SALIENT FEATURES OF THE FINANCE (NO.2) BILL, 2014

[Relating to Direct Taxes]

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The Finance (No.2) Bill, 2014, or the Union Budget, 2014-15, was presented in the Parliament on 10.7.2014. As regard the direct taxes, there are in all sixty nine (69) amendments proposed in the Finance (No.2) Bill, 2014, vide, clauses (3) to (71).

Save as otherwise provided in the aforesaid Bill, clauses (3) to (71) shall be deemed to have come into force on the first day of April, 2014, viz. from financial year (FY) 2014-15, relevant to assessment year 2015-16. In this regard, there may be certain issues and objections, because the aforesaid Bill has been presented during the relevant FY, viz. FY 2014-15, viz. on 10.7.2014. Further it may also be stated here that there are some amendments which will come into operation from certain specified dates, whereas some others will come into operation with retrospective effect. Therefore, an attempt has been made to provide the date with effect from which the amendment(s), in question, shall come into effect. The term '*Section*', in this Note shall mean the section of the Income-Tax Act, 1961 (the Act).

The abbreviations FY, PY and AY stand for financial year, previous year and assessment year, respectively, in this Note.

In this Note, only the important amendments have been discussed and the same are as follows:-

1 Rates and Slabs of Income-tax

In the Union Budget, 2014-15, the basic exemption limit for Individuals, Hindu Undivided Families (HUFs), Association of Persons (AOPs), Body of Individuals (BOIs) and Artificial Juridical Persons (AJPs) is to be raised by a sum of Rs.50,000. Therefore, the basic exemption limit has been raised from the present Rs.2,00,000 to Rs.2,50,000, in respect of the aforesaid entities. In respect of senior citizens (Age 60 years or above, but less than 80 years), the basic exemption limit has been raised from Rs.2,50,000 to Rs.3,00,000.

For the above purpose, Paragraph A of Part III of the First Schedule to the Bill, provides the following rates of income-tax :

I. In the case of every individual [other than those specifically mentioned in sub-paras (II) and (III)] or Hindu undivided family or every association of persons or body of individuals, whether

incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of the aforesaid Part III applies :–

(i)	Up to Rs.2,50,000	*Nil*
(ii)	Rs. 2,50,001 to Rs. 5,00,000	10 per cent.
(iii)	Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iv)	Above Rs. 10,00,000	30 per cent.;

II. In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than the age of eighty years at any time during the previous year :–

(i)	Up to Rs.3,00,000	*Nil*
(ii)	Rs. 3,00,001 to Rs. 5,00,000	10 per cent.
(iii)	Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iv)	Above Rs. 10,00,000	30 per cent.;

III. In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year :–

(i)	Up to Rs.5,00,000	*Nil*
(ii)	Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
(iii)	Above Rs. 10,00,000	30 per cent.

As regard **companies**, both domestic companies and companies other than domestic companies, there is no change in the rate of tax, the same continuing to be 30%, of the total income.

Surcharge

As regard the aforesaid entities, viz. **individuals, HUFs, firms, AOPs, BOIs**, etc, there will be no surcharge in case the taxable income is upto Rs.1 crore.

However, in case taxable income exceeds Rs.1 crore, then surcharge will be levied at the rate of 10% of the amount of income-tax. Marginal relief will be provided in all such cases.

The surcharge in case of every **domestic company** having income above Rs.1 crore, but upto Rs.10 crore, shall be levied at the rate of 5% and in case the income exceeds Rs.10 crore, then the

surcharge shall be levied at the rate of 10% of the amount of income-tax. Besides the marginal relief will be provided in all such cases.

Besides, in case of every **company, other than a domestic company, viz**. **a foreign company** having total income above Rs.1 crore, but not above Rs.10 crore, surcharge shall be levied at the rate of 2% of the income-tax chargeable. In case the income exceeds Rs.10 crore, surcharge shall be levied at the rate of 5% of the income-tax chargeable. However, marginal relief will be provided.

In other cases (including sections 115-O, 115QA, 115R or 115TA), the surcharge will be applicable at the rate of 10% of the income-tax chargeable.

Education cess

Education cess will continue to be applicable at the rate of 3% of the amount of tax computed, inclusive of surcharge in all cases.

2. Amendment of section 2 – Relating to certain definitions

I. Newly inserted section 2(13A) - Definition of "business trust"

Section 2 of the Act, is to be amended so as to insert a new clause (*13A*) to define "*business trust"* to mean a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognised stock exchange, in accordance with the regulations made under the Securities Exchange Board of India Act, 1992 and notified by the Central Government in this behalf.

This amendment will take effect from 1.10.2014.

II. Amendment of section 2(14) - Security held by foreign institutional investor to be treated as capital asset

Section 2(14) is to be amended so as to provide that the term "*capital asset*" shall include any security held by a Foreign Institutional Investor (FII) which has invested in such security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

This amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to the AY 2015-16 and subsequent AYs.

III. Amendment of section 2(42A) - Short-term / long-term capital asset

Section 2(42A) is to be amended, so as to provide that in case of a share held in a company which is not listed in a recognised stock exchange, the period of holding for the purpose of its qualification as a short-term capital asset, shall not be more than thirty-six months and for that

purpose the words "*a share held in a company or any other security listed in a recognised stock exchange in India" s*hall be substituted with the words "*a security (other than a unit) listed in a recognised stock exchange in India*". Further, in the case of a unit corresponding period of holding of twelve months, shall be limited to a unit of an equity oriented fund.

It is further proposed to insert an *Explanation* to define the expression "*equity oriented fund*".

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to the AY 2015-16 and subsequent AYs.

3. Amendments of section 10

Some clauses have been inserted in section 10, whereas some existing clauses of section 10 have been amended. The same are discussed as follows :

I. Amendment of section 10(23C) – Definition of the term "Substantially financed by the Government"

Absence of a definition of the term "*Substantially financed by the Government*" has led to litigation and varying decisions of judicial authorities who have, for this purpose, relied upon various other provisions of the Income-tax Act and other Acts. Thus, there is lack of certainty in this regard.

Therefore, an *Explanation* is to be inserted in section 10(23C), so as to provide that if the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.

II. Insertion of new clause (23FC) in section 10 – Exemption of income of a business trust

A new clause (23FC) is to be inserted in section 10, so as to provide that any income of a business trust, by way of interest received or receivable from a special purpose vehicle (SPV), would not be included in the total income of the trust.

Further, the term, "*Special purpose vehicle*" is defined to mean an Indian company in which the business trust holds controlling interest and any specific percentage of share holding or interest, as may be required by the regulations under which such trust is granted registration.

III. Insertion of new clause (23FD) in section 10 – Exemption of distributed income received by a unit holder from business trust.

A new clause (23FD) is to be inserted in section 10, so as to provide that any distributed income referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in the newly inserted clause (23FC) of section 10, shall not be included in the total income of such unit holder.

IV. Amendment of clause (38) of section 10 – Relating to a business trust

Clause 38 of section 10 is to be amended, so as to provide that the provisions of the said clause shall also be applicable to units of a business trust, as it is applicable to units of an equity oriented fund.

It is also to be provided that the provisions of this clause shall not apply in respect of any income arising from the transfer of any units of a business trust, which were acquired in consideration of a transfer referred to in section 47(xvii).

The aforesaid amendments will take effect from 1.4.2015 and will, accordingly, apply in relation to the AY 2015-16 and subsequent AYs.

[*Note : Certain amendments relating to charitable and religious institutions, etc, have been discussed separately*]

4. Amendment of sections 10(23C) and 11 - Charitable / religious institutions not entitled to claim exemption under general provisions of section 10

A trust or institution which is registered or approved or notified as a charitable or religious entity under section 12AA or 10(23C)(iv), (v), (vi) and (via) will not be entitled to claim exemption under any of the general provisions of section 10. The intention is that such entities should be governed by the special provisions of sections 11, 12 and 13 or section 10(23C), which is a code by itself, and should not be eligible to claim exemption under other provisions of section 10.

Therefore, such entity will not be entitled to claim that its income, like dividend income [exempt under section 10(34)] or income from mutual funds [exempt under section 10(35)], or interest on tax free bones, is exempt under section 10 and hence not liable to tax. Such income continues to qualify for exemption under section 10(23C) or section 11.

Agricultural income of such an entity however, will continue to enjoy exemption under section 10(1). Also such an entity eligible for exemption under section 11 will not be barred from claiming exemption under section 10(23C).

5. Amendments of sections 10(23C) and 11 – Depreciation in case of charitable and religious entities, not to be allowed as a deduction

Expenditure incurred to acquire a capital asset for carrying out charitable or religious activity is treated as application of income on object of the trust and hence, fully allowed as a deduction in computing the income of the trust. There is a controversy whether such trust is also entitled to claim depreciation on such assets where full deduction has been claimed at the time the asset was acquired.

In order to deny this double benefit, it is now provided that depreciation will not be allowed in computing the income of the trust in respect of an asset, where its cost of acquisition has already been claimed as deduction by way of application of income in the current or any earlier year.

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

6. Amendments of sections 12A and 12AA – Benefit of registration applicable for prior years

Presently, a trust or an institution can claim exemption only from the year in which the application for registration under section 12AA has been made. As such, registration was applicable only prospectively and this used to cause genuine hardship to several charitable organizations.

It is now provided that the benefit of sections 11 and 12 will be available to such trusts for all pending assessments on the date of such registration, provided the objects and activities of such trusts in these earlier years are the same as those on the basis of which registration has been granted.

It is also provided that no action for reopening under section 147 shall be taken by the Assessing Officer merely on the ground of non-registration. Accordingly, completed assessments in which benefit under section 11 has been granted, will not be adversely affected on account of non-registration.

It is clarified that such benefit will not be available to trusts where the registration was earlier refused or was cancelled.

This amendment is effective from 1.10.2014.

7. Amendment of section 12AA – Cancellation of registration of a charitable / religious trust

Presently registration of a trust / institution once granted, can be cancelled only under the following two circumstances :

(i) The activities of the trust are not genuine; or

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

Now, from 1.10.2014, the Commissioner shall also have power to cancel registration if it is noticed that the trust carries on activities in contravention of section 13(1) i.e.:

(a) Income does not enure for the benefit of the public;

(b) Income is applied for the benefit of any religious community or caste;

(c) Income is applied for the benefit of specified persons;

(d) Funds are invested in prohibited modes

It is, however, provided that registration will not be cancelled if the trust / institution proves that there was reasonable cause for breaching any of the above conditions.

For the above purpose, a new sub-section (4) has been inserted in section 12AA of the Act. It may also be stated here that the provisions of the newly inserted sub-section (4) will apply only in case of violation of the provision under section 13(1) of the Act.

The aforesaid amendment will take effect from 1.10.2014

8. Amendment of section 24(b) – Increase in limit of deduction for interest in respect of house property referred to in section 23(2)

While computing self-occupied house property income, an assessee is eligible for deduction on account of interest paid on amounts borrowed for acquisition or construction of a house property provided such acquisition or construction is completed within a period of three years from the end of the financial year in which the capital is borrowed. The deduction is restricted to Rs.1.5 lakh in case of self-occupied property, the annual value of which is taken as Nil.

The limit of deduction for such interest has now been increased to Rs.2 lakh.

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

9. Amendment of section 32AC – Investment allowance to a manufacturing company

The incentive introduced by the Finance Act, 2013, to promote investment in new plant and machinery by the companies that are engaged in manufacturing or production of any article or thing is to be further extended for medium sized investments.

Where the investment in eligible plant and machinery in a financial year exceeds Rs.25 crores, such companies would be eligible to claim one time additional deduction of 15% of the cost of such new plant and machinery acquired and installed. This deduction would be available for such investments made till 31.3.2017 (i.e. for three financial years, starting with financial year 2014-15)

Furthermore, the deduction available under the existing combined threshold of Rs.100 crores for investment made in financial years 2013-14 and 2014-15, will continue, even if the investment in the year 2014-15, is below the threshold of Rs.25 crores.

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

10. Amendment of section 35AD – Investment based deductions

The investment based incentive (deduction in respect of the eligible capital expenditure) is to be extended to two new sectors – '*laying and operating a slurry pipeline for the transportation of iron ore'* and '*setting up and operating a semiconductor wafer fabrication manufacturing unit'*, subject to notification by the Board.

It is to be provided that the asset, in respect of which the deduction is claimed, should be used only for the specified business for a period of eight years beginning with the year in which the asset is acquired or constructed. Furthermore, in the event that the asset is used for any purpose other than the specified business during the specified period, then the amount of deduction claimed (net of the depreciation that would have been allowable, had no such investment based deduction been claimed) would be deemed to be the business income of the year in which the asset is so used.

Further, where a taxpayer has claimed deduction for this investment based incentive, it is prohibited from claiming a deduction under section 10AA of the Act for that or any other assessment year. A corresponding provision de-barring claim of this investment based deduction would apply if the tax payer has claimed deduction under section 10AA (profits of SEZ) for any year.

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

11. Amendment of section 37(1) – Disallowance of expenditure on Corporate Social Responsibility (CSR)

An *Explanation* is inserted to section 37(1) to provide that any expenditure incurred by an assessee on CSR activities referred to in section 135 of the Companies Act, 2013, shall not be deemed to be an expenditure incurred for the purposes of the business or profession.

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

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

12. Amendment of sections 40(a)(i) and 40(a)(ia) – Disallowance for non-deduction of TDS

Section 40(a)(i), *inter alia*, provides for disallowance of expenditure payable outside India or to a non-resident, in case of non-deduction of tax or non-payment of tax after deduction during the previous year, or in subsequent year before the expiry of time prescribed under section 200(1) of the Act.

This section has been amended to provide that disallowance will not be attracted if, after deduction of tax during the previous year, the same has been paid on or before the due date of filing of return of income specified in section 139(1) of the Act.

Consequential amendment is also made in the proviso to, *inter alia*, provide that where tax has been deducted during the previous year, but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing he income of the previous year in which such tax has been paid.

Further, the existing section 40(a)(ia) provides for disallowance of the entire amount of specified expenses payable to a resident, in case of default in TDS.

In order to reduce the hardship as well as to make the provisions of section 40(a)(ia) more effective, this section is now amended, so as to :

(a) restrict the disallowance to only 30% of the expenditure; and

(b) include all expenses payable to residents on which tax is deductible at source.

In other words, payments such as salaries, directors' fees, purchase of immovable property as stock-in-trade, non-compete fees, etc, will now also be covered by this section. It may also be stated here that this section applies only to computation of business income.

The aforesaid amendment will take effect retrospectively from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

13. Amendment of section 43(5) – Commodity derivatives

Commodity derivative transactions were excluded from the purview of speculative transactions with effect from AY 2014-15, by insertion of clause (e) of section 43(5) by the Finance Act, 2013.

It is now clarified with immediate effect i.e. from AY 2014-15, that in order to be eligible for such exclusion, such transactions should be chargeable to Commodities Transaction Tax (CTT).

The aforesaid amendment will take effect retrospectively from 1.4.2015 and will, accordingly, apply in relation to AY 2014-15 and subsequent AYs

14. Amendment of section 45(5)(b) – Tax-treatment of capital gains relating to enhanced compensation arising on compulsory acquisition, etc.

Presently, section 45(5)(b) provides that where enhanced compensation is awarded by any court, tribunal or other authority in case of transfer of a capital asset by way of compulsory acquisition, it shall be taxed in the year in which it is received.

It is now provided that, if any amount of compensation is received in pursuance of an interim order of a court, tribunal or any other authority, it shall be taxable as capital gains in the previous year in which the final order of such court, tribunal or other authority is made.

The aforesaid amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

15. Amendment of section 47 – Transactions not regarded as transfer

A new sub-section (viib) is inserted in section 47, so as to provide that transfer of a Government Security carrying a periodic payment of interest made outside India through an intermediary dealing in settlement of securities, from one non-resident to another non-resident, will not be considered as '*transfer'* for the purpose of capital gains.

Further, a new clause (vii) is to be inserted in section 47 of the Act, so as to provide that any transfer of a capital asset being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor shall not be regarded as transfer for the purpose of section 45 of the Act.

Besides, it may be further stated that the special purpose vehicle will have the same meaning as provided in *Explanation* to section 10(23FC) of the Act.

The aforesaid amendment will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

16. Amendment of section 51 – No deduction of advance money received in regard to the cost of the asset, etc.

A proviso is to be inserted in section 51, so as to provide that where any sum of money received as an advance or otherwise in the course of the negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

The aforesaid amendment will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

17. Amendment of sections 54 and 54F – Capital gains exemption for investment in residential house property

The existing provisions of section 54 dealing with capital gains arising on transfer of long-term capital asset, being a residential house and section 54F, dealing with transfer of long-term capital asset other than a residential house, provide for exemption from capital gains under section 45, subject to specified conditions, when the taxpayer, within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer, constructs, a residential house.

Currently there is a controversy as to whether the benefit of exemption is available in respect of purchase / construction of more than one residential house and whether such house has necessarily to be located in India.

It is now provided that the exemption under the aforesaid sections is available only in respect of one residential house and that should be located in India.

The aforesaid amendment will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

18. Amendment of section 54EC – Exemption of capital gains on investment in specified bonds

Section 54EC provides that where capital gain arises from the transfer of a long-term capital asset (‘*original asset’*) and the assessee has, within a period of six months after the date of such transfer, invested the whole or part of capital gains in the long-term specified asset (specified bonds), such capital gains shall not be proportionately charged to tax.

However, it was provided that the investment made in the long-term specified asset during any financial year shall not exceed Rs.50 lakh.

Many taxpayers had interpreted this provision to their benefit and invested Rs.50 lakh each in two successive years (while ensuring that both dates of investment fell within the specified time limit of six months) and claimed exemption of up to Rs.1 crore. There was a controversy in this respect.

In order to set at rest this controversy, it is now provided that the investment made by an assesse in the long-term specified asset from capital gains arising from transfer of one or more original assets during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs.50 lakh.

The aforesaid amendment will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

19. Amendment of section 56 – Tax-treatment regarding forfeiture of advance money received for transfer of capital asset.

A new clause (ix) is to be inserted in section 56(2) of the Act, so as to provide that where any sum of money, received as an advance or otherwise in the course of the negotiations for transfer of a capital asset, is forfeited and the negotiations do not result in transfer of such capital asset, then, such sum shall be chargeable to income-tax under the head “*Income from other sources*”.

The aforesaid amendment will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

20. Amendment of sections 80C and consequential amendments of sections 80CCD and 80CCE - Raising the limit of deduction under section 80C from Rs.1 lakh to Rs.1.5 lakh

Under the existing provisions of section 80C of the Act, an individual or a Hindu undivided family, is allowed a deduction from income of an amount not exceeding one lakh rupees with respect to sums paid or deposited in the previous year, in certain specified instruments. The investments eligible for deduction, specified under sub-section (2) of section 80C, include life insurance premia, contributions to provident fund, schemes for deferred annuities etc. The assessee is free to invest in any one or more of the eligible instruments within the overall ceiling of Rs. 1 lakh.

In view of amendment to section 80C, the limit of the aggregate amount of deduction under sections 80C, 80CCC and 80CCD(1) contained in section 80CCE has been enhanced to Rs.1.5 lakh from the existing limit of Rs.1 lakh. However, the limit for section 80CCC of Rs.1 lakh continues and similar limit of Rs.1 lakh has been introduced in section 80CCD(1).

The aforesaid amendments will take effect from 1.4.2015 and will apply in relation to AY 2015-16 and subsequent AYs.

21. Amendment of section 80-IA(4)(iv) – Extension of the sunset date under section 80-IA for the power sector

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

(a) is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1.4.1993 and ending on 31.3.2014;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1.4.1999 and ending on 31.3. 2014;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1.4.2004 and ending on 31.3. 2014.

With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the above provisions are to be mended to extend the terminal date for a further period up to 31.3.2017, i.e. till the end of the 12th Five Year Plan.

These amendments will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

22. Amendment of section 112 – Tax on long-term capital gains on units

Under the existing provisions of section 112 of the Act, where tax payable on long-term capital gains arising on transfer of a capital asset, being listed securities or unit or zero coupon bond exceeds 10% of the amount of capital gains before allowing for indexation adjustment, then such excess shall be ignored. As long-term capital gains is not chargeable to tax in the case of transfer of a unit of an equity oriented fund which is liable to securities transaction tax, the benefit under section 112 in respect of unit cover only the unit of a fund, other than an equity oriented fund.

The provisions of section 112 are to be amended so as to allow the concessional rate of tax of 10% on long term capital gain to listed securities (other than unit) and zero coupon bonds.

The aforesaid amendment will take effect from 1.4.2015 and will accordingly apply, in relation to AY 2015-16 and subsequent AYs.

23. Amendment of section 115BBC – Tax on anonymous donations

The existing provisions of section 115BBC of the Act provide for levy of tax at the rate of 30% in case of certain assessees, being university, hospital, charitable organization, etc. on the amount of aggregate anonymous donations exceeding 5% of the total donations received by the assessee or one lakh rupees, whichever is higher.

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

Therefore**,** section 115BBC is to be amended so that the income-tax payable shall be the aggregate of the amount of income-tax calculated at the rate of 30% on the aggregate of anonymous donations received in excess of 5% of the total donations received by the assessee or one lakh rupees, whichever is higher, and the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the

anonymous donations which is in excess of the 5% of the total donations received by the assessee or one lakh rupees, as the case may be.

This amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

24. Amendment of section 115BBD – Reduction in tax rate on certain dividends received from foreign companies

Section 115BBD of the Act was introduced as an incentive for attracting repatriation of income earned by Indian companies from investments made abroad. It provides for taxation of gross dividends received by an Indian company from a specified foreign company at the concessional rate of 15% if such dividend is included in the total income for the assessment year 2012-13 or 2013-14 or 2014-2015.

With a view to encourage Indian companies to repatriate foreign dividends into the country, section 115BBD of the Act is to be amended so as to extend the benefit of lower rate of taxation without limiting it to a particular assessment year. Thus, such foreign dividends received in financial year 2014-15 and subsequent financial years shall continue to be taxed at the lower rate of 15%.

This amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

25. Amendments of sections 115JC and 115JEE – Alternative Minimum Tax (AMT)

Provisions of Chapter XX-BA dealing with AMT apply to a non-corporate assessee if it has claimed deduction under section 10AA or any of the provisions of Chapter VI-A. Section 115JEE has been amended so that the provisions of the Chapter XX-BA shall also apply when the assessee has claimed deduction under section 35AD.

Further, AMT is payable with respect to Adjusted Income. Section 115JE has been amended to provide that for computing the Adjusted Income total income shall be increased by deduction claimed under section 35AD, as reduced by the amount of depreciation that would have been allowable as if the deduction under section 35AD was not allowed. This adjustment will be in addition to the adjustments already specified in the section.

In addition, a new sub-section (3) has been inserted in section 115JEE, so as to provide that notwithstanding sub-sections (1) and (2), credit for AMT paid shall be available in accordance with the provisions of section 115JD. Thus, even if provisions of the Chapter are otherwise not

applicable in that year either because non-corporate assessee's (other than partnerships and LLPs) adjusted total income does not exceed Rs.20 lakh or it has not claimed deduction under Chapter VI-A, section 10AA or section 35AD, it will be entitled to claim credit for the AMT paid in the earlier years.

The aforesaid amendments will take effect from 1.4.2015 and will, accordingly, appl in relation to AY 2015-16 and subsequent AYs.

26. Amendments of sections 115-O and 115R – Dividend Distribution Tax (DDT)

Companies distributing dividend to their shareholders have to pay Dividend Distribution Tax at the rate of 15% under section 115-O. Similarly, mutual funds distributing income to unit holders of any scheme, other than an equity oriented scheme, have to pay DDT at the rate of 25% or 30% under section 115R.

Both these sections have been amended by modifying the amount on which the DDT is to be paid. The sections now provide for grossing up of the amount on which DDT is to be paid. Effectively, base rates of DDT have been increased as follows :

Category	**Present Rate***	**Amended Rate***
DDT – Companies	15%	17.65%
DDT – Mutual Funds – Individuals and HUF	25%	33.33%
DDT – Mutual Funds – Others	30%	42.86%

The aforesaid rates of DDT are subject to payment of additional payment by way of surcharge and education cess.

The aforesaid amendments will take effect from 1.10.2014.

27. Insertion of new Chapter XII-FA in the Act – Special provisions relating to business trusts

A new Chapter XII-FA which deals with "*Special provisions relating to business trusts*" is to be inserted in the Act.

The aforesaid Chapter has got only one section, viz section 115 UA. This section deals with tax on income of unit holder and business trusts.

The aforesaid Chapter is inserted in order –

(a) to provide that the distributed income in the hands of the unit holders will be of the same nature and in the same proportion as the income in the hands of the trust;

(b) to provide that the total income of the trust other than capital gain would be taxed in the hands of the trust at the maximum margin rate and capital gain would be taxed in accordance with sections 111A and 112;

(c) to provide that any distributed income or part thereof received by a unit holder from the business trust is of the same nature as the income referred to in clause (23FC) of section 10, then, such distributed income or part thereof shall be deemed to be the income of such unit holder and shall be charged to tax as income of the previous year;

(d) to provide that the person responsible for making payment of income or any part thereof distributed on behalf of a business trust to a unit holder, shall provide a statement to the unit holder and the prescribed authority in such time and in the form and manner as may be prescribed.

This amendment will take effect from 1.4 2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

[N.B : *The discussion relating to the tax regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (INVIT), is available in detail at the end of the Note.]*

28. Amendment of section 139 – Mutual Funds, Securitization Trusts and Venture Capital Companies or Venture Capital Funds, to file return of income

The existing provisions contained in sub-section (*4C*) of section 139, *inter alia,* provides for filing return of income by certain entities whose income is exempt under section 10 of the Act.

Section 139(4C) is to be amended so as to provide that Mutual Fund referred to in clause (*23D*) of section 10 and securitization trust referred to in clause (*23DA*) of section 10 and Venture Capital Company or Venture Capital Fund referred to in clause *(23FB)* of section 10, shall, if the total income in respect of which such fund, trust or company is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of the Act, so far as may be, apply as if it were a return required to be furnished under

sub-section (1) of the said section 139.

Further, a new sub-section (4E) is to be inserted in section 139 of the Act, so as to provide for filing of return of income by business trusts which are not required to furnish return of income or loss under any other provision of this section.

The aforesaid amendments will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

29. Insertion and amendment of certain sections relating to TDS

I. Amendment of section 194A – No TDS on interest income payable by SPV to a business trust

Section 194A of the Act, relating to deduction to TDS on interest other than "*interest on securities*".

A new clause (xi) is to be inserted in section 194A(3) so as to exempt from deduction of tax at source, the interest income payable by special purpose vehicle (SPV) to a business trust.

The aforesaid amendment will take effect from 1.10.2014.

II. Insertion of new section 194DA – TDS from non-exempt payments made under life insurance policy.

Under the existing provisions of section 10(10D) of the Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfilment of conditions specified under the said section.

Therefore, the sum received under a life insurance policy which does not fulfil the conditions specified under section 10(10D) are taxable under the provisions of the Act.

In order to have a mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempted under section 10(10D) of the Act, a new section is to be inserted in the Act so as to provide for deduction of tax at the rate of 2% on sum paid under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D) of the Act.

In order to reduce the compliance burden on the small tax payers, it has also been provided that no deduction under this provision shall be made if the aggregate sum paid in a financial year to an assessee is less than Rs.1,00,000/-.

This amendment will take effect from 1.10.2014.

III. Amendment of section 194LC – Benefit of concessional rate of withholding tax

Under the existing provisions of the aforesaid section, the beneficial provision of lower rate of withholding tax is available on payment made by an Indian company subject to the conditions provided therein.

Section 194LC is to be amended so as to provide for the benefit of reduced withholding tax on interest income in case of external commercial borrowings by business trust, subject to the same conditions provided in the section.

The existing provisions contained in sub-section (2) of section 194LC specify the interest eligible for lower withholding tax rate of 5%. It shall be the interest income payable by the specified company on borrowings made by it in foreign currency from sources outside India by way of long-term infrastructure bonds or under a loan agreement subject to approval by the Central Government. The sub-section further provides that the borrowing should be made at any time on or after the 1.7.2012, but before 1.7.2015.

Section 194LC(2) is to be amended so as to provide that the borrowings can be made before 1.7.2017, instead of currently provided cut-off date of 1.7.2015.

It is to be further provided that the benefit of the section would be available to all long-term bonds including long-term infrastructure bonds.

These amendments will take effect from 1.10. 2014.

IV. Amendment of section 200 – Correction / rectification of TDS statement

Under the existing provisions of section 200(3) of the Act, it is provided that any tax-deductor or any employer shall, after paying the TDS to the credit of Central Government, prepare TDS statements and deliver or cause to be delivered the same to prescribed I.T. authority or the person authorized by such authority.

The aforesaid section 200(3) of the Act, is to be amended by insertion of a proviso thereto, so as to provide that the aforesaid tax-deductor or the employer may also deliver to the prescribed authority a Correction Statement for rectification of any mistake or to add, delete or update the information furnished in the aforesaid TDS statements.

The aforesaid amendment will take effect from 1.10.2014.

V. Amendment of section 200A – Processing of TDS statements

As per the existing provisions of section 200A(1), it is provided that where a TDS statement has been made by a tax-deductor under section 200, such statement shall be processed in the manner provided in section 200A(1).

The aforesaid section 200A(1) is to be amended so as to include the Correction Statement, in addition to the statement of TDS.

The aforesaid amendment will take effect form 1.10.2014.

30. Amendment of section 145 – Income computation and disclosure standards

[Accounting Standard (AS) not meant for maintenance of books of account, but only for computation of income and disclosure of information]

Section 145 of the Act provides that the method of accounting for computation of income under the heads "*Profits and gains of business or profession*" and "*Income from other sources*" can either be the cash or mercantile system of accounting. The Finance Act, 1995 empowered the Central Government to notify Accounting Standards (AS) for any class of assessees or for any class of income. Since the introduction of these provisions, only two Accounting Standards relating to disclosure of accounting policies and disclosure of prior period and extraordinary items and changes in accounting policies have been notified.

The Central Board of Direct Taxes (CBDT) had constituted an Accounting Standard Committee in 2010. The Committee has submitted its Final Report in August, 2012. The Committee recommended that the **AS notified under the Act should be made applicable only to the computation of taxable income and a taxpayer should not be required to maintain books of account on the basis of AS notified under the Act**. The Final Report of the Committee was placed in public domain for inviting comments from stakeholders and general public. After examining the comments / suggestions, the Committee, *inter alia,* recommended that the provisions of section 145 of the Act may be suitably amended to clarify that **the notified AS are not meant for maintenance of books of account but are to be followed for computation of income**.

In order to clarify that the standards notified under section 145(2) of the Act are to be followed for computation of income and disclosure of information by any class of assessees or for any class of income, it is to be provided that the Central Government may notify in the Official Gazette from time to time Income Computation and Disclosure Standards to be followed by any class of or in respect of any class of income.

It is further provided that the Assessing Officer may make an assessment in the manner provided in section 144 of the Act, if the income has not been computed in accordance with the standards notified under section 145(2) of the Act.

This amendment will take effect from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs.

31. Amendment of section 285BA – Obligation to furnish annual information return (AIR)

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

Section 285BA is to be amended so as to provide furnishing of statement of information by a prescribed reporting financial institution in respect of any specified financial transaction or reportable account to the prescribed income-tax authority. It is further provided that the statement of information shall be furnished for such period, within such time, in the form and manner as may be prescribed.

It is also to be provided that where any person, who has furnished a statement of information under sub-section (1), or in pursuance of a notice issued under sub-section (5), comes to know or discovers any inaccuracy in the information provided in the statement, then, he shall, within a period of ten days, inform the income-tax authority or other authority or agency referred to in sub-section (1), the inaccuracy in such statement and furnish the correct information in the manner as may be prescribed.

It is also to be provided that the Central Government may, by rules, specify,—

(a) the persons referred to in sub-section *(1)* to be registered with the prescribed income-tax authority;

(b) the nature of information and the manner in which such information shall be maintained by the persons referred to in clause *(a);* and

(c) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in sub-section *(1)*.

The aforesaid amendment will take effect from 1.4.2015.

32. The taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (INVIT) – Sections 2(13A), 2(42A), 10(23FC), 10(23FD), 10(38), 47(xvii), 111A, 115UA, 139(4E), 194A and 194LBA

A separate Chapter XII-FA has been inserted to lay down the taxation of REITs and INVITs that are set up in accordance with SEBI Regulations. They are referred to as Business Trusts.

A new clause (13A) has been inserted in section 2 of the Act so as to define a Business Trust as Real Estate Investment Trust and Infrastructure Investment Trust, the units of which are listed on recognized stock exchange in accordance with SEBI Regulations and which are notified by the Central Government in this behalf.

The income-investment model of the aforesaid REITs and INVITs referred to as business trusts, has got the following distinctive features :

(i) The trust would raise capital by way of issue of units (to be listed on a recognized stock exchange) and can also raise debts directly both from resident as well as non-resident investors;

(ii) The income bearing assets would be held by the trust by acquiring controlling or other specific interest in an Indian company (SPV) from the sponsor.

The expansion of asset delivery through the public-private partnership (PPP) model has increased the number of assets available for financing. The Indian infrastructure and the PPPs are currently in a challenging phase, with development of existing projects delayed, and diminishing attractiveness of new projects to private sector funds and strategic operators. In order to meet these challenges, new investment vehicle structure, an Infrastructure Investment Trust needs to be facilitated. Similarly, securitization of income earning real estate assets needs to be facilitated. Certainty in the taxation aspects of these trusts is necessary.

The Income-Tax Act is to be amended in order to put in place a specific taxation regime for providing the way the income in the hands of such trusts is to be taxed and the taxability of the income distributed by such business trusts in the hands of the unit holders of such trusts. Such regime has the following main features:–

(i) The listed units of a business trust, when traded on a recognized stock exchange, would attract same levy of securities transaction tax (STT), and would be given the same tax benefits in respect of taxability of capital gains as equity shares of a company i.e., long term

capital gains, would be exempt and short term capital gains would be taxable at the rate of 15%.

(ii) In case of capital gains arising to the sponsor at the time of exchange of shares in SPVs with units of the business trust, the taxation of gains shall be deferred and taxed at the time of disposal of units by the sponsor. However, the preferential capital gains regime (consequential to levy of STT) available in respect of units of business trust will not be available to the sponsor in respect of these units at the time of disposal. Further, for the purpose of computing capital gain, the cost of these units shall be considered as cost of the shares to the sponsor. The holding period of shares shall also be included in the holding period of such units.

(iii) The income by way of interest received by the business trust from SPV is accorded pass through treatment i.e., there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV. However, withholding tax at the rate of 5% in case of payment of interest component of income distributed to non-resident unit holders, at the rate of 10% in respect of payment of interest component of distributed income to a resident unit holder shall be effected by the trust.

(iv) In case of external commercial borrowings by the business trust, the benefit of reduced rate of 5% tax on interest payments to non-resident lenders shall be available on similar conditions, for such period as is provided in section 194LC of the Act.

(v) The dividend received by the trust shall be subject to dividend distribution tax at the level of SPV but will be exempt in the hands of the trust, and the dividend component of the income distributed by the trust to unit holders will also be exempt.

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

(vii) The business trust is required to furnish its return of income.

(viii) The necessary forms to be filed and other reporting requirements to be met by the trust shall be prescribed to implement the aforesaid scheme.

The aforesaid amendments will take effect from 1.10.2014**.**

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