Salient features of the Finance Bill, 2015

[Relating to direct taxes]

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The Finance Bill, 2015 or the Union Budget, 2015-16, was presented in the Parliament on 28.2.2015. As regard the direct taxes, there are in all seventy seven (77) amendments proposed in the Finance Bill, 2015, vide clauses (3) to (79).

Save as otherwise provided in the aforesaid Bill, clauses (3) to (79) shall come into force on the first day of April, 2015, viz. from financial year (FY) 2015-16, relevant to assessment year (AY) 2016-17. Further, it may be stated that there are some amendments which have 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 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 : -

I. Rates and slabs of income-tax

In the Union Budget, 2015-16, the basic exemption limit for Individuals, Hindu Undivided Families (HUFs), Association of Persons (AOPs), Body of Individuals (BOIs) and Artificial Juridical Persons (AJPs), have remained unchanged.

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

1. In the case of every individual [other than those specifically mentioned in sub-paragraph (2) and (3)] or Hindu Undivided Family or every Association of Person or Body of Individuals, whether incorporated or not, or every Artificial Juridical Persons 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.;

2. 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.;

3. 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 domestic companies, partnership firms and limited liability partnerships (LLPs), the rates of income-tax remain unchanged at 30 %. In case of foreign companies also the rate of income-tax remains unchanged at 40 %.

It may also be stated here that corporate rate of income-tax is proposed to be reduced from 30% to 25% over the next four years in a phased manner starting with the FY 2016-17.

Surcharge

As regard the aforesaid entities, viz. Individuals, HUFs, 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, the surcharge will be levied at the rate of 12% of the amount of income-tax. Marginal relief will be provided in all such cases.

The surcharge in case of every **domestic company, partnership firm or LLP,** having income above Rs.1 crore, but upto Rs.10 crores, shall be at the rate of 7% and in case the income exceeds

Rs.10 crores, then the surcharge shall be levied at the rate of 12% of the amount of income-tax. Besides, the marginal relief will be provided in all such cases.

Further, 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 crores, surcharge will be levied at 2% of the income-tax chargeable. In case the income exceeds Rs.10 crores, the surcharge will be levied at 5% of the income-tax chargeable. Besides, marginal relief will be provided.

In other cases (including sections 115-O, 115QA. 115R or 115TA), the surcharge will be levied 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.

Wealth-tax

Wealth-tax has been abolished w.e.f. FY 2015-16, onwards. This is, however, sought to be compensated by the levy of additional surcharge of 2% in high income cases.

II. Measures to curb black money

Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances.

In order to curb generation of black money, by way of dealing in cash in immovable property transactions, section 269SS of the Act is amended, so as to provide that no persons shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property, otherwise than by an account payee cheque or account payee draft or by electronic clearing system through a bank account, if the amount of such loan / deposit or such specified sum is Rs.20,000 or more.

Further, section 269T is also amended, so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee draft or by electronic clearing system through a bank account, if the aggregate amount or the amount of loans or deposits or specified advances is Rs.20,000 or more.

Besides, consequential amendments are also made in section 271D and section 271E, to provide penalty for failure to comply with the amended provisions of sections 269SS and 269T, respectively.

The aforesaid amendments will take effect from 1.6.2015.

III. Measures to promote domestic manufacturing and improving the investment climate (Make in India)

A number of measures are taken in order to promote domestic manufacturing and improve the investment climate in the country. In order to achieve the aforesaid purpose, the following amendments are made in the Act.

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

The Finance Act, 2013, introduced "*GAAR*", which was to take effect from 1.4.2015. The implementation of "*GAAR*" is to be postponed by two years, viz. to 1.4.2017 and section 95 of the Act is to be amended, accordingly.

2. Pass through status to Category-I and Category-II Alternative Investment Funds

"*Pass through status*" is to be extended to Category-I Alternative Investment Fund (AIF) and Category-II Alternative Investment Fund, registered with SEBI and collectively termed as Investment Fund, which is currently available only to Venture Capital Fund (VCF), a sub-category of Category-I AIF, satisfying the conditions of SEBI (AIF) regulations. The existing regime applicable to VCFs will continue to apply.

The relevant amendments in this regard are discussed as follows :

(i) Taxability in the hands of Investment Fund

Income in the hands of Investment Fund, except income from profits and gains from business, is made exempt from income-tax. The levy of dividend distribution tax (DDT) and income distribution tax on the income paid by the Investment Fund to its unit holders, is to be relaxed. The income received by Investment Fund will not be subjected to withholding tax. Further, the income from profits and gains from business will be taxable in the hands of Investment Fund.

As regards carry forward and set-off of losses, it is provided that any loss incurred by the Investment Fund will not be allowed to be passed through to the unit holder, but will be allowed to be carried forward and set-off in the case of Investment Fund.

(ii) Taxability in the hands of Unit Holders

The income of Unit Holders of Investment Fund is taxed in the same manner as if Unit Holder had made investments directly into the investee company and not through Investment Fund. As regards the nature of income, the income paid by the Investment Fund will be treated as having the same nature and in the same proportion in the hands of Unit Holder, as had been received by the Investment Fund.

Further, as income from profits and gains from business will be taxable in the hands of Investment Fund, the same will be exempt in the hands of Unit Holders.

Besides, any income, other than taxable income of Investment Funds, will be liable to withholding tax at the rate of ten per cent (10%), which would be available as credit to Unit Holders.

(iii) Compliance requirements

The compliance requirement of furnishing of return of income is introduced, so as to include Investment Fund. Further, such fund will be required to provide information on various components of income of Unit Holders to the tax authorities and the Unit Holders.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

3. Fund Managers in India not to constitute business connection of off-shore fund

New sub-section (9A) is inserted in section 9 of the Act, removing the risk of fund manager, creating a business connection or a permanent establishment (PE) of off-shore fund in India. As per newly inserted sub-section (9A), off-shore fund shall not constitute a PE in India, if the following conditions are satisfied :

(i) The Fund should not be a resident in India.

(ii) The Fund is a resident of a country with whom India has a tax treaty or tax information exchange agreement

(iii) Aggregate participation of residents in the Fund shall not exceed 5% of the total corpus of the fund

(iv) The Fund is a broad based fund with a minimum of at least 25 unconnected persons

(v) Connected persons shall not have aggregate participation of more than 10%

(vi) The Fund shall not make any investment in its associate entity and shall not invest more than 20% in any single entity

(vii) Fund Manager shall not be employee of the Fund or a connected person

(viii) Fund Manager shall be registered with SEBI, and

(ix) Fund Manager shall not be entitled to more than 20% of the profits of the Fund

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

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

A proviso has been added to section 32(1)(iia) of the Act, so as to allow additional depreciation of thirty five per cent (35%) instead of twenty per cent (20%), in respect of new plant and machinery acquired and installed during the period from 1.4.2015 to 31.3.2020, to an assessee setting up manufacturing operations on or after 1.4.2015, in any notified backward area of Andhra Pradesh or Telengana.

Further, deduction under section 32AD, by way of investment allowance is to be provided to an assessee setting up manufacturing operations in the notified backward area of Andhra Pradesh or Telengana, on or after 1.4.2015. The deduction allowable is fifteen per cent (15%) of the actual cost of new assets acquired and installed during the period from 1.4.2015 to 31.3.2020. The deduction will be allowed during which the new asset will be installed.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

5. Taxation Regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invit) [Collectively known as business trusts]

The units of business trust which are listed on recognized stock exchange and held by the sponsor are treated at par with other securities subjected to securities transaction tax (STT), thereby exempting the income arising on transfer of such units held for a period of more than twelve months. The units with holding period of twelve months or less will be taxable at beneficial short term capital gains tax rate of fifteen per cent (15%).

Further, similar treatment is to be provided for sponsor on offloading the said units under an initial offer upon listing of such units.

Besides, any income received by a REIT, by way of renting / leasing / letting out of real estate asset owned directly by REIT will not be taxable. Consequently, any such income payable to REIT shall not be subject to withholding tax under section 194-I of the Act, resulting in "*Pass through status*" to the rental income as well.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

6. Extension of eligible period of concessional tax rate under section 194LD

Section 194LD is amended, so as to provide that concessional rate of five per cent (5%) withholding tax on interest payment under this section, will now be available on interest payable upto 30.6.2017.

The aforesaid amendment will take effect from 1.6.2015.

7. Reduction in rate of tax on income by way of Royalty and Fees for Technical Services in case of non-residents

The Finance Act, 2013, increased the tax rate from the then rate of ten per cent (10%) to twenty five per cent (25%) with effect from 1.4.2013.

In order to reduce the hardship faced by small entities due to high rate of tax of twenty five per cent (25%), section 115A is amended, so as to reduce the rate of tax to ten per cent (10%) on payments for royalty and payment by way of fees for technical services made to non-residents.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

***8.* Deduction for employment of new workmen**

With a view to encouraging generation of employment, section 80JJAA is amended, so as to extend the benefit to all assesses having manufacturing units, rather than restricting it to corporate assesses only. Further, in order to enable the smaller units to claim this incentive, the benefit under this section is to be extended to units employing even fifty instead of hundred regular workmen.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

IV. Ease of doing business / dispute resolution

A number of amendments have been made in order to provide ease of doing business and also to take care of dispute resolution, which are as follows :

1. Clarity relating to indirect transfer provisions

In the past, a number of amendments have been made in section 9 of the Act, which have resulted into a number of controversies.

Besides, retrospective insertion of indirect transfer provisions in the Finance Act, 2012, had resulted into several ambiguities on the applicability of these provisions, thereby impacting investment sentiments.

In order to address these concerns, an Expert Committee was constituted by the Government. Several recommendations of the Committee now have been placed in the current budget.

Key amendments in this regard are as follows :

(i) A foreign company or entity shall be deemed to derive its value substantially from Indian assets, if the fair market value of Indian assets represent at least fifty per cent (50%) of the value of all assets owned by such foreign company or entity, subject to a minimum value of Indian assets of Rs.10 crores.

(ii) Indian assets would include both tangible as well as intangible assets (without reduction of liabilities).

(iii) Specified valuation date will be 31st March or end date of accounting year (as the case may be), preceding the date of transfer.

However, if there is an increase in book value of assets between balance sheet date and date of transfer, by fifteen per cent (15%) or more, then valuation date would be the date of transfer.

(iv) Capital gains tax would be proportional to the value of assets located in India.

(v) To provide relief to the minority share holders, capital gains exemption is to be granted if transfer (along with associated enterprise) does not hold –

(a) Right of control or management, and

(b) Voting rights or share capital or interest exceeding five per cent (5%), in the foreign company or entity at any time in the twelve months preceding the date of transfer.

Similar exemption is also to be granted to indirect minority shareholders.

Besides, the following additional clarifications would also be prescribed through the Rules :

(a) Manner of determination of fair market value of Indian assets vis-à-vis global assets.

(b) Method of determination of proportion of Indian value of Indian assets.

In this regard, the Indian concern in which such foreign company or entity has investments would be under an obligation to furnish necessary information within prescribed time. Specific penalty is to be provided for non-compliance under the aforesaid obligation.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

2. Raising the threshold for specified domestic transaction

Transfer pricing provisions also apply to certain specified domestic transactions as specified under section 92BA of the Act.

In order to address the issue of compliance cost in case of small business, on account of low threshold of Rs.5 crores, it has to be provided in section 92BA that the aggregate of specified transactions entered into by the assessee in the previous year should exceed a sum of Rs.20 crores for such transaction to be treated as "*Specified domestic transaction*".

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

3. Rationalization of definition of charitable purpose in the Income-Tax Act

At present, a number of charitable institutions are facing difficulties, in view of second proviso to section 2(15), in relation to definition of "*Charitable purpose*".

Besides, activity of yoga has been one of focus areas in the present times and international recognition has also been granted to it by the United Nations. **Therefore, definition of "*Charitable purpose*" is to be expanded, so as to include "*yoga*", as a specific category in the definition of charitable purpose on the lines of education.**

Further, at present in case an institution carrying on "*advancement of any other object of general public utility"*, where trade, commerce or business activities are undertaken (and

where the receipts exceed a certain threshold), the institution cannot claim the benefit of exemption under section 11 of the Act.

In order to protect genuine institutions which carry on trade, commerce or business, as part of their charitable activities, the definition of charitable purpose is to be rationalized, so as to provide that carrying on of the aforesaid activities would not impact the charitable nature of institution if the following conditions are specified :

(i) Such activities are undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and

(ii) The aggregate receipts from such activity or activities, during the previous year do not exceed twenty per cent (20%) of the total receipts of the trust or institution undertaking such activity or activities during the previous year.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

4. Tax neutrality on merger of similar schemes of Mutual Funds

A new clause (xviii) is inserted in section 47 of the Act, in order to exclude the transfer of units upon consolidation or merger of Mutual Fund Schemes from the definition of the term "*Transfer*". This amendment would result into a tax neutral treatment for such transactions similar to that in case of amalgamation of companies.

A corresponding amendment is also made in section 49 of the Act, whereby cost of acquisition of units in the consolidating / old scheme shall be deemed to be the cost of acquisition of units allotted in the new scheme. Further, the period of holding of units in consolidating / old scheme shall be considered for the purpose of determining the period of holding of units allotted in the new scheme, in order to determine the nature of capital gain / loss.

The key condition for such tax neutrality will be that the schemes should be of the same type, i.e the consolidation is of two or more schemes of "*Equity Oriented Fund*" or two or more schemes of "*Other Than Equity Oriented Funds* ".

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

5. Enabling the Board to notify rules for giving foreign tax credit

Presently, as per the provisions of sections 90, 90A and 91 of the Act, a tax-payer is granted credit for tax paid by it in foreign countries on doubly taxed income. However, the I.T.Act,

1961, does not provide the manner for granting tax credit for tax paid in any country outside India.

Accordingly, sub-section (2) of section 295 of the Act, is amended, so as to provide that the CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income tax paid in any country or specified territory outside India under sections 90, 90A or 91, against the income-tax payable under the Act.

The aforesaid amendment will take effect from 1.6.2015.

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

In view of the lower revenue collection, by way of wealth-tax, the number of tax-payers paying wealth-tax and with an objective to reduce the compliance burden on the tax-payers and administrative burden on the tax authorities, the levy of wealth-tax under the Wealth-Tax Act, 1957, is abolished.

The aforesaid amendment will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

V. Benefits for individual tax-payer s

A number of benefits have been provided to individual tax-payers in the Finance Bill, 2015, which are as follows :

1. Tax saving scheme for parents of a girl child

With an objective of welfare of a girl child, the Prime Minister announced a saving scheme titled, "*Sukanya Samriddhi*"

An exemption is to be provided from tax to the parents / guardians of a girl child in respect of the following payments of account held under the said scheme.

(i) Interest on deposits in the account

(ii) Withdrawal from the said account in accordance with the relevant rules

Further, the investment in this schedule will be eligible for deduction (max. upto Rs.1,50,000) under section 80C of the Act.

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

2. Increase in limit of deduction of health insurance premia

The limit of deduction under section 80D of the Act, in respect of health insurance premia, is to be increased :

(i) From the existing limit of Rs.15,000 to Rs.25,000, for individuals (other than senior citizens)

(ii) From existing limit of Rs.25,000 to 30,000, for senior citizens.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

3. Raising the limit of deduction under section 80DDB, for the medical treatment of certain chronic and protracted diseases (such as cancer, full blown AIDS)

In order to reduce the burden of undue hardship on the taxpayer, section 80DDB of the Act is to be amended. Under section 80DDB, there is a requirement of obtaining certificate from doctor working in a Government hospital. It is now to be provided that deduction would be allowed upon obtaining certificate from any specialist doctor.

Further, the tax deduction for expenditure on medical treatment of a very senior citizen is to be increased to Rs.80,000, as against the present limit of Rs.60,000.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

4. Raising the limit of deduction under sections 80DD and 80U, relating to expenditure on treatment of specified disability

Sections 80DD and 80U are to be amended so as to enhance the quantum of deduction as follows :

(i) In respect of a person with specified disability from Rs.50,000 to Rs.75,000.

(ii) In respect of a person with specified severe disability from Rs.1,00,000 to Rs.1,25,000.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

5. Raising the limit of deduction under section 80CCC relating to contribution to pension

Sub-section (1) of section 80CCC is to be amended so as to raise the limit of deduction under section 80CCC from Rs.1,00,000 to Rs.1,50,000, within the overall limit provided in section 80CCE.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

6. **Additional deduction under section 80CCD for contribution to national pension system (NPS)**

The deduction for contribution to certain pension scheme under section 80CCC of the Act is to be increased from Rs.1,00,000 to Rs.1,50,000.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

7. **Relaxation of requirement for obtaining TAN for certain deductors**

In order to reduce the burden of procedural compliances, section 203A of the Act is to be amended so as to relax the requirement for obtaining and quoting TAN in case of deductors and collectors to be notified by the CBDT.

The aforesaid amendment will take effect from 1.6.2015.

8. **Hundred per cent deduction for National Fund for Control of Drug Abuse**

The National Fund for Control of Drug Abuse is a fund created by the Government of India in the year 1989, under the Narcotic Drugs and Psychotropic Substances Act, 1985 and since National Fund for Control of Drug Abuse is also a fund of national importance, section 80G is amended so as to provide hundred per cent deduction in respect of donations made to the said National Fund for Control of Drug Abuse.

The aforesaid amendment will take effect from 1.4.2016 and will, accordingly, apply in relation to the AY 2016-17 and subsequent AYs.

9. **Additional funds / institutions notified for deduction under section 80G – Swachh Bharat Kosh and Clean Ganga Fund**

In order to encourage donations to Swachh Bharat Kosh and Clean Ganga Fund, the relevant amendments are explained, as follows :

(i) Under the existing provisions, donations made to certain funds and charitable institutions for the social purpose of national importance are eligible for deduction at the rate of 100%.

(ii) The scope of the aforesaid provisions is to be widened so as to include the additional funds namely "*Sawchh Bharat Kosh*" (for improving sanitation facilities in rural / urban areas and school premises) and Clean Ganga Fund (for rejuvenation of river Ganga).

(iii) In addition, income of Swachh Bharat Kosh and Clean Ganga Fund will be eligible for exemption under section 10(23C)(iiiaa) and section 10(23C)(iiiaaa) of the Act.

Further, the donations made to Swachh Bharat Kosh and Clean Ganga Fund will be eligible for 100% deduction from gross total income of the donor.

It may, however, be stated in this regard that only resident donors will be eligible for deduction in case of contributions / donations to "*Clean Ganga Fund*".

(iv) The aforesaid amendments shall apply retrospectively from AY 2015-16, but would not include the amount spent in pursuance of Corporate Social Responsibility under the Companies Act, 2013.

The aforesaid amendments will take effect retrospectively from 1.4.2015 and will, accordingly, apply in relation to AY 2015-16 and subsequent AYs, subject to the condition in the aforesaid clause (iv).

VI. Rationalization measures

A number of provisions under the Act have been amended / modified by way of rationalization measures. Some of the important amendments / modifications are as follows :

1. Clarity regarding source rule in respect of interest received by the non-resident banking companies.

In the past, the ITAT has held that while interest paid by a branch of a foreign bank to the head office is tax deductible in the hands of the paying branch, interest received by the head office cannot be taxed in the hands of the foreign bank. The ITAT was of the view that the Indian branch is not distinct from its head office and that tax treaties cannot create such a fiction in the I.T.Act, thereby creating a tax liability, where the I.T.Act itself, creates no such charge.

The aforesaid controversy is put to rest by creating a deeming provision to treat permanent establishment (PE) in India as a person separate and independent of non-resident of which it is a PE. As a result, branch / PE of a foreign bank in India, will be required to withhold tax on interest payment to head office (or any other branch / PE outside India), non-compliance of which would result in disallowance of interest deduction to the Indian branch / PE.

Accordingly, section 9(1)(v) of the Act, is amended, so as to provide that interest payable by a branch (or PE) of a foreign bank in India to its head office (or to any other branch / PE outside India) shall be deemed to accrue or arise in India. Accordingly, such interest would now be taxable in India in the hands of the foreign bank.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

2. **Rationalization of provisions of section 11, relating to accumulation of income by charitable trusts and institutions.**

In order to remove the ambiguity with regard to the period within which the charitable institution is required to file Form No.10 with the tax authorities and to ensure timely filing of return of income, section 11(2) of the Act is amended, in order to provide that the benefit of accumulation of income for future will be available only if both the return of income and the Form No.10 are filed within the due date of filing of original return of income under section 139 of the Act.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

3. **Furnishing of return of income by certain universities and hospital referred to in section 10(23C) of the Act.**

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

Section 139(4C) of the Act, is amended, in order to provide that entities covered under sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10 shall be mandatorily required to file their return of income.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

4. **Power of the Central Board of Direct Taxes to prescribe the manner and procedure for computing period of stay in India.**

   In order to remove the uncertainty with regard to the manner and basis of determination of period of stay in India for crew members of ships who are Indian citizens, section 6 of the Act is amended, so as to provide that in case of an individual, being a citizen of India and a member of crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

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

5. **Rationalizing the provisions of section 115JB**

   Section 115JB of the Act, is amended, in order to provide that in case of foreign institutional investors (FIIs), income arising from capital gains (other than short-term capital gains on which securities transaction tax is not chargeable), shall not be included for computing book profit for the purpose of MAT. Correspondingly, the expenditure in relation to the aforesaid income shall not be considered for computing book profit.

   The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

   [NB : *The aforesaid amendment does not address the raging controversy, regarding applicability of MAT to foreign companies*]

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

   The existing provisions of section 253(1) of the Act, specify orders that are appealable before the ITAT. However, the order passed by the prescribed authority under sub-clauses (vi) and (via) of section 10(23C) is not included in section 253(1) of the Act.

   The decision of the prescribed authority to refuse the grant of approval can have significant implications for the educational or medical institution under the Act. Further, under a

comparable provision, an order for refusal to register a charitable trust is appealable before the Appellate Tribunal.

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

The aforesaid amendment will take effect from 1.6.2015.

7. Rationalization of provisions relating to deduction of tax on interest (other than interest on securities)

Section 194A of the Act, is amended, in order to include the following provisions :

(i) TDS will now be applicable on interest paid by banks on recurring deposits, if such interest paid exceeds the threshold limit of Rs.10,000 per year.

(ii) Currently, interest income for purpose of TDS is computed with reference to a branch of bank / co-operative society. It is now provided that for entities which have adopted core banking solution, TDS on interest should be computed on the interest paid at the entity level and not at a branch level.

(iii) Currently, payment of interest by members by a co-operative society, is not subject to TDS. It is now to be provided that this benefit shall not apply in respect of interest paid on time deposits by the co-operative banks to its members.

(iv) It is now provided that TDS shall be applicable only on payment (and not accrual) of interest on compensation awarded by Motor Accident Claim Tribunal.

The aforesaid amendment will take effect from 1.6.2015.

8. Amendments to the conditions for determining residency status in respect of companies

There is a lot of ambiguity regarding the expression "*Place of effective management*" (POEM), in respect of a company under section 6 of the Act. The provisions of section 6 are, therefore, modified.

The modification in the condition of residence in respect of a company by including the concept of effective management would align the provisions of the Act with the Double Taxation Avoidance Agreements (DTAAs) entered into by India with other countries and would also be in line with international standards. It would also be a measure to deal with

cases of creation of shell companies outside India, being controlled and managed from India. Accordingly, section 6 of the Act, is amended, so as to provide that a person being a company shall be said to be resident in India in any previous year if –

(i) It is an Indian company; or

(ii) Its place of effective management at any time in that year is in India.

Further, the expression "*Place of effective management*" is defined to mean a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole, are, in substance made.

Since POEM is an international well accepted concept, there are well recognized guiding principles for determination of POEM, although it is a fact dependent exercise.

Besides, in due course a set of guiding principles to be followed for determination of POEM would be issued for the benefit of the tax-payers, as well as tax administration.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

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

On the issue of levy of penalty under section 271(1)(c) of the Act, various Courts and Tribunal have held that no penalty for concealment can be levied under section 271(1)(c) of the Act, in cases where tax is payable under MAT / AMT provisions and concealment has been found under normal computation of total income.

In order to remedy the aforesaid lacuna, the definition of the expression "*Amount of tax sought to be evaded"* is amended, so as to include the aggregate of tax sought to be evaded under MAT / AMT provisions (if applicable) and under normal computation of total income, thereby putting the controversy to rest.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

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

Section 49 of the Act is amended in order to bring about clarity in regard to cost of acquisition and period of holding in case of demerger.

Accordingly, section 49(1)(iii)(e) is amended, in order to include transfer under clause (vib) of section 47 and to provide that the cost of acquisition of an asset acquired by the resulting company shall be the cost for which the demerged company acquired the capital asset, as increased by the cost of improvement incurred by the demerged company.

The aforesaid amendments will take effect from 1.4.2016 and will accordingly, apply in relation to AY 2016-17 and subsequent AYs.

11. Withholding tax on salary payments under the existing provisions of section 192 of the Act.

The employer is authorized to allow certain deductions, exemptions or set-off of certain loans, etc, after obtaining necessary evidence / documentary proof from the employees. For example, house rent allowance, interest payment for claiming loss from self-occupied house property, etc.

However, the existing provisions do not contain any specific guidance regarding the nature of evidence / documents to be obtained from the employees in this regard, thereby resulting in lack of uniformity.

In order to bring about clarity in regard to the aforesaid issues, section 192 of the Act is amended, so as to provide that the employer shall obtain from the employees evidence / documentary proof in such form and manner as may be prescribed by the CBDT.

For the aforesaid purpose, a new sub-section (2D) is to be inserted in section 192 of the Act, with effect from 1.6.2015.

12. Transport allowance exemption increased

For salaried individuals, exemption on account of transport allowance is doubled to Rs.1,600 per month from existing limit of Rs.800 per month.

13. Withholding tax on Provident Fund withdrawals

The tax deduction at source on withdrawal of accumulated balance in the provident fund is to be simplified.

It is provided that in case of premature withdrawals of Rs.30,000 or more, where the employers manage their own private provident fund trust, tax will be withheld at the rate of

ten per cent (10%) thereof. If PAN is not furnished by the employee, tax will be withheld at maximum marginal rate.

The aforesaid amendment will take effect from 1.6.2015.

14. Relief from withholding tax on payments from LIC

Section 197 of the Act is amended, so as to provide that individuals not having taxable income and receiving payments under LIC upto Rs.1 lakh, can claim relief of non-deduction of tax at source by submitting Form Nos.15G / 15H.

The aforesaid amendment will take effect from 1.6.2015.

15. Disclosure of foreign assets.

While the Wealth-Tax Act, 1957, has been abolished, it is provided that assets currently covered in wealth-tax returns will be required to be disclosed in the individual's return of income.

Stringent provisions are to be introduced for non-disclosure of foreign assets and any concealment of income. Concealment of income and non-reporting of foreign assets may lead to prosecution and penalty of three hundred per cent (300%) of tax on such concealed income.

A new law is to be introduced shortly in this regard.

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