finance Bill, 2015 proposes to change this condition. As per the new condition if the place of effective management at any time in the year is in India such company will be considered to be a resident company and liable for paying tax on its global income. This amendment is being made on the ground that place of effective management is an internationally well accepted and recognized guiding principle for determination of residential status.

This is a major change and many of the foreign companies which use India as a back office or it may try to locate some of its activities in India may shy now doing so considering the fact that Indian tax office is quite aggressive and may allege that by doing so the place of effective management at that point of time was in India and hence the company has become a resident and liable for paying tax on its global income, of course subject to benefit of tax credit in respect of the income earned abroad and taxes paid thereon. It will also complicate the matters for Indian companies having subsidiaries abroad. It is a normal practice of the holding company to obtain data and information about the activities and the working of its subsidiary companies. In such a situation there can be an allegation that its place of effective management at any time during the year was in India and hence such subsidiary companies are resident liable for tax in India.

This was a provision in the Direct Tax Code which is now being incorporated in this Income Tax Act and that is why the Finance Minister in his Budget speech has stated that a few aspects of Direct Tax Code which were left out have been addressed in the present Budget and there is no great merit in going ahead with the Direct Tax Code.

2. **Clarification regarding indirect transfer issue arising from retrospective amendment to Section 9 of the Income Tax Act – Vodafone case**

The Finance Act, 2012 has made drastic amendment in Section 9 by inserting Explanation 5 to the effect that any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if such shares or interest derive directly or indirectly its value substantially from the assets located in India. This amendment was made with retrospective effect and

created a huge impact on the Indian investment climate. This amendment was made in the year 2012 and for more than two years no clarity was given about meaning of the value substantially derived from the assets located in India.

The Finance Bill, 2015 proposes to clarify this provision as under:-

(i) The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-

  (a) exceeds the amount of ten crore rupees; and

  (b) represents at least fifty per cent. of the value of all the assets owned by the company or entity.

(ii) Value of an asset shall mean the fair market value of such asset without reduction of liabilities, if any, in respect of the asset.

(iii) The specified date of valuation shall be the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer.

(iv) However, if the book value of the assets of the company on the date of transfer exceeds by at least 15% of the book value of the assets as on the last balance sheet date preceding the date of transfer, then instead of the date mentioned in (iii) above, the date of transfer shall be the specified date of valuation.

(v) The manner of determination of fair market value of the Indian assets vis-a vis global asset of the foreign company shall be prescribed in the rules.

(vi) The taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. The method for determination of proportionality is proposed to be provided in the rules.

(vii) The exemption shall be available to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises,

(a) neither holds the right of control or management,

(b) nor holds voting power or share capital or interest exceeding five per cent. of the total voting power or total share capital,

in the foreign company or entity directly holding the Indian assets (direct holding company).

(viii) in case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-

(a) neither holds the right of management or control in relation to such company or the entity,

(b) nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five percent. in the direct holding company or entity.

(ix) Exemption shall be available in respect of any transfer, subject to certain conditions, in a scheme of amalgamation, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company.

(x) Exemption shall be available in respect of any transfer, subject to certain conditions, in a demerger, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company.

A consequential amendment is being made in Section 47 by inserting clause (viab) providing that any transfer in a scheme of amalgamation of a capital asset being a share of a foreign company referred to in Explanation 5 to clause (i) of Section 9(1) which derives directly or indirectly its value substantially from the shares of an Indian company held by amalgamating foreign company to the amalgamated foreign company shall not be considered as transfer if atleast 25% of the shareholders of the amalgamating foreign company continue to remain shareholder of the amalgamated foreign company and such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated. A similar amendment is being proposed by inserting clause (vicb) to exclude the applicability of Explanation 5 in the case of a demerger if the shareholder holding not less than 3/4th in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated. It has been clarified that the provisions of section 391 to 394 of the Companies Act, 1956 shall not apply in case of a demerger. This exemption in case of restructuring is being given prospectively ignoring the fact that impact of amendment made by the Finance Act, 2012 is retrospective. Accordingly it would be more advisable to provide exemption on restructuring within the group retrospectively.

3. **Obligation to furnish information by Indian concerns in which Indian assets are held by foreign company/entity**

The Finance Bill, 2015 further proposes to introduce a new section 285A putting obligation on Indian concerns to submit information or document in such a manner as may be prescribed by Rules within the prescribed period where any share or interest in a company or entity registered or incorporated outside India derive directly or indirectly its value substantially from the assets located in India as referred to in Explanation 5 to clause (i) of Section 9(1) and such company or entity hold directly or indirectly such assets in India through or in such Indian concern.

In case of a failure to furnish the above stated information by the Indian concern it shall be liable to pay penalty equal to 2% of the value of the transaction in respect of

which such failure has taken place if such transaction had the effect of directly or indirectly transferring the right of the management or control in relation to Indian concern. In other cases the penalty shall be Rs.5 lakh. Thus in view of the above obligation and the penalty the Indian concern now needs to keep a track not only on its shareholder but also the ultimate shareholder and in case of any transfer or transaction taking place which gets covered by Explanation 5 of clause (i) of Section 9(1) it is required to report the same.

4. **Presence of Fund Manager in India not to constitute business connection**

The Finance Bill, 2015 proposes to make another interesting amendment to give benefit to the Fund Managers in India. As per the amendment proposed the fund management activities carried through an eligible fund manager acting on behalf of such funds shall not constitute business connection in India of the said fund. It has been further proposed that an eligible investment fund shall not be said to be a resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. This exception from the general Rules regarding business connection and residential status will be available on fulfillment of the following conditions:-

(1) The offshore fund shall be required to fulfill the following conditions during the relevant year for being an eligible investment fund:

(i) the fund is not a person resident in India;

(ii) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into;

(iii) the aggregate participation or investment in the fund, directly or indirectly, by persons being resident in India does not exceed five percent. of the corpus of the fund;

(iv) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident ;

(v) the fund has a minimum of twenty five members who are, directly or indirectly, not connected persons;

(vi) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten percent.;

(vii) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty percent.;

(viii) the investment by the fund in an entity shall not exceed twenty percent of the corpus of the fund;

(ix) no investment shall be made by the fund in its associate entity;

(x) the monthly average of the corpus of the fund shall not be less than one hundred crore rupees and if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year;

(xi) the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;

(xii) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.

(xiii) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken on its behalf is not less than the arm's length price of such activity.

(2) The following conditions shall be required to be satisfied by the person being the fund manager for being an eligible fund manager:

(i) the person is not an employee of the eligible investment fund or a connected person of the fund;

(ii) the person is registered as a fund manager or investment advisor in accordance with the specified regulations;

(iii) the person is acting in the ordinary course of his business as a fund manager;

(iv) the person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty percent of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through such fund manager.

It is further proposed that every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfillment of the above conditions or any information or document which may be prescribed. In case of non furnishing of the prescribed information or document or statement, a penalty of Rs. 5 lakh shall be leviable on the fund.

It is also proposed to clarify that this regime shall not have any impact on taxability of any income of the eligible investment fund which would have been chargeable to tax irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not. Further, the proposed regime shall not have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

It is interesting to note that two amendments are being proposed in the Finance Bill, 2015 and which are contrary to each other. In the first amendment to section 6(3) a

foreign company will be considered to be a resident even if its place of effective management is in India at any time in the year. This amendment give signal that no foreign company should have any Board meeting or any other activity which may lead to a change of status. The second amendment not to treat offshore fund and fund manager as resident despite carrying out activities in India which per se confirms business connection as well as control and management being situated in India. The explanation given to attract offshore funds and the fund managers to carry out their activities in India equally applies to foreign companies and there is no justification to scare such foreign company to note to carry out any activity in India.

5. Interest paid by a branch of a foreign bank (non-resident) to its head office to be chargeable to tax in India

The Finance Bill 2015 proposes to insert an explanation to clause (v) after sub-clause (c) to provide that any interest paid by a branch of a foreign bank (non-resident) to its head office or any permanent establishment or other branch of such non-resident foreign bank outside India shall be deemed to be income accruing or arising in India and the same shall be chargeable to tax in addition to the income attributable to such branch in India. For this purpose, it is being clarified that such foreign branch (permanent establishment) in India shall be deemed to be a person separate and independent of the non-resident person (head office or any other branch of such foreign bank) of which it is a permanent establishment (branch).

This amendment is being done to overrule the judgement of the Special Bench of the ITAT in case of Sumitomo Mitsui Banking Corporation (136 ITD 66(MUM)) whereby it was held that the payment of interest shall not be taxable in the absence of any specific provision in the domestic law providing taxability of the interest so paid by a branch of a bank to its head office and other branches.

In view of this amendment, the branch of a foreign bank being permanent establishment in India shall also be required to deduct tax at source on any interest paid to its head office or any other branch outside India. In case of non-deduction of tax of such interest, the interest expenditure will be disallowed besides attracting levy of interest and penalty for failure to deduct tax at source.

6. General Anti Avoidance Rule (GAAR) being deferred

The Finance Bill, 2015 proposes to defer the provisions of General Anti Avoidance Rule introduced by the Finance Act, 2013 by another two years i.e. starting from the financial year 2017-18 (assessment year 2018-19) by inserting sub-section (2) in Section 95 to provide that this Chapter shall apply in respect of any assessment year beginning on or after the 1st day of April, 2018. It has been further provided that investment made upto 31st March, 2017 shall be protected from the applicability of GAAR and hence provisions of GAAR shall be applicable in respect of transactions entered into on or after 1st day of April, 2017. Necessary amendment in this regard shall be made in the relevant Rules.

7. Introduction of concessional tax rates

The Finance Bill, 2015 proposes to extend eligible period of concessional rate of 5% applicable in respect of income by way of interest paid to a foreign institutional investor or a qualified foreign investor in a Rupee denominated bond of an Indian company or Government security upto 30th June, 2017. This provision of Section 194LD was inserted by the Finance Act, 2013 granting concessional rate in respect of the period starting from 1st day of April, 2013 but before 1st day of June, 2015 to attract foreign investment at the time when there was an adverse balance of payment. The Finance Bill, 2015 proposes to extend this eligibility period of concessional tax rate of 5% upto 30th June, 2017. This amendment will be applicable from 1st June, 2015.

8. Concessional tax rate of 10% being restricted to GDR issued against shares of listed companies only.

As per the existing provisions of Section 115ACA, a concessional rate of 10% is applicable in respect of the income by way of dividend or by way of long-term capital gains in respect of Global Depository Receipt issued to non-resident investors against the issue of ordinary shares or Foreign Currency Convertible Bonds of issuing company.

The Finance Bill, 2015 proposes to widen the scope by extending the benefit to both resident as well as non-resident investors. However, the benefit is being restricted to the GDR issued against the ordinary share by a listed company only as against benefit of GDR issued against the ordinary shares by any company. Consequent to the above amendment, the GDR having underlying assets other than the ordinary shares of a listed company or foreign currency convertible bonds of issuing company, would not be eligible for concessional tax rates of 10%. Further, transfer of GDR by a non-resident to non-resident would be treated as a transfer and accordingly chargeable to capital gain under Section 45 of the Income Tax Act with the result that the non-resident buyer of GDR will have to comply with the withholding of tax provision of Section 195 despite the fact that the buyer of such GDR may not be aware of the identity of the seller of the GDR and also the cost of such GDR to the seller.

9. **Rules to be notified for giving foreign tax credit**

As per the Double Taxation Avoidance Agreement entered into with various countries an Indian resident is entitled to take foreign tax credit i.e. the tax paid in the other country. This credit is allowed of a sum calculated on such double tax income, at the Indian rate of tax or the rate of tax of such country whichever is lower. The Income Tax Act, however, does not provide the manner for granting credit of such taxes. The Finance Bill, 2015 proposes to amend section 295(2) so as to empower the Board to notify Rules to provide the procedure for granting relief or deduction of income tax paid in any country against the income tax payable in India. This amendment will be effective from 1st day of June, 2015. This being a procedural amendment will be applicable to the existing assessment as well.

10. **CBDT being empowered for deciding residential status of a crew member of foreign bound ship**

The Finance Bill 2015 proposes to insert an explanation 2 below Section 6(i) of the Income Tax Act empowering the Central Board of Direct Taxes to prescribe the manner and the procedure for computing the stay in India in respect of a citizen of

India and a member of the crew of a foreign bound ship leaving India, in respect of such voyage.

This amendment is being made with retrospective effect, that is, from Financial Year 2015-16.

I. ASSESMENT PROCEDURE

1. Approval for reopening of assessment from Joint Commissioner / Commissioner

As per the existing provisions of Section 151 of the Income Tax Act, while reopening the assessment after the expiry of four years from the end of the relevant assessment year, approval is to be obtained from the Joint Commissioner. However, in case the original assessment has been made under Section 143(3), then approval has to be obtained from the Joint Commissioner if reopening is being done within a period of four years from the end of the relevant assessment year and from the Commissioner of Income Tax after the expiry of the four years.

The Finance Bill 2015 proposes to modify the above provision. Now, approval will be required from the Joint Commissioner in all cases if the assessment is being reopened within a period of four years from the end of the relevant assessment year and from the Commissioner of Income Tax, if assessment is being reopened after a period of four years from the end of the relevant assessment year irrespective of the fact whether original assessment has been done under Section 143(3) or not.

This amendment shall be effective from 1st June, 2015. Accordingly, all approvals for reopening after that date irrespective of the assessment year to which it pertains shall be in accordance with the new procedure.

2. Scope of the reopening of the assessment consequent to the search of a person other than the person searched being widened under Section 153C.

As per the existing provision of Section 153C, where the Assessing Officer of the searched person is satisfied that any money, bullion, jewellery or valuable article or

thing or books of accounts or document seized during the course of a search belongs to a person other than the person searched then such books of accounts are to be handed over to the Assessing Officer of such other person and consequent thereto the re-assessment proceedings in respect of six years immediately preceding the assessment year in which the search is carried out are initiated by the Assessing Officer of such other person under Section 153C. There has been a dispute going on, on the meaning of the word "belonging to". The Delhi High Court in case of Pepsi Food (P) Ltd. vs. ACIT 367 ITR 112 (Del) has held that the Assessing Officer of the searched person needs to be satisfied firstly that the books of accounts or document does not belong to the searched person. Thereafter, he needs to be satisfied that such books of accounts or document belongs to another person and only after its recording such satisfaction, the proceedings under Section 153C can be initiated.

The Finance Bill, 2015 proposes to substitute the word "belongs to" in respect of books of accounts or document seized with the word "pertains to or pertained to, or any information contained therein, relates to such other person".

This amendment will have far-reaching implication as scope of the word "pertains to" is much wider as compared to "belongs to". Any sales invoice issued by a person and found with the person who has been searched will be considered to be pertaining to the person who has issued the sales invoice and in consequence thereto provision of Section 153C for reopening of the assessment for the six years can be applied to such other person. Similarly, the words "any information contained therein, related to" are also much wider. Even a ledger account of such other person in the book of other person will be information contained therein and relates to such other person. Even in such cases, the provision of Section-153C can be invoked against such other person merely on the basis of a ledger account of such other person being maintained by a searched person.

The earlier word "belongs to" was much more logical as any books of accounts or document found, the moment such person claimed it to belonging to other person then proceedings of 153C were rightly being initiated. Merely on the basis of 'documents pertaining to' or 'information relating to' should not be the ground for

reopening of the six assessment years. If the document pertains or information is relevant and incriminating, then the other provisions of the Act including Section 148 can always be invoked against such other person instead of initiating proceedings under Section 153C for the six assessment years. Earlier also on the basis of the information found during the course of the search and the statement recorded therein, the department has been reopening the assessment under Section 148 for the relevant assessment year and there has not been any dispute on technicalities of reopening of such assessment. By invoking the provision of Section 153C not only the issue of justification or technicalities under Section 153C will arise but also the department will be saddled with a huge number of reassessments to be carried out in respect of each of such other persons whose information is found contained in the seized document.

This amendment shall be effective from 1st June, 2015 and accordingly any reassessments proceedings initiated on or after 1st June, 2015 will fall within the above meaning. Further the implication of this amendment will be that before first day of June 2015, the proceeding under Section 153C can only be initiated when the books of accounts or document belongs to any such other person and in the absence of any books of accounts or document found belonging to any such other person, the proceedings initiated under Section 153C are bad in law.

3. **Department not to file appeal when identical question is pending before Supreme Court**

As per the existing provision of Section 158A, an option has been given to the assessee to make an application to the Assessing Officer or an appellate authority where any question of law arising in his case for another assessment year is pending before the High Court in an appeal under Section 260A or before the Supreme Court in an appeal under Section 261. On such declaration being filed, the Assessing Officer or the Appellate Authority is required to dispose of the case without awaiting the final decision on the question of law in another assessment year. On receipt of the decision of the High Court or the Supreme Court, the same decision is to be applied to the case before the Assessing Officer or the Appellate Authority by

necessary rectification / amendment order in conformity with the decision of the High Court or the Supreme Court.

The Finance Bill, 2015 proposes to expand the scope of the above provision giving an option to the department also to not to file an appeal for subsequent year where department is in appeal on the same question of law in an earlier year by inserting a new Section 158AA. This option is limited in the sense that only question of law arising for any assessment year which is pending before the Supreme Court in an appeal or in a Special Leave Petition against the order of the High Court in favour of the assessee, then, the Commissioner instead of directing the Assessing Officer to file appeal to the Appellate Tribunal may direct the Assessing Officer to make an application to the Appellate Tribunal within 60 days from the date of receipt of the order of the Commissioner (Appeal), to the effect that appeal on the question of law will be filed when the question of law becomes final in the earlier case. This application can be filed if an acceptance is received from the assessee confirming that the question of law is identical to that arising in another assessment year. In case of a refusal by the assessee, the normal appeal will be filed by the department to the Appellate Tribunal. On receipt of the final order of the Supreme Court and if the same is in favour of the department, the Commissioner will direct the Assessing Officer to file the appeal within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner.

This amendment shall be effective from 1st June, 2015 and accordingly any appeal to be filed against an order of the Commissioner (Appeal) on or after 1st June, 2015 by the department where a question of law identical to the question of law arisen in this appeal is pending before the Supreme Court then instead of filing the appeal the above said procedure can be followed.

4. **Interest under Section 234B for failure to pay advance tax to be charged from the first day of the assessment year in all cases**

As per the existing provision of 208 of the Income Tax Act, every person is required to pay advance tax if the amount of such tax payable is Rs.10000 or more. In case of failure to pay such advance tax, interest @ 1% for every month or a part of the

month is required to be paid from the first day of the assessment year where the advance tax paid is less than 90% of the assessed tax till the date of the determination of the total income. However, where before the determination of the total income the tax is paid by the assessee under Section 140A or otherwise, interest is calculated upto a date on which the tax is so paid and reduced by the interest if any paid under Section 140A towards the interest chargeable under the section and thereafter interest is calculated on the amount by which tax so paid together with the advance tax paid falls short of the assessed tax.

If as per the provision of sub-section 3 of Section 234B, in case of a reassessment under Section 147 or under Section 153A, the additional interest in respect of the additional income is to be paid commencing from the date of determination of the total income under Section 143(1) or Section 143(3) till the date of reassessment under Section 147 or Section 143A. Accordingly, in case of the reassessment under Section 147A and 153A, no interest on the additional income was chargeable from the first day of the assessment year till the date of the original regular assessment under Section 143(1) and 143(3) as the case may be.

The Finance Bill, 2015 proposes to amend this sub-section 3 of Section 234B to provide that interest in the case of reassessment under Section 147 or Section 153A in respect of the entire income including the additional income shall be chargeable to tax from the first day of the assessment year and not from the date of original assessment under Section 143(1) or Section 143(3).

Further, as on date, there is no clarity about charging of interest under Section 234B in respect of tax payable on the additional income offered before the Settlement Commission. To address this confusion, the Finance Bill, 2015 proposes to insert a new sub-section 2(A) in Section 234B to provide that where an application is made under Section 245C(1) before the Settlement Commission for any assessment year, the assessee shall be liable to pay interest @ 1% for every month starting from the first day of April of the relevant assessment year and till the date of making such application on the additional amount of income tax with reference to the additional income. It is being further provided that where the amount of total income disclosed in the application gets increased as a result of final order of Settlement Commission

passed under Section 245D(4), the assessee shall be liable to pay this interest @1% starting from the first day of April of such assessment year till the date of the order passed by the Settlement Commission under Section 245D(4) on the tax payable in respect of additional income determined over and above the additional income offered in the settlement application.

The above amendment is stated to be effective from the first date of June 2015. However, there is every possibility that this amendment will be contested to be clarificatory in nature and hence there can be a dispute whether this interest shall be payable in respect of earlier assessment years as well or in respect of the assessment year 2016-17 i.e. commencing after the first day of June 2015. Also there could be a dispute whether this interest is leviable for the period commencing on or after 1st June, 2015 or the period before. In this regard, it may be relevant to note that the Finance Act, 2003 has inserted Section 234D with effect from 1st June, 2003 to provide charging of interest on excess refund. The said provision was held by the court to be applicable prospectively i.e. from assessment year 2004-05. The Delhi High Court in the case of Director of Income Tax versus M/s Jacabs Civil Incorporated/ Mitsubishi Corporation [(2011) 330 ITR 5780 (Del) has held:

> *"Any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the legislature. – therefore, of the opinion that the Tribunal was right in deleting the interest under Section 234D of the Act for the period prior to the assessment year 2004-05. As a result, these appeals of the Department are dismissed."*

To overrule the above judgment, Explanation 2 was inserted by the Finance Act 2012 in Section 234D with retrospective effect, that is, 1st June, 2003 to declare that the provision of Section 234D shall apply to assessment year commencing before the first day of June 2003, if the proceedings in respect of such assessment year is completed after the said date.

The Finance Bill, 2015 does not have a similar explanation. In view of the declared policy of the present Government to not to enact any retrospective law, one can expect that no such explanation shall be inserted and the above judgments delivered with reference to Section 234D will also be applicable in respect of interest now proposed to be charged under Section 234B. Accordingly the interest under the proposed amendment will be applicable from assessment year 2016-17.

6. Scope of revision by Commissioner under Section 263 being widened

As per the existing provision of Section 263, the Commissioner is empowered to revise the orders passed by the Assessing Officer or to set aside the same if he considers that the order passed is erroneous and prejudicial to the interest of the Revenue.

As per the existing provision, this order can be revised when order is erroneous as well as prejudicial to the interest of revenue. Further, the order cannot be revised if the Assessing Officer has carried out the enquiry and Commissioner of Income Tax is not allowed to sit over the judgement of the Assessing Officer to decide what inquiry AO should have carried out. The consistent view of the courts in this regard has been that the order can be revised when there is a lack of enquiry. However, it cannot be revised in case of inadequate enquiries.

The Finance Bill, 2015 proposes to widen the scope of revision by Commissioner by specifically providing that order can be revised by the Commissioner if:

(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.

The scope of power being given to the Commissioner for revising the order is too wide. As per the proposed provision, any assessment order can be revised by the Commissioner since it will be much easier to allege that the Assessing Officer has failed to make enquiry which should have been made. The Commissioner of Income Tax can sit over the judgement of the Assessing Officer after the order has been passed.

It is also interesting to note that in terms of the clause (d), the Commissioner is being given power to revise the order on the ground that the order has not been passed in accordance with the decision of the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. It is settled law that if any order is passed which is not in accordance with the law as pronounced by the jurisdictional High Court or the Supreme Court, the same is considered to be an error apparent from the record liable for rectification. Further, under Section 154 power to rectify a mistake apparent from record to an income tax authority is available for a period of four years from the end of the financial year in which the order sought to be rectified was passed, whereas the Commissioner can revise the order under Section 263 within a period of two years from the end of the financial year in which such order was passed. Thus, there is no justification for inserting this clause (d).

It is also interesting to note that clause (c) regarding order not being in accordance with the direction or instruction issued by the Board and the order not being in accordance with any decision prejudicial to the assessee being delivered by the jurisdictional High Court or the Supreme Court is being inserted in Section 263 with no corresponding amendment in 264 whereby an order can be revised by the Commissioner either on his own motion or on an application by the assessee for revision. This revision can also be in the interest of the assessee. The law needs to be fair and equitable. If an order has been passed by the Assessing Officer against the assessee and which is not in accordance with the direction issued by the Board or not in accordance with the order passed by the jurisdictional High Court or the Supreme Court, then similar amendment ought to have been proposed in Section 264.

The above amendment is proposed to be effective from 1st June, 2015 and accordingly the Commissioner from that day onwards shall have the power to revise the order under the expanded scope.

7. Appeal of income upto 15 lakhs to be heard by the Single Member of ITAT

The Finance Bill, 2015 proposes to increase the threshold limit of Rs.5 lakh to 15 lakhs for appeals to be heard by single member of the ITAT by amending provisions of Section 255(3) of the Act. This provision shall be effective from 1st June, 2015 and accordingly from that day onwards wherever the income assessed is upto Rs.15 lakhs then appeal in such cases will be heard by single member of the tribunal. It is to be noted that as per the Instruction issued by the CBDT No. 5/2014 dated 10th July, 2014 no appeal can be filed by the Revenue against the order of the CIT(Appeals) where the tax effect is Rs.4 lakhs or less. On the income assessed at Rs.15 lakhs, by and large, tax effect involved in the appeal will be less than Rs.4 lakh and accordingly appeal before the single member of the tribunal will be that of the assessee only.

7. **Cash transaction of Rs.20,000 or more in relation to immovable property being prohibited**

The Finance Bill, 2015 proposes to expand the scope of Section 269SS and Section 269T prohibiting payment of cash of Rs.20000 or more relating to immovable property transaction as well as acceptance of the cash relating to the immovable property. Under the existing provision of 269SS, no person can take any loan or deposit otherwise than by an account payee cheque or bank draft or online transfer if the amount of such deposit is Rs.20000 or more. Similarly, under Section 269T, a person is prohibited from repaying any such loan or deposit of Rs.20,000 or more.

Section 269SS is being amended to provide that no person shall accept any cash relating to immovable property transaction if the sum is Rs.20,000 or more. Similarly, Section 269T is being amended to provide that no person shall pay by advance or otherwise for transfer of a sum of Rs.20,000 or more in relation to transfer of immovable property irrespective of the fact that whether the transaction takes place or not.

It is to be noted that penalty for violation of Section 269SS and 269T is equivalent to the amount accepted or repaid. Corresponding amendment is being made in Section 271D and 271E to provide that in case any person accepts any cash of Rs.20000 or more for purchase of immovable property or any person makes any payment in respect of purchase for immovable property of Rs.20000 or more then penalty on both the persons – purchaser and seller – shall be levied equivalent to the 100% of the cash so paid or received. It is to be further noted that there is no exemption in respect of agricultural land or property. The only exception is when such transactions are between persons both having agricultural income and neither of them has any income chargeable to tax.

The above amendment shall be effective from 1st June, 2015 and as such any consideration accepted in cash for an amount of Rs.20000 or more in relation to any transaction of immovable property and any amount paid in cash of Rs.20,000 or more in relation to transfer of immovable property, after 1st June, 2015, penalty equivalent to 100% of such sum shall be leviable.

J. SETTLEMENT PROCEEDINGS

1. On reopening of assessment for one year, the tax-payer can approach the Settlement Commission for other assessment years as well.

As per the existing provisions of Section 245C(1), an assessee can make an application before the Settlement Commission for settlement of its tax liabilities where proceedings for assessment are pending before an assessing officer on the date of which such application is being made. The proceeding for assessment includes proceeding for re-assessment under Section 147, consequent to the issue of notice under Section 148, proceeding for making fresh assessment in pursuance of an order passed by ITAT under Section 254 or by Commissioner of Income Tax under Section 263 or under Section 264, setting aside or cancelling an assessment, proceeding for assessment or re-assessment consequent to a search under Section 153A or under Section 153C. Accordingly, for making an application to the Settlement Commission, it is necessary that the proceeding for assessment or re-assessment should be pending with the Assessing Officer on the date of such

application. In the case of a re-assessment proceeding under Section 147, an assessee can approach the Settlement Commission only for that assessment year for which it has received a notice under Section 148. The assessee cannot make an application to the Settlement Commission in respect of the other assessment years. The Finance Bill, 2015 proposes to amend this condition allowing an assessee to file application before the Settlement Commission for any other assessment year even if notice under Section 148 for such other assessment years has not been issued by the Assessing Officer. The only condition is that the return of income for such other assessment years should have been furnished either under Section 139 or in response to notice under Section 142 of the Act. Consequently an amendment is being proposed to provide that the proceeding of assessment or re-assessment shall be deemed to have been commenced from the date on which return of income is furnished under Section 139 or in response to notice under Section 142 and shall be considered to have been concluded on the date on which the assessment is made or on the expiry of two years from the end of the relevant assessment years in a case where no assessment is made. This amendment shall be effective from 1st June, 2015 and accordingly, an application under the above provision can be filed on or after 1st June, 2015.

2. Time period for rectification by Settlement Commission being extended

The Finance Act, 2011 has inserted sub-section 6(B) under Section 245D empowering the Settlement Commission to rectify any mistake apparent from record within a period of six months from the date of the order. Before this amendment, the Settlement Commission was not having power to rectify any mistake apparent from record as well.

However, a controversy has arisen that in case the applicant or the Department files an application for rectification within a period of six months from the date of the order but no order for rectification is passed by the Settlement Commission within a period of six months from the date of the order then can the Settlement Commission pass rectification order beyond six months from the date of the order?

In order to address this controversy, the Finance Bill, 2015 proposes to substitute the existing sub-section 6(B) with a new sub-section 6(B) to provide that Settlement Commission may rectify *suo motu* any mistake apparent from record at any time within a period of six months from the end of the month in which the order was passed or within a period of six months from the end of the month in which an application for rectification is made by the applicant or the Commissioner, as the case may be. It is being, further, provided that such application is to be filed by the applicant or the Commissioner within a period of six months from the end of the month in which the order sought to be rectified was passed by the Settlement Commission.

This amendment shall be effective from 1st June, 2015 and accordingly, an application under the above provision can be filed on or after 1st June, 2015.

3. Settlement Commission to record reasons in writing while granting immunity

As per the existing provisions of Section 245H, the Settlement Commission has power to grant immunity to the applicant from prosecution and penalty if it is satisfied that the applicant has cooperated with the Settlement Commission and has made a full and true disclosure of his income and the manner in which such income has been derived. Presently, the Settlement Commission is not required to record reasons in writing for granting such immunity.

The Finance Bill, 2015 proposes to amend this provision making it mandatory for the Settlement Commission to record reasons in writing in the order passed by it for granting immunity from prosecution and penalty. This amendment is being made to address the issue which has arisen about the full and true disclosure of income being made by the applicant. Normally, during the course of the proceedings before the Settlement Commission, under Section 245D(4), the income offered by the applicant gets increased as per the mutual understanding reached between the applicant, the Department and the Settlement Commission. On the basis of this mutual understanding, the Settlement Commission records the fact that the applicant has cooperated and has made full and true disclosure and normally grants immunity from

prosecution and penalty. Now, in cases where income finally determined by the Settlement Commission is different from the income initially offered by the applicant, there will be issue whether immunity can be granted to the applicant from prosecution and penalty and iif yes, then the Settlement Commission has to record the reasons in writing why such immunity is being granted.

This amendment shall be effective from 1st June, 2015.

4. Abetment of proceedings if settlement order under Section 245D(4) is passed without terms of settlement.

An interesting amendment is being made in respect of the final order passed by the Settlement Commission under Section 245D(4) to provide that in case terms of settlement have not been stated in the final order then the application filed by the applicant shall be considered to have been abetted meaning thereby that the order passed by the Settlement Commission will be a nullity. As per this amendment for a default by the Settlement Commission in not providing the terms of settlement in the final order passed by it under Section 245D(4), the applicant will have to suffer and the entire process will become a nullity and the applicant will have to revert back to the normal assessment procedure before the Assessing Officer. This amendment shall also be effective from 1st June, 2015 and accordingly any order passed by the Settlement Commission under Section 245D(4) after 1st June, 2015 to the applicant needs to ensure that the terms of settlement are stated by the Settlement Commission despite the fact that the applicant do not have any control about the final order passed by the Settlement Commission. It would have been more advisable to provide that such order passed shall be considered to be a mistake apparent from record and the Settlement Commission shall rectify the same within a period of six months from the date of such order providing the terms of settlement rather than abetting such proceedings.

5. Scope of knocking at the Settlement Commission once in a lifetime being narrowed by including related person / related entities.

As per the existing provisions of Section 245K, there is a bar on subsequent application by the same person for settlement of its tax disputes. Accordingly, a

person who has made an application for settlement after first day of June 2007 and if such application has been allowed to be proceeded with under Section 245D(1) then such person is not entitled to make an application subsequently.

The present restriction is person specific. The Finance Bill, 2015 proposes to widen the restriction so as to include related person as under:

"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 per cent. of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than fifty per cent. 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 per cent. of the shares or voting rights 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 persons or body of individuals, any individual who was entitled to more than fifty per cent. of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;

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

This amendment shall be effective from 1st June, 2015 and accordingly, an application under the above provision can be filed on or after 1st June, 2015.

6. Seized assets may be adjusted against liability arising on application for settlement.

As per the existing procedure of the Settlement Commission under Section 245C(1), an applicant has to pay tax and interest thereon in respect of the income disclosed before the Settlement Commission before the date of making such an application.

As per the provisions of Section 132B, the assets seized during the course of the search can be applied only towards existing liability of the tax and the amount of the tax liability determined on completion of the assessment under Section 153A and the assessment of the year in which search is initiated. The Finance Act, 2013 further inserted Explanation 2 in this Section to clarify that existing liability does not include advance tax payable. Consequent to the above provision and the explanation inserted by the Finance Act, 2013, a peculiar situation has arisen in the case of a searched person where money in the form of cash and bank account is seized by the Department and such person is prohibited from using such money for payment of his tax liability arising consequent to the such undisclosed money in the form of cash and the bank account which such person intends to disclose and pay taxes thereon. This has created a vicious circle whereby a person wants to pay tax arisen in respect of the undisclosed seized money and the law prohibits him from using such money necessitating further default by such person. This has also resulted into a practical difficulty whereby such person cannot go to the Settlement Commission, since as per the existing procedure of the Settlement Commission under Section 245(C)(1), an applicant has to pay tax and interest thereon in respect of the income disclosed before the Settlement Commission before the date of making such an application.

The Finance Bill, 2015 proposes to relax a part of it by amending Section 132B to provide that the assets seized can also be utilized towards liability arising on an application made before the Settlement Commission under Section 245C(1).

This amendment is being made effective from 1st June, 2015. Consequent to this amendment, an applicant on or after 1st June, 2015 will be in a position to make a request to the Commissioner to utilize the seized assets towards his liability arisen consequent to the tax payable on the additional income being disclosed under Section 245C(1) before the Settlement Commission.

K. TAX DEDUCTION AT SOURCE

1. <u>Employees to submit evidence regarding deduction / set off of loss to the employers.</u>

As per the existing provisions under Section 192 of the Income Tax Act, every employer is required to deduct tax at source in respect of salaries paid to the employees at the average rate of income tax computed on the basis of estimated income of the employee. While computing such estimated income of the employee, the employer is supposed to take into account the deductions / exemptions including set off of loss, if any, for which the employee is eligible. In case of any wrong deduction or exemption taken into consideration by estimation of income by the employer, the employer is made liable to pay tax as well as interest thereon, despite the fact that the employer as on date does not have any power under the Act to ask for evidence in support of the exemption or deduction being claimed by the employee.

To address this issue, the Finance Bill, 2015 proposes to insert a new sub-section (2D) to provide that the employer for the purposes of estimating income of the employee shall obtain from the employee the evidence or proof or particulars of such deductions / exemptions including claim for set off of loss in such form and manner as may be prescribed. The form and manner will be prescribed by the Board by the Rules. With this amendment, this will address the dilemma which an employer has to face in the absence of the evidence / proof being available on record for exemption being asked for by the employee while withholding the tax on the salary income.

This amendment is being made effective from 1st June, 2015.

2. Tax to be deducted at source by cooperative banks on interest being paid to its members.

The Finance Bill, 2015 proposes to amend the provisions of Section 194A to provide that the cooperative banks shall also be required to deduct tax at source in respect of the interest being paid to their members. This amendment is being made to clarify the provisions of Section 194A(3)(v) which provides general exemption from

deduction from payment of interest by all cooperative banks to their members on the principle of mutuality.

3. Tax to be deducted at source by bank on interest on recurring deposits.

At present, tax is required to be deducted at source on payment of interest under Section 194A. However, in terms of sub-section 3, there is an exemption to deduct tax at source if such interest income is credited or debited by a banking company in respect of deposit other than time deposit. Accordingly, interest on saving bank account and recurring deposit with bank is not liable for deduction of tax at source. The Finance Bill, 2015 proposes to restrict the exemption only in respect of the saving bank by amending the definition of time deposit given in explanation 1 to mean deposit including recurring deposit.

4. Threshold limit of interest of Rs.10,000 in respect of deposit with bank to be computed in aggregate with a bank as against branch of the bank.

As per the existing provisions of Section 194A(3), tax is not required to be deducted at source in respect of interest where the amount of interest paid does not exceed Rs.10,000 by a bank. This threshold limit of Rs.10,000 is computed with reference to the interest paid by a branch of the bank or the cooperative society or the public company.

The Finance Bill, 2015 proposes to insert a further proviso to provide that this threshold limit of Rs.10,000 shall be computed with reference to the total amount of the interest credited or paid by the bank or the cooperative society or the public company where core banking solutions have been adopted by such bank, cooperative society or the public company. This is being done in view of the fact that most of these entities are computerized and it is not difficult for these entities to work out the aggregate amount of the interest being paid to a particular depositor in respect of its branches. Accordingly, the aggregate interest being paid by a bank from all its branches will be considered for the purpose of deduction of tax at source under Section 194A and in case the aggregate amount of the interest paid by a bank does not exceed Rs.10,000, only then tax will not be deducted at source.

This provision shall be effective from 1st June, 2015 and accordingly from that day onwards, the aggregate amount of the interest exceeds Rs.10,000 with all the branches then tax will be required to be deducted at source. It is to be noted that the threshold exemption of Rs.10,000 is available with reference to a financial year and accordingly interest paid for the period from 1st April, 2015 to 31st May, 2015 will also be taken into consideration after 1st June, 2015 while computing threshold limit of Rs.10,000.

5. Tax on interest awarded by Motor Accident Claim Tribunal to be deducted at source at that time of payment only.

As per the existing provisions of Section 194A, tax is required to be deducted at source at the time of the credit or payment whichever is earlier. In the case of interest awarded by the Motor Accident Claim Tribunal, the interest is deemed to be the income in the year in which such interest is received in view of the provisions of the Section 145A of the Act.

Considering this provision, the Finance Bill, 2015 proposes to substitute clause (ix) to exempt interest income credited by way of interest awarded by the Motor Accident Claim tribunal from deduction of tax at source, and at the same time, inserting new clause (ix)(a) to provide that exemption in respect of interest paid during the financial year shall be only when the amount does not exceed Rs.50,000. The implication of the above two amendments will be that in the year of payment of interest awarded by the Motor Accident Claim Tribunal if the amount of interest is Rs.50,000 or more, then the tax shall be required to be deducted at source.

This amendment shall be effective from 1st June, 2015 and accordingly, an application under the above provision can be filed on or after 1st June, 2015.

6. Exemption from deduction of tax in respect of payment to transporters being limited to small transporters

As per the existing provisions of Section 194C of the Income Tax Act, tax is required to be deducted at source while making payment to contractors including sub-contractors for carrying out any work. The "work" includes carriage of goods or

passengers by any mode of transport other than by railway. However, considering the resistance by the transporters by way of sub-section (6), no deduction is required to be made in respect of amount credited or paid to a contractor engaged in business plying, hiring or leasing goods or carriages, if such contractor furnishes his Permanent Account Number. This exemption is available to the contractors / transporters whether it is a small transporter or a large transport company.

The Finance Bill, 2015 proposes to restrict this exemption to such transporters (contractors) which own 10 or less good carriages at any time during the previous year and also furnishes a declaration to this effect.

This amendment shall be effective from 1st June, 2015. Accordingly, from 1st June, 2015 onwards, while making payment in respect of carriage of goods, the payer will be required to obtain a declaration from the contractor (transporter) that it owns 10 or less goods' carriages and also the PAN number and only then tax will not be required to be deducted at source. It is to be noted that this exemption is available in respect of goods' carriages only and there is no exemption available in respect of carriage of passengers.

7. Additional fee under Section 234E for default in furnishing TDS / TCS statement to be adjusted while processing of statement.

As per the existing provisions of Section 243E of the Act, in case of delay in submitting statement of TDS / TCS, the person is liable to pay additional fee @ Rs.200 for each day of default subject to the total tax deducted overall ceiling total tax deductible or collectable as the case may be. This amount is required to be paid before filing the statement. The quarterly statement so filed is processed under Section 200A of the Act. The Finance Bill, 2015 proposes to enable computation of this additional fee payable under Section 234E at the time of processing of the quarterly statement.

This amendment shall be effective from 1st June, 2015 with this enabling provision that the additional fee shall be taken into account at the time of processing of the return and the payment will be credited at the time of processing of the return itself.

8. Enabling provision to process and file correction statement in respect of TCS.

The Finance Bill, 2015 proposes to amend the provision relating to statement filed regarding tax collection at source. As per the existing provision, there is no enabling provision for processing of the TCS statement and also TCS collection statement. Accordingly, the provisions of Section 206C are being amended to provide processing of the TCS statement and also allowing the assessee to file correction statement on the line of TDS statement. Corresponding amendment is also being made regarding the intimation generated after processing of TCS statement so as to deem it as notice of demand under Section 156 of the Act. Further, such notice shall be subject to rectification under Section 154 of the Act and also appealable under Section 246A of the Income Tax Act. Corresponding amendment is also being made in Section 220(2) to provide that where interest is charged for any period under Section 206C(7) for non-payment of tax specified in such intimation, no interest shall be charged under Section 220(2) so as to avoid charging of double interest for the same period.

9. Government deductors or collectors to file prescribed statement within the prescribed time.

As per the existing provision, the Government deductors / collectors are allowed to make payment of tax deducted / collected through book entry. The Finance Bill, 2015 proposes to amend Sections 200 and 206C of the Act to provide that where any payment has been made by book entry, the Government deductors / collectors shall furnish within the prescribed time a prescribed statement. In case of delay in furnishing such statement, penalty @ 100 per day for each day of default, subject to overall limit of the tax deductible or collectible, shall be applicable under Section 272A of the Act.

10. Every person to furnish information in respect of each payment made to a non-resident.

As per the existing provision of Section 195(1), any person responsible for paying to a non-resident any sum which is chargeable under the provisions of the Income Tax Act is required to deduct tax at source at the rate prescribed by the Finance Act. Further, as per the provision of Section 195(6) of the Act, such person is required to furnish information relating to such payment in the prescribed form.

The Finance Bill, 2015 proposes to widen the scope of furnishing the information making it obligatory for every person who makes any payment to a non-resident, irrespective of the fact whether such payment is chargeable to tax or not, to furnish the information in the prescribed form within the prescribed period. In case of failure to submit such information, the Finance Bill, 2015 proposes to insert a Section 271-I proposing to levy a penalty of Rs.1 lakh on such person.

This amendment shall be effective from 1st June, 2015. With this proposed amendment, every person making any payment to a non-resident even to a close relative or small online payment and irrespective of the fact that such sum is chargeable to tax will be liable to file such statement and in case of failure to file such statement, a penalty of Rs.1 lakh shall be leviable on such person. The explanation given in the Memorandum for introducing this provision is that the existing provision of obtaining the information only in respect of remittances which the remitter declares as taxable defeats the objective of identifying the remittances on which tax was deductible when the payer has failed to deduct the same. This obligation probably will put too onerous obligations on all persons who may not have the necessary infrastructure and also access to the professionals. All payments made to non-residents are through banking channel and the tax authorities can very well collect such information from the bank instead of putting such obligation on an individual person and then to collate the whole information.

11. Scope of tax exemption form 15G / 15H being widened.

As per the existing provisions of Section 197A, tax is not required to be deducted at source in the case of an individual who is a resident in India and in the case of a

person other than a company or a firm if he furnishes a declaration in the prescribed form 15G, the tax on his estimated total income during the year will be nil. This exemption is available in respect of the income mentioned in the sections which include interest income but does not include payment received in respect of life insurance policy which is chargeable to tax and tax is required to be deducted at source.

The Finance Bill, 2015 proposes to allow submission of these forms 15G/15H even in case where the person receives payment in respect of life insurance policy which is chargeable to tax without deduction of tax at source as well.

This amendment shall also be effective from 1st June, 2015.

12. Obtaining of Tax Deduction at Source Number (TAN) not to be mandatory for certain deductors.

As per the existing provisions, every person who is required to deduct tax at source is required to obtain Tax Deduction Number (TAN). The Finance Bill, 2015 proposes to insert Section 203A to enable the Central Government to notify such person as will not be required to obtain the Tax Deduction at source Number. This amendment is being made to address the issue which has arisen consequent to the amendment made by the Finance Act, 2013 whereby every person is required to deduct tax at source at the time of making payment for transfer of immovable property where the value of such property is Rs.50 lakhs or more. In such cases, it is proposed that instead of quoting TDS No., PAN will suffice.

This amendment shall be effective from 1st June, 2015.

L. MISCELLANEOUS

1. Tax audit report / certificate not to be issued by a related auditor and chartered accountant not holding valid Certificate of Practice.

The Finance Bill, 2015 proposes to put a restriction regarding tax auditor as well as certificate to be issued under the various provisions of the Income Tax Act by amending the definition of ‘accountant’ under Section 288 of the Act.

As per the proposed amendment, an auditor who is not eligible to be appointed as auditor of a company under Section 141(3) of the Companies Act shall also not be eligible for carrying out any audit or furnishing of any report or certificate under the Income Tax Act also. In the case of other than company, the restriction on the accountant (auditor) will be as under:

(i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;

(ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;

(iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;

(iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

(v) an officer or employee of the assessee;

(vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;

(vii) an individual who, or his relative or partner—

(I) is holding any security of, or interest in, the assessee:
Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;

(II) is indebted to the assessee:
Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;

(III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:
Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;

(viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;

(ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.';

For this purpose the "relative" here shall mean:

(a) spouse of the individual;
(b) brother or sister of the individual;
(c) brother or sister of the spouse of the individual;
(d) any lineal ascendant or descendant of the individual;
(e) any lineal ascendant or descendant of the spouse of the individual;
(f) spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);
(g) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.'.

2. **Only CA with Certificate of Practice to represent before tax authorities**

The Finance Bill, 2015 further proposes that a chartered accountant, who holds a valid certificate of practice under Section 6(i) of the Chartered Accountants Act, shall be considered as an accountant, as per explanation below Section 288(2) of the Act. Accordingly, the chartered accountants who are not holding valid certificate of practice shall not be eligible to carry out any audit or furnish any audit report or certificate and shall also not be eligible to represent before any income tax authority. It is to be noted that restriction of related chartered accountant is not applicable for representing before the income tax authority. However, such chartered accountant for representing before the income tax authority needs to hold a certificate of practice.

It may also be relevant to note that under the existing provision of Section 288, an assessee who is entitled or required to attend before the income tax authority or the appellate tribunal in connection with any proceeding under this Act, such proceeding can be attended to by an authorized representative except when the assessee is required to attend personally for examination or oath etc. As per sub-section (2) of

Section 288, "authorized representative" means a person who is authorized by the assessee in writing and can be following classes of persons:

(i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(ii) any officer of a Scheduled Bank with which the assessee maintaining a current account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practise in any court in India; or

(iv) an accountant; or

(v) any person who has passed any accountancy examination recognized in this behalf by the Board; or

(vi) any person who has acquired such educational qualification as the Board may prescribe for this purpose.

On going through the above list, it is to be further noted that under clause (v) any person who has passed any accountancy examination recognized by the Board is eligible to appear as authorized representative.

Under Rule 50, the following accountancy examinations have been recognized by the Board.

(i) The National Diploma in Commerce awarded by the All-India Council for Technical Education under the Ministry of Education, New Delhi, provided the diploma-holder has taken Advanced Accountancy and Auditing as an elective subject for the Diploma Examination.

(ii) Government Diploma in Company Secretaryship awarded by the Department of Company Affairs, under the Ministry of Industrial Development and Company Affairs, New Delhi.

(iii) Final Examination of the Institute of Company Secretaries of India, New Delhi.

(iv) The Final Examination of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959.

(v) The Departmental Examinations conducted by or on behalf of the Central Board of Direct Taxes for Assessing Officers, Class I or Group 'A',

Probationers, or for Assessing Officers, Class II or Group 'B', Probationers, or for promotion to the post of Assessing Officers, Class II or Group 'B', as the case may be.

(vi) The Revenue Audit Examination for Section Officers conducted by the Office of the Comptroller and Auditor General of India.

Further, under clause (vi), any person who has acquired such educational qualification as the Board may prescribe for this purpose are also entitled as authorized representative. Under Rule-51, the following educational qualifications have been prescribed to be eligible as authorized representative:

A degree in Commerce or Law conferred by any of the following Universities:--

(I) Indian Universities:
Any Indian University incorporated by any law for the time being in force.

(II) Rangoon University.

(III) English and Welsh Universities:
The Universities of Birmingham, Bristol, Cambridge, Durham, Lees, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wale.

(IV) Scottish Universities:
The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews.

(V) Irish Universities:
The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin.

(VI) Pakistan Universities:
Any Pakistan University incorporated by any law for the time being in force.

Though in view of the amended definition of accountant, a chartered accountant holding valid certificate of practice only will be eligible to appear as authorized representative but a person otherwise having a simple degree in commerce will still continue to be eligible as an authorized representative.

3. Measures to curb black money

The Finance Minister in his Budget speech has put a number of proposes to curb the black money. Corresponding amendments have not been proposed in the Finance Bill, 2015. In this regard, the Finance Minister has proposed to introduce two new Legislations. One is Bill on Black Money and second is Benami Transactions (Prohibition) Bill.

As per the proposal, the new law on black money will provide regressive imprisonment upto 10 years in case of concealment of income and assets and evasion of tax relating to foreign assets. The offence will be non-compoundable and the person will not be eligible to approach the Settlement Commission. Further, a penalty @ 300% of tax to be evaded shall be levied. Non-disclosure of the foreign assets or inadequate disclosure will also be liable for imprisonment upto 7 years. Income in relation to undisclosed foreign assets or undisclosed income from any foreign asset will be taxable at the maximum marginal rate with no exemption and deductions. The date of opening of a foreign bank account would be mandatorily required to be specified by the assessee in the return of income. The provisions of prevention of Money Laundering Act and the Foreign Account Management Act are also proposed to be amended in this regard.

As regards the Benami Transactions (Prohibition) Bill, this law will provide confiscation of benami property and also prosecution.

4. Quoting of PAN to be made mandatory on all transactions above Rs.1,00,000

The Finance Minister has proposed that quoting of PAN for any purchase or sale exceeding the value of Rs.1 lakh shall be mandatory. Under the existing provisions of Section 139A(5), every person is required to quote Permanent Account Number in all documents pertaining to such transactions as may be prescribed. As per the existing Rule 114, PAN is required to be quoted for specified transactions which include sale or purchase of immovable property where value exceeds Rs.5 lakhs, a contract sale / purchase of securities (shares etc.) where contract value exceeds Rs.1 lakh. These

rules are likely to be modified so that for any purchase or sale exceeding Rs.1 lakh, quoting of PAN will be mandatory.

5. **Incentivisation of credit or debit card transactions**

The Finance Minister in his Budget speech has also proposed to incentivise credit or debit card transactions and put incentives for cash transactions. In this regard, he has proposed to put a ceiling of Rs.5000 for payment of a hotel bill in cash.

6. **Direct Tax Code being dropped**

The Finance Minister in his Budget speech has now confirmed that the Direct Tax Code is being given a final burial. In this regard, the Finance Minister has stated that most of the provisions of the Direct Tax Code have already been included in the Income Tax Act and a very few other aspects which were left out have been addressed in the present Budget. The abolition of the wealth tax and amending the definition of the resident companies so as to include foreign company having place of effective management are the proposals which were part of the Direct Tax Code and have been introduced in this Budget.

7. **Abolition of Wealth Tax**

The Finance Minister in his Budget speech has proposed to abolish the wealth tax and he has proposed to enhance surcharge at the rate of 12% as against the present rate of 10% on income of Rs.1 crore or more in respect of individual and HUF and Rs.10 crores or more in the case of companies. The surcharge for the companies having income above Rs.1 crore. The present rate of surcharge of 5% in respect of companies having income of Rs.1 crore but less than Rs.10 crores is being increased to 7%.

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TAXATION DEDUCTION & COLLECTION AT SOURCE

Issues, Judgements and Clarifications

VED JAIN

In this book an effort has been made to deal with all the issues involved in the area of tax deduction and collection and it also suggests how procedures could be simplified and nationalized. Important official circulars, clarifications and summaries of relevant judgements have been reproduced. Three appendices at the end give current data relating to rate of tax deduction at source, data schedule for deposit of tax and tax rated as per double taxation avoidances agreement with different countries.

SEARCH, SEIZURE AND SURVEY

Issues, Clarifications and Judgements

VED JAIN

The issues involved in Search, Seizure and Survey have been discussed in detail in this book and references to the relevant circulars have been provided. Summary of relevant judgements have also been reproduced.

TAXATION OF INCOME: AN INTERNATIONAL COMPARISION

A Select Study of

U.S. • U.K. • Australia • Malaysia • Pakistan • India

INDU JAIN

Business and investment Operations of individuals and companies are becoming increasingly international in scope in the wake of current wave of globalization and openness sweeping across the countries of the world. Income tax systems of different countries differ in terms of definition of income and expenses, exemptions and concessions, rates and collection procedures. Varying tax practices of different countries complicate decision-making of individuals and corporates. Hence, the comparative study of income tax becomes relevant in this context.

This book explains and compares the income tax provisions of six countries, three developed countries, viz. the U.K., the U.S., and Australia and three developing countries, namely Malaysia, Pakistan and India.

The book will be useful for a cross-section of readers including researchers, teachers and students of economics, commerce, law and management. The critical analysis of the income tax systems of six countries would also be beneficial for policy makers, corporate executives, legislators and tax consultants.

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