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Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

****

Dated, the 27th November, 2015

EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2015

CIRCULAR

INCOME-TAX ACT

Finance Act, 2015 – Explanatory Notes to the Provisions of the Finance Act, 2015

CIRCULAR NO. - 19 /2015, DATED 27th NOVEMBER, 2015

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1. Introduction

1.1 The Finance Act, 2015 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 14th day of May, 2015 and has been enacted as Act No. 20 of 2015. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act

2.1 The Act has-

(*i*) specified the rates of income-tax for the assessment year 2015-16 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2015-16.

*(ii)*amended sections 2, 6, 9, 10, 11, 13, 32, 35, 36, 47, 49, 80C ,80CCC, 80CCD, 80D, 80DD, 80DDB, 80G, 80JJAA, 80U, 92BA, 95, 111A, 115A, 115ACA, 115JB, 115U, 115UA, 132B, 139, 153C, 154, 156, 192, 194A, 194C, 194I, 194LBA, 194LD, 195, 197A, 200, 200A, 203A, 206C, 220, 234B, 245A, 245D, 245H, 245HA, 245K, 245O, 246A, 253, 255, 263, 269T, 271, 271D, 271E, 272A, 273B, 288, and 295 of the Income-tax Act, 1961;

(iii) Substituted new sections for sections 151 and 269SS;

(*iv*) inserted new sections 9A, 32AD, 158AA, 192A, 194LBB, 206CB, 271FAB, 271GA, 271-I and 285A in the Income-tax Act, 1961;

(*v*) inserted Chapter XII-FB consisting of section 115UB in the Income-tax Act, 1961;

(*vi*) repealed the Wealth-tax Act, 1957;

(*vii*) amended sections 97, 98, 100 and 101 of the Finance (No.2) Act, 2004.

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2015-16

3.1.1 In respect of income of all categories of assessees liable to tax for the assessment year 2015-16, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance (No.2) Act, 2014 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases during the financial year 2014-15.

The main features of the rates specified in the said Part I are as follows:

3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person. –

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:-

<table>
<tr><th>Income chargeable to tax</th><th colspan="3">Rate of income- tax</th></tr>
<tr><td></td><td>Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.</td><td>Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)</td><td>Individual, resident in India who is of the age of eighty years or more (very senior citizen)</td></tr>
<tr><td>Up to Rs. 2 ,50,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="3">Nil</td></tr>
<tr><td>Rs. 2,50,001 - Rs. 3,00,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 3,00,001 - Rs. 5,00,000</td><td>10%</td></tr>
<tr><td>Rs. 5,00,001 - Rs. 10,00,000</td><td>20%</td><td>20%</td><td>20%</td></tr>
<tr><td>Exceeding Rs. 10,00,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

For instance, if the income of an individual is Rs. 1,01,00,000 and income-tax computed is Rs. 28,55,000. Surcharge on the income-tax at the rate of 10% of such tax is Rs. 2,85,500. Thus the total income-tax inclusive of surcharge is Rs. 31,40,500 without providing marginal relief. On providing marginal relief, the income-tax inclusive of surcharge shall be limited to Rs. 29,55,000. Then the education cess of two per cent is to be computed on Rs. 29,55,000 which works out to Rs. 59,100. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax which for the present case of income-tax of Rs. 29,55,000 works out to be Rs. 29,550. Thus, where the amount of tax computed is Rs. 29,55,000, the Education Cess of two per cent is Rs. 59,100, the Secondary and Higher is Rs. 29,550. The total cess in this case will amount to Rs. 88,650 (*i.e.*, Rs. 59,100 + Rs. 29,550). No marginal relief shall be available in respect of such Cess.

3.1.3 Co-operative Societies

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	**Rate**
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore

rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.4 Firms –

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.5 Local Authorities –In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of ten percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.6 Companies –

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of five per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of ten per cent shall be levied if the total income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or an Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent. where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2015-16.

3.2.1 In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D, 194LBA and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2015-16 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2015 -16 will continue to be the same as those specified in Part II of the First Schedule to the Finance (No.2) Act, 2014 except that in case of payments in the nature of income by way of royalty or fee for technical services referred to in section 115A, made to non-residents (other than a company) or a foreign company, the rate shall be ten per cent. of such income instead of twenty five per cent..

3.2.2 Surcharge –

The tax deducted at source in the following cases shall be increased by a surcharge for purposes of the Union indicated below:-

(i) In case of every non-resident person not being a company, the rate of surcharge is twelve percent of tax where the income or aggregate of such income paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(ii) In case of payments made to foreign companies, the rate of surcharge is two per cent of such income tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such income or the aggregate of such incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five percent.

(iii) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm ,being a resident or a domestic company.

3.2.3 Education Cess –

Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any. For instance, if the amount of income of a foreign company is Rs. 1,20,00,000 and tax is deducted from such foreign company is Rs. 12,00,000 at the rate of 10 per cent., then the surcharge at the rate of two per cent. on such tax deducted shall be Rs. 24,000. Education cess on such amount of tax deducted and surcharge (Rs. 12,00,000 + Rs. 24,000 = Rs. 12,24,000) shall be Rs.24,480.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the above illustration, where the amount of tax deducted is Rs. 12,00,000, the surcharge is Rs. 24,000, the said Secondary and Higher Education Cess will be computed at the rate of one percent on Rs. 12,24,000 which works out to be Rs. 12,240. The total cess in this case will, therefore, amount to Rs. 36,720 (i.e., Rs24,480 + Rs. 12,240).

3.3 Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2015-16.

3.3.1 The rates for deducting income-tax at source from 'Salaries' and computing advance tax during the financial year 2015-16 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2015-16 on current incomes in cases where accelerated assessments have to be made, *e.g.*, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person –

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company).. The basic exemption limit, rates of tax and slabs of income for various categories remain the same as in financial year 2014-15. The rates of tax during the financial year 2015-16 are as follows:-

Income chargeable to tax	**Rate of income- tax**		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India, who is of the age of eighty years or more. (very senior citizen)
Up to Rs. 2 ,50,000	*Nil*	*Nil*	
Rs. 2,50,001 - Rs. 3,00,000			

			Nil
Rs. 3,00,001 - Rs. 5,00,000	*10%*	*10%*	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a person having a total income exceeding one crore rupees as against the rate of ten per cent. for the financial year 2014-15.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.3 Co-operative Societies

In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	**Rate**
Up to Rs. 10,000	10%
Rs. 10,001 -Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees as against the rate of ten per cent. for the financial year 2014-15.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.4 Firms –

In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a firm having a total income exceeding one crore rupees as against the rate of ten per cent. for the financial year 2014-15.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax inclusive of surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.5 Local Authorities-

In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act.

The amount of income-tax so computed shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees as against the rate of ten per cent. for the financial year 2014-15.

However, marginal relief shall be available. Accordingly, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of

income tax and surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.3.6 Companies-

In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of seven per cent where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees as against the rate of five per cent. for the financial year 2014-15. Surcharge at the rate of twelve per cent shall be levied if the total income of the company exceeds ten crore rupees as against the rate of ten per cent. for the financial year 2014-15.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961 but before 1-4-1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964 but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that (i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees, (ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of income-tax computed including surcharge. No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.4 Surcharge on Additional Income-tax Where additional income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of income by a company on buy-back of shares from shareholders or on distribution of income by a mutual fund to its unit holders or on distribution of income by a securitization trust to its investors, the additional tax so

payable shall be increased by a surcharge of twelve percent of such tax as against the rate of ten per cent. for the financial year 2014-15.

4. Rationalisation of definition of charitable purpose in the Income-tax Act

4.1 Section 11 of the Income-tax Act deals with exemption to charitable trusts and institutions. The primary condition for grant of exemption to a trust or institution under the said section is that the income derived from property held under trust should be applied for charitable purposes in India. 'Charitable purpose' is defined in section 2(15) of the Act. The first proviso to clause (15) of section 2,*inter alia*, provides that advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. However, as per the second proviso, this restriction shall not apply if the aggregate value of the receipts from the activities referred above is twenty five lakh rupees or less in the previous year.

4.2 The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding program on yoga or other programs as part of actual carrying out of the objects which are of charitable nature were being put to hardship due to first and second proviso to section 2(15).

4.3 The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore the provisions of the Income-tax Act have been amended to include 'yoga' as a specific category in the definition of charitable purpose on the lines of education.

4.4 In order to ensure appropriate balance between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization as part of actual carrying out of the primary purpose of the trust or institution, the definition of 'charitable purpose' in the Income-tax Act has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose**,** if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

> (i) such activity is 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 percent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year .

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

5. Alignment of provisions relating to taxation of Government Grants with the provisions of Income Computation and Disclosure Standards (ICDS).

5.1 Sub-section (2) of section 145 of the Income-tax Act provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessees or for any class of income. The Central Board of Direct Taxes (CBDT) notified ICDS-I to ICDS-X vide Notification No.S.O. 892(E) dated 31st March, 2015 after wide public consultations. The ICDS-VII relating to Government grants provides that all Government grants except relating to depreciable asset shall be recognised as income in accordance with the provisions of the said ICDS. The existing provisions of *Explanation* 10 to clause (*1*) of section 43 of the Income-tax Act already contained the guidance for treatment of Government grants relating to acquisition of an asset. However, there was no specific guidance available under the provisions of the Income-tax Act for treatment of other Government grants. During the public consultations for ICDS, the stakeholders suggested that in order to avoid any future controversy in this matter, there should be specific provision in the Income-tax Act for treating these Government grants as income. The Accounting Standard Committee, which drafted the ICDS, has also examined the suggestions/comments received during public consultations and suggested that the issue of legislative amendment for bringing certainty in this matter may be examined. In order to avoid any future litigation and controversy in this matter, the definition of income under clause (24) of section 2 of the Income-tax Act has been amended so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of *Explanation* 10 to clause (*1*) of section 43 of the Income-tax Act.

5.2 As mentioned in Press Release dated 5th May, 2015, the amended definition of income shall not apply to the LPG subsidy or any other welfare subsidy received by an individual in his personal capacity and not in connection with the business or profession carried on by him.".

5.3 **Applicability:-** This amendment takes effect from 1st April, 2016 and would accordingly apply to assessment year 2016-17 and subsequent assessment years.

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

6.1 Clause (1) of section 6 of the Income-tax Act provides the conditions under which an individual is held to be resident in India. The said clause, *inter alia*, provides that an individual is said to be resident in India in any previous year if he, having within the four years preceding that year been in India for a period or periods amounting in all

to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year. However, in the case of an individual, being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship, the above mentioned condition of sixty days is extended to one hundred and eighty-two days.

6.2 In the case of foreign bound ships where the destination of the voyage is outside India, there was uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens.

6.3 In view of the above, the Income-tax Act has been amended to provide that in the case of an individual, being a citizen of India and a member of the 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 in the Income-tax Rules, 1962. Rule 126 of Income-tax Rules, 1962 notified vide S.O. No. 2240(E) dated 17th August, 2015 prescribes the manner for determination of the period of stay in India.

6.4 ***Applicability: -*** This amendment takes effect retrospectively from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

7. Amendment to the conditions for determining residency status in respect of Companies

7.1 The provisions of section 6 of the Income-tax Act provide for the conditions under which a person can be said to be resident in India for a previous year. In respect of a person being a company the conditions are contained in clause (3) of section 6 of the said Act. Under the said clause, before its amendment by the Act, a company was said to be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) during that year, the control and management of its affairs is situated wholly in India.

7.2 Due to the requirement that whole of control and management should be situated in India and that too for whole of the year, the condition had been rendered practically inapplicable. A company could easily avoid becoming a resident by simply holding a board meeting outside India. This could facilitate creation of shell companies which are incorporated outside but controlled from India.

7.3 'Place of effective management' (POEM) is an internationally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognise the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation. Many countries prefer the POEM test to be appropriate test for determination of residence of a company. The principle of POEM is recognized and accepted by Organisation of Economic Cooperation and Development (OECD) also.

The OECD commentary on model convention provides definition of place of effective management to mean the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole, are, in substance, made.

7.4 The modification in the condition of residence in respect of 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 but being controlled and managed from India.

7.5 In view of the above, section 6 of the Income-tax Act has been amended 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, in that year, is in India .

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

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

8. Clarity relating to Indirect transfer provisions

8.1 The provisions of section 9 of the Income-tax Act deal with cases of income which are deemed to accrue or arise in India. Sub-section(1) of the said section creates a legal fiction that certain incomes shall be deemed to accrue or arise in India. Clause(i) of said sub-section (1) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. The said clause provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

8.2 The Finance Act, 2012 had inserted certain clarificatory amendments in the provisions of section 9. The amendments, *inter alia*, included insertion of *Explanation* 5 in section 9(1)(i) w.r.e.f. 1.04.1962 . The *Explanation* 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated

outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

8.3 Considering the concerns raised by various stakeholders regarding the scope and impact of these amendments, an Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was constituted by the Government to go into the various aspects relating to the amendments.

8.4 The recommendations of the Expert Committee were considered and a number of recommendations (either in full or with partial modifications) were accepted for implementation either by way of an amendment of the Act or by way of issuance of a clarificatory circular in due course. In order to give effect to the recommendations, the provisions of section 9 relating to indirect transfer have been amended by the Act to provide that:-

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

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

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

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

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

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

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

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

(vii) the exemption shall be available to a non-resident from transfer, outside India, of a share of, or interest in, a foreign company or entity if such foreign company or entity directly owns the assets situated in India and the transferor along with its associated enterprises, at any time in twelve months preceding the date of transfer,

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

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

(viii) in case the transfer is of shares or interest in a foreign company or entity which holds the Indian assets indirectly, then the exemption shall be available to the transferor if he along with its associated enterprises, at any time in 12 months preceding the date of transfer,-

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

(b) nor holds any right in, or in relation to, such company or entity which would entitle him to the right of control or management of the direct holding company or entity, nor holds such percentage of voting power, or share capital or interest in such company or entity which entitles him to the voting power, or share capital or interest exceeding five percent. in the direct holding company or entity.

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

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

(xi) there shall be a reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be leviable under section 271GA. The penalty shall be-

(a) a sum equal to two percent of the value of the transaction in respect of which such failure has taken place if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and

(b) a sum of five lakh rupees in any other case.

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

9. Clarity regarding source rule in respect of interest received by the non-resident in certain cases

9.1 The provisions of section 5 of the Income-tax Act provide for scope of total income for the purposes of its chargeability to tax. In case of a non-resident person, the chargeability of income in India is on the basis of source rule under which certain categories of income are deemed to accrue or arise in India. The provisions of section 9 provide for the circumstances under which income is deemed to accrue or arise in India. Section 9(1) (v) relates specifically to the interest income. The said clause provides that the income by way of interest is deemed to accrue or arise in India if it is payable by—

(*a*) the Government ; or

(*b*) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(*c*) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India.

9.2 Section 90 of the said Act provides that Central Government may enter into an agreement with the Government of any country or specified territory outside India among other things for providing relief from double taxation. India has entered into Double Taxation Avoidance Agreements (DTAAs) with more than 90 countries. Further sub-section (2) of the section provides that in respect of an assessee to whom such DTAA applies, the provisions of the Act shall apply to the extent they are more beneficial to him. Therefore, the taxpayer is entitled to relief from the provisions of the Income-tax Act if such relief is available under the DTAA and to that extent the provisions of the Income-tax Act are not applicable.

9.3 Further, income of a non-resident from business activity is taxable in India if it has a business connection in India in accordance with the provisions contained in section 9(1)(i) of the Income-tax Act, and only such income is taxable as is attributable to the business connection. Similarly, under the DTAA, income from business activity in the case of a non-resident shall be taxable only if such non-resident has a permanent establishment (PE) in India and only such income is taxable which is attributable to the PE. The concept of PE is almost on similar lines as business connection with variations as per different DTAAs. The DTAA further provides the manner of computation of income attributable to the PE. It is provided that for the purpose of computation of income, the PE shall be deemed to be an independent enterprise with certain restrictions regarding allowability of expense paid to head office by the PE. Under DTAAs, in case of a banking company, the interest paid by a PE to its head office and

other branches is allowed as deduction by treating such a permanent establishment as an independent enterprise.

9.4 The CBDT, in its Circular No. 740 dated 17/4/1996 had clarified that branch of a foreign company in India is a separate entity for the purpose of taxation under the Income-tax Act and, accordingly, TDS provisions would apply along with separate taxation of interest paid to head office or other branches of the non-resident, which would be chargeable to tax in India.

9.5 Some of the judicial rulings in this context have held that although under the provisions of the Income-tax Act the payment of interest by the branch to head office is non-deductible under domestic law, being payment to the self, however, such interest is deductible due to computation mechanism provided under the DTAA but it is not taxable in the hands of the Bank, being income generated from self. The view expressed in the CBDT circular has not found favour in these judicial decisions. If the legal fiction created under the treaty were treated to be of limited effect, it would have led to base erosion. The interest paid by the permanent establishment to the head office or other branch etc. is an interest payment sourced in India and is liable to be taxed under the source rule in India. This position is also recognised in some of our DTAAs, in particular Article 14 (3) the Indo-USA DTAA which reads as under:-

"*In the case of a banking company which is resident of the United States, the interest paid by the permanent establishment of such a company in India to the head office may be subject in India to tax in addition to the tax imposable under the other provisions of this Convention at a rate which shall not exceed the rate specified in paragraph 2(a) of Article 11 (Interest)*"

9.6 The Special Bench of the ITAT in the case of Sumitomo Mitsui Banking Corporation [136 ITD- 66 TBOM] had mentioned that there are instances of other countries providing for specific provisions in their domestic law which allows for the taxability of interest paid by a permanent establishment to its head office and other branches and had pointed out absence of such a specific provision in the Income-tax Act. Considering that there were several disputes on the issue which were pending and likely to arise in future, it was essential that necessary clarity and certainty is provided for in the Income-tax Act.

9.7 Accordingly, the Income-tax Act has been amended to provide that in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India. The permanent establishment in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment and the provisions of the Income-tax Act relating to computation of total income, determination of tax and collection and recovery would apply. Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Further, non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract

levy of interest and penalty in accordance with relevant provisions of the Income-tax Act.

9.8 ***Applicability: -*** These amendments take effect from 1st April, 2016 and will, accordingly, apply to the assessment year 2016-17 and subsequent assessment years.

10. Fund Managers in India not to constitute business connection of offshore funds

10.1 The provisions of section 9 of the Income-tax Act deal with incomes which are deemed to accrue or arise in India. Section 9(1)(i) provides a set of circumstances in which income is deemed to accrue or arise in India, and is taxable in India. One of the conditions for the income of a non-resident to be deemed to accrue or arise in India is the existence of a business connection in India. Once such a business connection is established, income attributable to the activities which constitute business connection becomes taxable in India. Similarly, under Double Taxation Avoidance Agreements (DTAAs), the source country assumes taxation rights on certain incomes if the non-resident has a Permanent Establishment (PE) in that country.

10.2 Further, section 6 of the Act provides conditions under which a person is said to be resident in India. In the case of a person other than an individual, the test is dependent upon the location of its "control and management".

10.3 In the case of off-shore funds, under the above provisions, the presence of a fund manager in India could create sufficient nexus of the off-shore fund with India and could constitute a business connection in India even though the fund manager may be an independent person. Similarly, if the fund manager located in India undertakes fund management activity in respect of investments outside India for an off-shore fund, the profits made by the fund from such investments could have been liable to tax in India due to the location of fund manager in India and attribution of such profits to the activity of the fund manager undertaken on behalf of the off-shore fund. Therefore, apart from taxation of income received by the fund manager as fees for fund management activity, income of off-shore fund from investments made in countries outside India may have also got taxed in India due to such fund management activity undertaken in, and from, India constituting a business connection. Further, presence of the fund manager under certain circumstances may have led to the off shore fund being held to be resident in India on the basis of its control and management being in India.

10.4 There are a large number of fund managers who are of Indian origin and are managing the investment of offshore funds in various countries. These persons were being discouraged from locating in India due to the above tax consequence in respect of income from the investments of offshore funds made in other jurisdictions.

10.5 In order to facilitate location of fund managers of off-shore funds in India a specific regime has been provided in the Income-tax Act in line with international best practices with the objective that, subject to fulfillment of certain conditions by the fund and the fund manager,-

(i) the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and

(ii) that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.

10.6 The regime provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund.

10.7 Further, it has been provided that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. This specific exception from the general rules for determination of business connection and 'resident status' of off-shore funds and fund management activity undertaken on its behalf is subject to the following:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.8 It has been provided that conditions mentioned in items (v),(vi)& (vii) of paragraph 10.7 shall not apply in cases of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund or such other fund as the Central Government may notify.

10.9 It has been further provided that every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfillment of the above conditions or any information or document which may be prescribed. In case of non furnishing of the prescribed information or document or statement, a penalty of Rs. 5 lakh shall be leviable on the fund (section 271FAB). The provisions of the new section 9A shall be applied in accordance with such guidelines and in such manner as the CBDT may prescribe in this behalf.

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

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

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

11.1 Under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (SECC) notified by Securities and Exchange Board of India (SEBI), the Clearing Corporations are mandated to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

11.2 Income by way of contributions to the Investor Protection Fund set up by recognised stock exchanges in India, or by commodity exchanges in India or by a depository is exempt from taxation under the provisions of the Income-tax Act.

11.3 On similar lines, income of the Core SGF arising from (a) contribution received from specified persons;(b) investment made by the fund, and(c) the penalties imposed by the recognised Clearing Corporation has been made exempt from taxation subject to similar conditions as provided in case of Investor Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository.

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

11.3.2 The specified person for this purpose is defined to mean any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund, any recognised stock exchange being a shareholder in such recognised Clearing Corporation or a contributor to the Core Settlement Guarantee Fund and any clearing member contributing to the Core Settlement Guarantee Fund.

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

12. Rationalisation of provisions of section 11 of the Income-tax Act relating to accumulation of Income by charitable trusts and institutions

12.1 Under the provisions of section 11 of the Income-tax Act, the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. While 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed Form 10 to the Assessing Officer in this regard and the money so accumulated or set apart is invested or deposited in the specified forms or modes. If the accumulated income is not applied in accordance with these conditions, then such income is deemed to be taxable income of the trust or institution.

12.2 In order to remove the ambiguity regarding the period within which the assessee is required to furnish Form 10, and to ensure due compliance of the above conditions within time, the Income-tax Act has been amended to provide that the Form 10 shall be furnished before the due date of furnishing the return of income specified under section 139 of the Income-tax Act for the fund or institution. In case the Form is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of furnishing the return of income.

12.3 Under section 11 of the Income-tax Act, it has also been provided that if the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by the trust/institution in writing on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose. There was no standard format for exercising the option. Accordingly, the provisions of section 11 have also been amended to prescribe a format for exercise of option by the trust/institution for the purposes of clause (2) of the Explanation to sub-section (1) of section 11 of the Income-tax Act.

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

13. Allowance of balance 50% additional depreciation

13.1 To encourage investment in plant or machinery by the manufacturing and power sector, additional depreciation of 20% of the cost of new plant or machinery acquired and installed is allowed under the existing provisions of section 32(1)(iia) of the Income-tax Act over and above the general depreciation allowance. On the lines of

allowability of general depreciation, the second proviso to section 32(1)(ii) *inter alia* provides that the allowance for additional depreciation would be restricted to 50% if the new plant or machinery acquired and installed by the assessee is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in the previous year. Non-availability of full 100% allowance for additional depreciation for plant or machinery acquired and installed in the second half of the year may motivate the assessee to defer such investment to the next year for availing full 100% allowance for additional depreciation in the next year.

13.2 To remove the discrimination in the manner of allowing additional depreciation on plant or machinery used for less than 180 days and plant or machinery used for 180 days or more, a new proviso has been inserted to section 32(1)(ii) of the Income-tax Act so as to provide that the balance 50% of the additional depreciation allowance on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

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

14. Incentives for the States of Andhra Pradesh, Bihar, Telangana and West Bengal

14.1 Manufacturing sector plays significant role in the economic growth of any region. In order to encourage the setting up of industrial undertakings in the backward areas of the State of Andhra Pradesh or the State of Bihar or the State of Telangana or the State of West Bengal, a new section 32AD has been inserted in the Income-tax Act and also the provisions of section 32 of the Income-tax Act has been amended to provide following incentives:

14.2 Additional Investment Allowance

14.2.1 Section 32AD has been inserted in the Income-tax Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if—

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

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

14.2.2 This deduction shall be available over and above the existing deduction available under section 32AC of the Income-tax Act. Accordingly, if a company sets up an undertaking in the notified backward area in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, it shall be eligible to claim deduction under the existing provisions of section 32AC of the Income-tax Act as well as under this newly inserted section 32AD of the Income-tax Act if it fulfils the conditions (such as investment above a specified threshold) provided in section 32AC as well as conditions specified in section 32AD.

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

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle;

(v) any ship or aircraft; or

(vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

14.2.4 With a view to ensure that the manufacturing units which are set up by availing this incentive actually contribute to economic growth of these backward areas by carrying out the activity of manufacturing for a reasonable period of time, suitable safeguards have been provided for restricting the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganisation but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.

14.3 Additional Depreciation at the rate of 35%

14.3.1 To incentivise investment in new plant or machinery, additional depreciation of 20% is allowed under the existing provisions of section 32(1)(iia) of the Income-tax Act in respect of the cost of plant or machinery acquired and installed by certain assessees. This depreciation allowance is allowed over and above the deduction allowed for general depreciation under section 32(1)(ii) of the Income-tax Act.

14.3.2 In order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward areas in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal, a new proviso has been inserted in section 32(1)(iia) of the Income-tax Act to provide for higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by an assessee for setting up of a manufacturing undertaking or enterprise in the notified backward area of the said States on or after the 1st April, 2015.

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

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

15. Prescribed conditions relating to maintenance of accounts, audit etc to be fulfilled by the approved in-house R&D facility

15.1 Under section 35(2AB) of the Income-tax Act, weighted deduction of 200% is allowed to a company engaged in the business of biotechnology or manufacturing of any article or thing (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an approved in-house research and development facility. For availing this weighted deduction, the company is required to enter into an agreement with the Secretary, Department of Scientific and Industrial Research (DSIR) and also required to obtain his approval. The Secretary, DSIR is required to send the report regarding approval to DGIT (Exemption) in the prescribed Form, who generally does not have jurisdiction over the assessee company. Further, the company is required to maintain separate books of account for approved R&D facility and is also required to get the books of account audited. However, the copy of audit report is required to be submitted to the DSIR only. The Comptroller and Auditor General of India in its report on performance audit of pharmaceuticals sector recommended for rationalisation of the provision relating to monitoring of this weighted deduction.

15.2 In order to have a better and meaningful monitoring mechanism for weighted deduction allowed under section 35 (2AB) of the Income-tax Act, the provisions of section 35(2AB) of the Income-tax Act has been amended so as to provide that

deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and fulfils such conditions as may be prescribed with regard to maintenance and audit of accounts and also furnishes prescribed reports. Further a reference of the Principal Chief Commissioner or Chief Commissioner is inserted in section 35(2AA) and section 35(2AB) of the Income-tax Act so as to provide that the report referred to therein may also be sent to the Principal Chief Commissioner or Chief Commissioner.

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

16. Alignment of provisions relating to capitalisation of interest and claim of deduction of bad debts with the provisions of the Income Computation and Disclosure Standards (ICDS)

16.1 The Income Computation and Disclosure Standards (ICDS)-IX relating to borrowing costs provides for capitalisation of borrowing costs incurred for acquisition of assets up to the date the asset is put to use. The proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act provided for capitalisation of borrowing costs incurred for acquisition of assets for extension of existing business up to the date the asset is put to use. However, the provisions of ICDS-IX do not make any distinction between the asset acquired for extension of business or otherwise.

16.2 Therefore, there was an inconsistency between the provisions of proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act and the provisions of ICDS-IX. The general principles for capitalisation of borrowing cost requires capitalisation of borrowing cost incurred for acquisition of an asset up to the date the asset is put to use without making any distinction whether the asset is acquired for extension of existing business or not. The Accounting Standard Committee, which drafted the ICDS, also recommended that there is a need to carry out suitable amendments to provisions of the proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act for aligning the same with the general capitalisation principles.

16.3 In view of the above, the provisions of proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act have been amended so as to provide that the borrowing cost incurred for acquisition of an asset shall be capitalised up to the date the asset is put to use without making any distinction as to whether an asset is acquired for extension of existing business or not.

16.4 The provisions of the ICDS are applicable for computation of income and not for the purposes of maintenance of books of account. There may be cases where the income is recognised for computation of taxable income in accordance with the provisions of ICDS without recording the same in the books of account and such income may be

required to be reversed in accordance with the provisions of the ICDS. For claiming bad debt, the provisions of section 36(1)(vii) of the Income-tax Act, *inter alia,* require that the amount should be written off in the accounts of the assessee.

16.5 Therefore, the reversal of income in accordance with the provisions of the ICDS may not be allowable on the ground that same has not been written off in the accounts as per the provisions of section 36(1)(vii) of the Income-tax Act. In view of this, a proviso has been inserted in section 36(1)(vii) of the Income-tax Act so as to provide that for claiming deduction under section 36(1)(vii) of the Income-tax Act, the income which have been recognised as per the provisions of ICDS without recording in the accounts and is required to be written off as irrecoverable as per the provisions of ICDS,it shall be deemed to be written off as irrecoverable in the accounts.

16.6 Applicability:- These amendments take effect from 1st April, 2016 and would accordingly apply to assessment year 2016-17 and subsequent assessment years.

17. Deduction for payment made for purchase of sugar cane by co-operative sugar factories at a price fixed by or fixed with the approval of the Government.

17.1 Sugar factories operating in the cooperative sectors in certain states of India pay to sugarcane growers a final amount, often referred to as Final Cane Price (FCP) which is over and above the Statutory Minimum Price (SMP) fixed by the Central Government under the Sugarcane Control Order, 1996. FCP is decided on the basis of the particular factory's working results which take into account all the revenues and expenditure incurred by the factory.

17.2 The payment of FCP by the co-operative sugar factories over and above the SMP for purchase of sugarcane resulted into tax litigation. The co-operative sugar factories were claiming this excess payment as business expenditure whereas the same has been disallowed in the assessment on the ground that the excess price paid for purchase of sugar cane over and above SMP is in the nature of appropriation/distribution of profit and hence not allowable a deduction.

17.3 In order to provide certainty in this matter and to encourage co-operative movement in sugar sector, a new clause (xvii) has been inserted in sub-section (1) of section 36 of the Income-tax Act to provide that the amount paid for purchase of sugarcane by the co-operative societies engaged in the manufacture of sugar at a price which is equal to or less than the price fixed by or fixed with the approval of the Government shall be allowed as deduction for computing business income of the sugar co-operative factories. Hence, for the purposes of computing business income of a co-operative society engaged in the business of manufacture of sugar for assessment year 2016-17 and subsequent assessment years, the price paid for purchase of sugarcane which has been fixed or approved by the Government shall be allowed as deduction under section 36(1)(xvii) of the Income-tax Act even if the same is in excess of the SMP.

17.4 Applicability:- This amendment are takes effect from 1st April, 2016 and would accordingly apply to assessment year 2016-17 and subsequent assessment years.

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

18.1 Securities and Exchange Board of India has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer numbers of schemes. However, such mergers/consolidations are treated as transfer and capital gains are imposed on unitholders under the Income-tax Act.

18.2 In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, tax neutrality has been provided to unit holders upon consolidation or merger of mutual fund schemes provided that the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than an equity oriented fund by amending section 47 of the Income-tax Act. Section 49 of the Income-tax Act has also been amended to provide that the cost of acquisition of the units in a consolidated scheme of a mutual fund shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee.

18.3 Consolidating scheme has been defined as the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and the consolidated scheme means the scheme with which the consolidating scheme merges or which is formed as a result of such merger.

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

19. 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

19.1 Under clause (vib) of section 47 of the Income-tax Act any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer if the resulting company is an Indian company. In such cases the cost of such asset in the hands of resulting company should be the cost of such asset in the hands of demerged company as increased by the cost of improvement, if any, incurred by the demerged company or the resulting company as the case may be. Further, the period of holding of such asset in the hands of resulting company should include the period for which the asset was held by the demerged company.

19.2 However, under the provisions of the Income-tax Act, before amendment made by the Finance Act, 2015, there was no express provision to this effect. Accordingly, sub-clause (e) of clause (iii) of sub-section (1) of section 49 of the Income-tax Act has been

amended so as to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company or the resulting company ,as the case may be, and the period of holding of a capital asset in the hands of the resulting company shall include the period for which the asset was held by the demerged company.

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

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

20.1 Pursuant to the Budget announcement in July 2014, a special small savings instrument for the welfare of the girl child has been introduced under the Sukanya Samriddhi Account Rules, 2014. The following tax benefits have been envisaged in the Sukanya Samriddhi Account scheme:-

(i) The investments made in the Scheme will be eligible for deduction under section 80C of the Income-tax Act.

(ii) The interest accruing on deposits in such account will be exempt from income tax.

(iii) The withdrawal from the said scheme in accordance with the rules of the said scheme will be exempt from tax.

20.2 Accordingly, a new clause (11A) has been inserted in section 10 of the Income-tax Act to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee. As a result, the interest accruing on deposits in the aforesaid account, and withdrawals from any such account under the scheme would be exempt.

20.3 The Scheme has been notified under clause (viii) of sub-section (2) of section 80C of the Income-tax Act vide Notification number 9/2015 S.O.210 (E),F.No. 178/3/2015-ITA-I dated 21.01.2015.With a view to provide that the deduction under section 80C may be availed by the parent or legal guardian of the girl child, amendment of section 80C of the Income-tax Act has been made to provide that a sum paid or deposited during the year in the Scheme in the name of any girl child of the individual or in the name of any girl child for whom such individual is the legal guardian, would be eligible for deduction under section 80C of the Income-tax Act.

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

21. Raising the limit of deduction under 80CCC

21.1 Under the provisions of sub-section (1) of the section 80CCC of the Income-tax Act, before its amendment by the Act, an assessee, being an individual was allowed a deduction upto one lakh rupees in the computation of his total income, of an amount paid or deposited by him to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from a fund set up under a pension scheme.

21.2 In order to promote social security, sub-section (1) of section 80CCC has been amended to raise the limit of deduction under section 80CCC from one lakh rupees to one hundred and fifty thousand rupees, within the overall limit provided in section 80CCE.

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

22. Additional deduction under 80CCD

22.1 Under the provisions contained in sub-section (1) of section 80CCD of the Income-tax Act, before its amendment by the Act, if an individual, employed by the Central Government on or after 1st January, 2004, or an individual employed by any other employer, or any other assessee being an individual has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding ten per cent. of his salary in the case of an employee and ten per cent. of the gross total income in case of any other individual is allowed. Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under sub-section (2) of section 80CCD, to the extent it does not exceed ten per cent. of the salary of the individual in the previous year. Sub-section (1A) of section 80CCD provides that the amount of deduction under sub-section (1) shall not exceed one hundred thousand rupees. Till date, under section 80CCD, only the National Pension System (NPS) has been notified by the Ministry of Finance.

22.2 With a view to encourage people to contribute towards NPS, sub-section (1A) of section 80CCD has been omitted. The overall limit of one hundred and fifty thousand rupees under section 80CCE shall apply in respect of the contribution made in

accordance with sub-section (1) of section 80CCD. In addition to the enhancement of the limit under section 80CCD(1), a new sub-section (1B) has been inserted in section 80CCD so as to provide for an additional deduction in respect of any amount paid, upto fifty thousand rupees for contributions made by any individual assessee under the NPS. The additional deduction of Rs.50,000/- will be available whether or not any claim under sub-section (1) of section 80CCD has been made.

Consequential amendments have also been made in sub-section (3) and sub-section (4) of section 80CCD.

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

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

23.1 The provisions contained in section 80D of the Income-tax Act, before its amendment by the Act, inter alia, provided for ---

a) deduction upto fifteen thousand rupees to an assessee, being an individual in respect of health insurance premia, paid by any mode, other than cash, to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or any other notified scheme or any payment made on account of preventive health check up of the assessee or his family; and

b) an additional deduction of fifteen thousand rupees to an individual assessee to effect or to keep in force insurance on the health of the parent or parents of the assessee.

23.2 A similar deduction is also available to a Hindu undivided family (HUF) in respect of health insurance premia, paid by any mode, other than cash, to effect or to keep in force insurance on the health of any member of the HUF. The section also provided for a deduction of twenty thousand rupees in both the cases if the individual insured is a senior citizen of sixty years of age or above.

23.3 The quantum of deduction allowed under Section 80D to individuals and HUF in respect of premium paid for health insurance had been fixed vide Finance Act, 2008 at Rs.15000/- and Rs.20,000/- for senior citizens. In view of continuous rise in the cost of medical expenditure, section 80D has been amended to raise the limit of deduction from **fifteen thousand rupees to twenty five thousand rupees**. The limit of deduction for senior citizens has been raised from **twenty thousand rupees to thirty thousand rupees.**

23.4 Further, very senior citizens are often unable to get health insurance coverage and are therefore unable to take tax benefit under section 80D. Accordingly, as a welfare measure towards very senior citizens, section 80D has further been amended to provide

that any payment upto Rs.30,000/- made on account of medical expenditure shall be allowed as a deduction under section 80D, in respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person. The aggregate deduction available to any individual who is a very senior citizen in respect of health insurance premia and the medical expenditure incurred for his family would, however, be limited to thirty thousand rupees.

Example:

		Rs.
(i)	For Individual and his family	Rs.
	Health insurance premia	21,000
(ii)	For parents	
	Health insurance of Mother:	18,000
	Medical expenditure on father (very senior citizen)	25,000
	Deduction eligible u/s 80D	Rs. 21000 + Rs. 30000 = Rs. 51,000

A 'very senior citizen' has been defined to mean an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

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

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

24.1 The provisions of section 80DD of the Income-tax Act, before its amendment by the Act, *inter alia*, provided for a deduction to an individual or HUF, who is a resident in India, and has incurred—

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability as defined under the said section; or
(b) Paid any amount to LIC or any other insurer in respect of a scheme for the maintenance of a disabled dependant.

24.2 The section provided for a deduction of fifty thousand rupees if the dependant is suffering from disability and one lakh rupees if the dependant is suffering from severe disability (as defined under the said section).

24.3 The provisions of section 80U of the Income-tax Act, before its amendment by the Act, *inter alia*, provided for a deduction to an individual, being a resident, who, at

any time during the previous year, was certified by the medical authority to be a person with disability (as defined under the said section).

24.4 The said section provided for a deduction of fifty thousand rupees if the person is suffering from disability and one lakh rupees if the person is suffering from severe disability (as defined under the said section).

24.5 The limits under section 80DD and section 80U in respect of a person with disability were fixed at fifty thousand rupees by Finance Act, 2003. Further, the limit under section 80DD and section 80U in respect of a person with severe disability was last enhanced from seventy five thousand rupees to one lakh rupees by Finance (No.2) Act, 2009.

24.6 In view of the rising cost of medical care and special needs of a disabled person, section 80DD and section 80U have been amended to raise the limit of deduction in respect of a person with disability from fifty thousand rupees to seventy five thousand rupees.

24.7 Section 80DD and section 80U have further been amended to raise the limit of deduction in respect of a person with severe disability from one lakh rupees to one hundred and twenty five thousand rupees.

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

25. Raising the limit of deduction under section 80DDB

25.1 Under the provisions contained in section 80DDB of the Income-tax Act, before its amendment by the Act, an assessee, resident in India is allowed a deduction of a sum not exceeding forty thousand rupees, being the amount actually paid, for the medical treatment of certain chronic and protracted diseases such as Cancer, full blown AIDS, Thalassaemia, Haemophilia etc. This deduction is allowed up to sixty thousand rupees where the expenditure is in respect of a senior citizen i.e. a person who is of the age of sixty years or more at any time during the relevant previous year.

25.2 The above deduction is available to an individual for medical expenditure incurred on himself or a dependant. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on its members. Dependant in case of an individual means the spouse, children, parents, brother or sister of an individual and in case of an HUF means a member of the HUF ,wholly or mainly dependant on such individual or HUF for his support and maintenance.

25.3 Under the provisions of section 80DDB before its amendment by the Act, a certificate in the prescribed form, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist working in a Government

hospital was required. It had been represented that the requirement of a certificate from a doctor working in a Government hospital causes undue hardship to the persons intending to claim the aforesaid deduction. Government hospitals at many places do not have doctors specialising in the above branches of medicine. Therefore, it may be difficult for the taxpayer to obtain a certificate from a Government hospital.

25.4 In view of the above, section 80DDB has been amended to provide that the assessee will be required to obtain a prescription from a specialist doctor for the purpose of availing this deduction.

25.5 Section 80DDB has been amended further to provide for a higher limit of deduction of upto eighty thousand rupees, for the expenditure incurred in respect of the medical treatment of a "very senior citizen". A "very senior citizen" has been defined as an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

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

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

26.1 Under the provisions of section 80G of the Income-tax Act, before its amendment by the Act, an assessee was allowed a deduction from his total income in respect of donations made by him to certain funds and charitable institutions. The deduction is allowed at the rate of hundred percent of the amount of donations made to certain funds and institutions formed for a social purpose of national importance, like the Prime Ministers' National Relief Fund, National Foundation for Communal Harmony etc.

26.2 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. Since National Fund for Control of Drug Abuse is also a Fund of national importance, section 80G has been amended to provide hundred per cent. deduction in respect of donations made to the said National Fund for Control of Drug Abuse.

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

27. Tax benefits for Swachh Bharat Kosh and Clean Ganga Fund

27.1 Under the provisions of section 80G of the Income-tax Act, before its amendment by the Act, a deduction was allowed in computing the total income of a

person in respect of donations made to certain funds and charitable institutions. The deduction is allowed at the rate of fifty percent of the amount of donations made except in the case of donations made to certain funds and institutions formed for a social purpose of national importance, where it is allowed at the rate of one hundred percent, such as the National Defence Fund set up by the Central Government, the Prime Minister's National Relief Fund, the Prime Minister's Armenia Earthquake Relief Fund, the Africa (Public Contributions-India) Fund, the National Children's Fund, the National Foundation for Communal Harmony etc.

27.2 "Swachh Bharat Kosh" has been set up by the Central Government to mobilize resources for improving sanitation facilities in rural and urban areas and school premises through the Swachh Bharat Abhiyan. Similarly, Clean Ganga Fund has been established by the Central Government to attract voluntary contributions to rejuvenate river Ganga.

27.3 With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, section 80G of the Income-tax Act has been amended to incentivise donations to the two funds. It has been provided that donations made by any donor to the Swachh Bharat Kosh and donations made by resident donors to Clean Ganga Fund will be eligible for a deduction of hundred per cent in computing the total income. However, any sum spent on this account in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor.

27.4 The provisions of section 10(23C) of the Income-tax Act provide for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund; the Prime Minister's Fund (Promotion of Folk Art); the Prime Minister's Aid to Students Fund; the National Foundation for Communal Harmony. Considering the importance of Swachh Bharat Kosh and Clean Ganga Fund, section 10(23C) of the Income-tax Act has also been amended to exempt the income of Swachh Bharat Kosh and Clean Ganga Fund, set up by the Central Government, from income-tax.

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

28. Deduction for employment of new workmen

28.1 The provisions of section 80JJAA of the Income-tax Act, before its amendment by the Act, *inter alia,* provided for deduction to an Indian company, deriving profits from manufacture of goods in a factory. The quantum of deduction allowed is equal to thirty per cent of additional wages paid to the new regular workmen employed by the

assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

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

28.3 With a view to encourage generation of employment, section 80JJAA has been amended to extend the benefit to all assessees having manufacturing units rather than restricting it to corporate assessees only. Further, in order to enable the smaller units to claim this incentive, the benefit under section 80JJAA has been extended to units employing 50 (instead of 100) regular workmen.

28.4 Accordingly, sub-sections (1) and (2) of the section 80JJAA have been amended. Further, clause (i) of the Explanation to section 80JJAA has been amended to provide "additional wages" to mean the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.

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

29. Raising the threshold for specified domestic transaction

29.1 The provisions of section 92BA of the Income-tax Act define "specified domestic transaction" in case of an assessee to mean any of the specified transactions, not being an international transaction, where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum as provided in the said section. Before amendment by the Act, this threshold was rupees five crore.

29.2 In order to address the issue of compliance cost in case of small businesses on account of low threshold of five crore rupees, the said section 92BA has been amended to provide that the aggregate of specified transactions entered into by the assessee in the previous year should exceed a sum of twenty crore rupees for such transaction to be treated as 'specified domestic transaction'.

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

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

30.1 The provisions of the General Anti Avoidance Rule (GAAR) introduced by the Finance Act, 2013 are contained in Chapter X-A (consisting of section 95 to 102) and section 144BA of the Income-tax Act. Chapter X-A provides the substantive provision of

GAAR whereas section 144BA provides the procedure to be undertaken for invoking GAAR and passing of the assessment order in consequence of GAAR provisions being invoked.

30.2 As provided in the Income-tax Act before its amendment, GAAR provisions were to come into effect from 1.04.2016. These provisions, therefore, would have been applicable to the income of the financial year 2015-16 (Assessment Year 2016-17) and subsequent years.

30.3 The implementation of GAAR provisions was reviewed. Concerns had been expressed regarding certain aspects of GAAR. Further, it was noted that the Base Erosion and Profit Shifting (BEPS) project under Organisation of Economic Cooperation and Development (OECD) is continuing and India is an active participant in the project. The report on various aspects of BEPS and recommendations regarding the measures to counter it are awaited. It would, therefore, be proper that GAAR provisions are implemented as part of a comprehensive regime to deal with BEPS and aggressive tax avoidance.

30.4 Accordingly, the Income-tax Act has been amended to defer the implementation of GAAR by two years and GAAR provisions have been made applicable to the income of the financial year 2017-18 (Assessment Year 2018-19) and subsequent years. Further, investments made up to 31.03.2017 will be protected from the applicability of GAAR by undertaking amendment in the relevant rules in this regard.

30.5 ***Applicability: -*** This amendment takes effect from 1st April, 2015.

31. Reduction in rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents

31.1 The provisions of section 115A of the Income-tax Act provide that in case of a non-resident taxpayer, where the total income includes any income by way of Royalty and Fees for technical services (FTS) received by such non-resident from Government or an Indian concern after 31.03.1976, and which is not effectively connected with permanent establishment, if any, of the non-resident in India, tax shall be levied on the gross amount of such income at the rate provided therein. The Finance Act, 2013 had provided the rate to be 25%.

31.2 In order to reduce the hardship faced by small entities due to high rate of tax of 25%, the Income-tax Act has been amended to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents to 10%.

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

32. Amendments relating to Global Depository receipts (GDRs)

32.1 The Depository Receipts Scheme, 2014 was notified by the Department of Economic affairs (DEA) vide Notification F.No.9/1/2013–ECB dated 21st October, 2014. This scheme replaces "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through depository receipt mechanism) Scheme, 1993".

32.2 The taxation scheme of income arising in respect of depository receipts under section 115AC of the Income-tax Act, before amendment by the Act, was aligned with the earlier scheme which was limited to issue of Global Depository Receipts (GDRs) based on the underlying shares of the company issued for this purpose (i.e sponsored GDR) or FCCB of the issuing company and where the company was either a listed company or was to list simultaneously. Besides, the holder of such GDRs was a non-resident only. Further, section 47(viia) provided exemption from capital gains arising from transfer of GDRs by one non-resident to another non-resident made outside India.

32.3 As per the new depository scheme, Depository Receipts (DRs) can be issued against the securities of listed, unlisted or private or public companies against underlying securities which can be debt instruments, shares or units etc; Further, both the sponsored issues and unsponsored deposits and acquisitions are permitted. DRs can be freely held and transferred by both residents and non-residents.

32.4 Further, the process of conversion of DRs into the underlying shares involves the non-resident holding the DRs in the overseas market giving instruction to its foreign broker regarding cancellation of DRs and release of underlying shares. The foreign broker then delivers the DRs to the foreign depository for cancellation and instructs it to deliver the underlying shares into a demat account held by the foreign investor in India. The foreign depository thereafter cancels the DRs and issues an instruction to its local custodian in India to release and deliver the underlying shares into the special demat account in India. The local custodian in India delivers the shares to the specified 'DR type' demat account and informs the foreign depository of the completion of the process. The foreign investor may choose to hold the underlying shares or sell them in India (either on exchange through a SEBI registered broker or through private arrangement).

32.5 Since the tax benefits under the Income-tax Act were intended to be provided in respect of sponsored GDRs and listed companies only, the definition of GDR in section 115ACA of the said Act has been amended to mean only those instruments i.e. depository receipts as are issued to non-resident investors against

(i) ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or
(ii) foreign currency convertible bonds of issuing company.

32.6 Clause (42A) of section 2 of the Income-tax Act has been amended to provide that in the case of a capital asset, being share or shares of a company, which is acquired by the non-resident assessee on redemption of Global Depository Receipts held by such

assessee, the period of holding shall be reckoned from the date on which request of such redemption was made.

32.7 Section 49 (2ABB) has been inserted in the Income-tax Act to provide that where the capital asset being share of a company is acquired by the non-resident assessee on redemption of Global Depositary Receipts (GDR) held by him, then the cost on acquisition of the share shall be the price of such share prevailing on any recognized stock exchange in India on the date on which a request for redemption was made.

32.8 In view of the process of conversion of GDR into underlying shares referred to above, it is hereby clarified that the "date on which a request for redemption was made" for purposes of Section 49(2ABB), shall be the date on which the instruction from foreign depositary is received by the local custodian in India requesting the release of underlying shares in favour of the non-residence assessee.

32.9 It is also clarified that GDRs which qualify for special treatment under the Income-tax Act constitute a subset of Depository receipts which can be issued under the Depository Scheme, 2014. Therefore, the benefit under section 115 AC, section 47 and section 49 (2ABB) of the Income-tax Act are available only if the GDR has been issued against the ordinary shares of the issuing company, being a company listed on a recognized stock exchange in India ('sponsored' issue). The benefit of these sections would not be available in respect of depositary receipts issued other than under sponsored issuance of a listed company. Accordingly:-

i. The gains arising on transfer of such depository receipt(i.e. other than sponsored issue) between non-resident investors, outside India, would not be exempt from Capital gains;

ii. On conversion of these DRs into the underlying shares, the provision of Section 49 (2ABB) shall not apply and the cost of acquisition of such underlying shares on conversion of DR shall be the cost at which DR had been acquired by the investor.

32.10 ***Applicability: -*** These amendments take effect from the 1st day of April, 2016 and will, accordingly, apply to the assessment year 2016-17 and subsequent assessment years.

33. Rationalising the provisions of section 115JB

33.1 The provisions contained in section 115JB of the Income-tax Act before its amendment by the Act ,provided that in the case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half percent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be eighteen and one-half percent of its book profit. This tax is termed as minimum alternate tax (MAT). Explanation below sub-section (2) of section 115JB provides that the expression "book profit" means net profit as shown in the profit

and loss account prepared in accordance with the provisions of the Companies Act, or in accordance with the provisions of the Act governing a company as increased or reduced by certain adjustments, as specified in the section.

33.2 Section 86 of the Income-tax Act provides that no income-tax is payable on the share of a member of an AOP, in the income of the AOP in certain circumstances. However, under the provisions of section 115JB prior to its amendment by the Act, a company which is a member of an AOP is liable to MAT on such share also since such income is not excluded from the book profit while computing the MAT liability of the member. In the case of a partner of a firm, the share in the profits of the firm is exempt in the hands of the partner as per section 10(2A) of the Act and no MAT is payable by the partner on such profits.

33.3 In view of the above, section 115JB has been amended to provide that the share of a member of an AOP, in the income of the AOP, on which no income–tax is payable in accordance with the provisions of section 86 of the Act, should be excluded while computing the MAT liability of the member under 115JB of the Act. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is to be excluded from the MAT liability) shall also be added back to the book profit for the purpose of computation of MAT.

33.4 The provisions of section 115JB have also been amended to provide that the amount of income from (i) capital gains arising on transactions in securities; or (ii) interest, royalty or fees for technical services chargeable to tax at the rates specified in Chapter XII, accruing or arising to a foreign company shall not be liable to MAT if such income is credited to the profit and loss account and the income-tax payable in accordance with the other provisions of the Income-tax Act, is less than the rate specified in section 115JB. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is to be excluded from the MAT liability) shall also be added back to the book profit for the purpose of computation of MAT.

33.5 The Finance (No.2) Act, 2014 inserted clause (xvii) in section 47 of the Income-tax Act to provide tax neutrality /deferment in respect of exchange of share of a special purpose vehicle with the units of business trust, however, no neutrality/deferment of Minimum Alternate Tax (MAT) liability under section 115JB of the Income-tax Act has been provided. The liability under MAT may arise due to recording of exchange of shares with the units at fair value by a shareholder, being a company in compliance with the provisions of Accounting Standard – 13 prescribed under the Companies Act, 2013 as per rule 7 of the Companies (Accounts) Rules, 2014. The recording of said exchange at fair value may result into inclusion of notional gain or loss in the book profit of the company for the purposes of levy of MAT under section 115JB of the Income-tax Act. Inclusion of these notional amounts especially notional gain in the book profit for levying MAT may result into cash flow problem for the company.

33.5.1 In order to provide tax deferment/ neutrality for MAT purposes, at the stage of the said exchange of share with the units of business trust, the provisions of section 115JB of the Income-tax Act have been amended to provide that notional gain or loss on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47 of the Income-tax Act shall not be taken into account for computation of book profit for the purposes of levying MAT under section 115JB of the Income-tax Act.

33.5.2 It has been further provided that notional gain or loss resulting from any change in carrying amount of the said units shall also not be taken into account for the purposes of levy of MAT. The actual gain or loss on transfer of the units by taking into account the cost of shares exchanged or the carrying amount of such shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be, shall be included in the book profit of the year of transfer of units for the purposes of levying MAT under section 115JB of the Income-tax Act. These amendments are explained by way of the following illustration:-

- Company 'A' is holding 100 shares of Special Purpose Vehicle (SPV) which are carried at Rs.2000 in the books of the company as on 1st April, 2015. During the financial year 2015-16, these 100 shares are exchanged with the 100 units of Business Trust (BT) and the same is recorded at the fair value of Rs.3000 resulting into a notional gain of Rs.1000. At the end of financial year 2016-17, the carrying amount of the units has been recorded at Rs.2500 resulting into a notional loss of Rs.500. During the financial year 2017-18, these units are sold for Rs.4000.

- In the above illustration, the notional gain of Rs.1000 shall be excluded from the book profit of the financial year 2015-16. Similarly, the notional loss of Rs.500 shall be excluded from the book profit of the financial year 2016-17. For computation of book profit for the financial year 2017-18, the actual gain of Rs.2000, computed by taking into account the carrying cost of shares i.e. Rs.2000 and the actual sale price of unit i.e. Rs.4000 shall be included in the book profit of financial year 2017-18 for the purposes of levying MAT under section 115JB of the Income-tax Act.

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

34. Taxation Regime for Real Estate Investment Trusts (REIT) and Infrastructure Investment Trusts (Invit)

34.1 The Finance (No.2) Act, 2014 had amended the Income-tax Act to put in place a special taxation regime in respect of business trusts. The business trust as defined in section 2(13A) of the Income-tax Act before amendment by the Act, included a Real Estate investment Trust (REIT) and an Infrastructure Investment Trust(InviT) which is registered under regulations framed by Securities and Exchange Board of India (SEBI) in this regard.

34.2 The said tax regime for the business trust and their investors as contained in different sections of the Income-tax Act, *inter alia,* provided that:-

(i) The listed units of a business trust, when traded on a recognised stock exchange, would be liable to securities transaction tax (STT), and the long term capital gains shall be exempt and the short term capital gains shall be taxable at the rate of 15%.

(ii) In case of capital gains arising to the sponsor at the time of exchange of shares in Special Purpose Vehicle (SPV), being the unlisted company through which income generating assets are held indirectly by the business trusts, with units of the business trust, the taxation of gains is deferred.

(iii) The tax on such gains is to be levied at the time of disposal of units by the sponsor.

(iv) However, the preferential capital gains regime (consequential to levy of STT) available to other unit holders of business trust, is not available to the sponsor in respect of these units at the time of their transfer.

(v) For the purpose of computing capital gain, the cost of these units is considered as cost of the shares to the sponsor. The holding period of shares is included in computing the holding period of such units.

(vi) The pass through is provided in respect of income by way of interest received by the business trust from SPV 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.

(vii) However, withholding tax at the rate of 5 per cent. in case of payment of interest component of income distributed to non-resident unit holders, and at the rate of 10 per cent. in respect of payment of interest component of distributed income to a resident unit holder is required to be effected by the trust.

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

34.3 The deferral of capital gains provided to the sponsor of business trust had placed such a sponsor at a disadvantageous tax position vis-a vis direct listing of the shares of

the SPV. In case the sponsor holding the shares of the SPV decides to exit through the Initial Public Offer (IPO) route, then the benefit of concessional tax regime relating to capital gains arising on transfer of shares subject to levy of STT is available to him. The tax on short term capital gains (STCG) in such cases is levied @ 15% and the long term capital gain (LTCG) is exempt under section 10(38) of the Act. However, the benefit of concessional regime was not available to the sponsor at the time it offloads units of business trust acquired in exchange of its shareholding in the SPV through Initial offer at the time of listing of business trust on stock exchange.

34.4 In order to provide parity, it has been provided that,-

(i) the sponsor would get the same tax treatment on offloading of units under an Initial offer on listing of units as it would have been available had he offloaded the underlying shareholding through an IPO.

(ii)Chapter VII of the Finance (No. 2) Act, 2004 has been amended to provide that STT shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an Initial offer at the time of listing of units of business trust on similar lines as in the case of sale of unlisted equity shares under an IPO.

(iii) the benefit of concessional tax regime of tax @15 % on STCG and exemption on LTCG under section 10(38) of the Act shall be available to the sponsor on sale of units received in lieu of shares of SPV subject to levy of STT.

(iv) MAT deferral at the time of exchange of shares of SPV with units of business trust has also been provided (refer para 33.5).

34.5 Further, in case of a business trust being a REIT, the income is predominantly in the nature of rental income. This rental income arises from the assets held directly by REIT or held by it through an SPV. While the rental income received at the level of SPV gets passed through by way of interest or dividend to the REIT, the rental income directly received by the REIT was being taxed at REIT level and did not get pass through benefit.

34.6 In order to provide pass through to the rental income arising to REIT from real estate property directly held by it, it has been provided that :-

(i) any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust shall be exempt;

(ii) the distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income byway of renting or leasing or letting out any real estate asset owned directly by such REIT, shall be deemed to be income of such unit holder and shall be charged to tax.

(iii) the REIT shall effect TDS on rental income allowed to be passed through. In case of resident unit holder, tax shall be deducted @ 10%, and in case of

distribution to non-resident unit holder, the tax shall be deducted at rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax .

(iv) no deduction shall be made under section 194-I of the Income-tax Act where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset held directly by such REIT.

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

35. Pass through status to Category –I and Category –II Alternative Investment Funds

35.1 The provisions of section 10(23FB) of the Income-tax Act provide that any income of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall not form part of its total income. Section 115U of the said Act provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner, on current year basis, as if the person had made direct investment in the VCU.

35.2 These sections provide a tax pass through (i.e. income is taxable in the hands of investors instead of VCF/VCC) only to the funds, being set up as a company or a trust, which are registered (i) before 21.05.2012 as a VCF under SEBI (Venture Capital Funds) Regulations, 1996, or (ii) as venture capital fund being one of the sub-categories under category-I Alternative investment fund (AIF) regulated by SEBI (AIF) Regulations, 2012 w.e.f. 21.05.2012. This pass through is available only in respect of income which arises to the fund from investment in VCU (Venture Capital Undertaking), being a company which satisfies the conditions provided in SEBI (VCF) Regulations, 1996 or SEBI (AIF) Regulations, 2012 (AIF regulations) .

35.3 Under the AIF regulations, various types of AIFs have been classified under three separate categories as Category I, II and III AIFs. Category I includes AIFs which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the Government or regulators consider as socially or economically desirable. Category II AIFs are funds including private equity funds or debt funds which do not fall in Category I and III and which do not undertake leverage or borrowing other than to meet day-to-day operational requirements. Category III AIFs are funds which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. The funds can be set up as a trust, company, limited liability partnership and any other body corporate. Similarly, investment by AIFs can be in entities which can be a company, firm etc.

35.4 Pooled investment vehicles (other than hedge funds) engaged in making passive investments have been accorded pass through in certain tax jurisdictions. In order to rationalize the taxation of Category-I and Category-II AIFs (hereafter referred to as investment fund), a special tax regime has been provided. The taxation of income of such investment fund and their investors shall be in accordance with the new regime which is applicable to such funds irrespective of whether they are set up as a trust, company, or limited liability firm etc. The salient features of the special regime are as under:-

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

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

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

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

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

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

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

(viii) the income received by the investment fund would be exempt from TDS requirement vide Notification S.O. 1703 (E)dated 25th June,2015.

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

35.5 Further, the existing pass through regime shall continue to apply to VCF/VCC which had been registered under SEBI (VCF) Regulations, 1996. Remaining VCFs, being part of Category-I AIFs, shall be subject to the new pass through regime.

35.6 The application of the provisions of the new regime has been explained in the Memorandum explaining the provisions in the Finance Bill, 2015 by way of illustrations.

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

36. Furnishing of return of income by certain universities and hospitals referred to in section 10 (23C) of the Income-tax Act

36.1 Under the provisions of section 10 of the Income-tax Act, exemption under sub-clause (iiiab) and (iiiac) of clause (23C), subject to specified conditions, is available to such university or educational institution, hospital or other institution which is wholly or substantially financed by the Government.

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

36.3 The Income-tax Act has been amended to provide that entities covered under clauses (iiiab) and (iiiac) of clause (23C) of section 10 shall be mandatorily required to file their return of income.

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

37. Return of Income is to be filed by 'beneficial owner' or 'beneficiary' of a foreign asset

37.1 Sub-section (1) of section 139 of the Income-tax Act specifies the category of tax payers who are required to furnish their return of income. Fourth proviso to sub-section (1) of section 139 of the said Act provides that a resident who is not required to furnish a return of income but who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India shall furnish, on or before the due date, his return of income.

37.2 In the budget announcement of 2015 it was stated that the requirement of furnishing of return of income will be extended to beneficial owner of assets. Before the

amendment made by the Act, there was no requirement of furnishing the return if the asset was held by a person as a beneficial owner or he is a beneficiary of the foreign asset. It has been found that in a large number of cases foreign assets are held in the name of trusts/entities where the assessee is a beneficial owner or is a beneficiary. As a result, he escapes the requirement of furnishing the return of income and disclosing the foreign asset.

37.3 Accordingly, section 139 has been amended to provide for furnishing of return of income by the beneficial owner or beneficiary of a foreign asset. The amendment also defines the term 'beneficial owner' to mean an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. The term 'beneficiary' has been defined to mean an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

37.4 It has also been provided that a beneficiary of any asset (including any financial interest in any entity) located outside India is not required to furnish a return of income where, income, if any, arising from such asset is includible in the income of the beneficial owner in accordance with the provisions of the Income-tax Act.

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

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

38.1 Section 151 of the Income-tax Act provides for sanction from certain authorities before issue of notice, for reassessment of income escaping assessment, under section 148. Under certain specified circumstances, the Assessing Officer is required to obtain sanction before issue of notice under section 148. Section 151, before amendment made by the Finance Act, 2015, specified different sanctioning authorities based on- (i) whether scrutiny under sub-section (3) of section 143 or section 147 has been made earlier or not, (ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and (iii) the rank of the Assessing Officer proposing to issue notice.

38.2 In order to provide simplicity, section 151 has been amended so as to provide that no notice under section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval

of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

38.3 Applicability: This amendment has taken effect from 1st day of June, 2015.

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

39.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been conducted or requisition has been made. The provisions contained in sub-section (1) of the section 153C, before amendment made by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the Income-tax Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

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

39.3 Applicability: This amendment has taken effect from the 1st day of June, 2015.

40. Procedure for appeal by revenue when an identical question of law is pending before Supreme Court

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

40.2 There were no parallel provisions in the Income-tax Act, before amendments made by the Finance Act, 2015, enabling revenue not to file appeal for subsequent years where the Department is in appeal on the same question of law for an earlier year. As a result, appeals had been filed by the revenue year after year on the same question of law until it is finally decided by the Supreme Court thus, multiplying litigation.

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

40.4 The Commissioner or Principal Commissioner shall give such direction only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. However, in case no such acceptance is received, the Commissioner or Principal Commissioner may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal as per the normal provisions of appeal to Appellate Tribunal.

40.5 It has also been provided that where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within sixty days from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal

Commissioner and save as otherwise provided in the said section 158AA, all other provisions of Part B of Chapter XX shall apply accordingly.

40.6 Applicability: This amendment has taken effect from the 1st day of June, 2015.

41. Simplification of Tax Deduction at Source (TDS) mechanism for Employees Provident Fund Scheme (EPFS)

41.1 Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund scheme (PPFS) subject to fulfillment of certain conditions. The provident funds established under a scheme framed under EPF & MP Act, 1952 or PPFS exempted under section 17 of the said Act and recognised under the Income-tax Act are termed as Recognised Provident fund (RPF) under the Income-tax Act. The provisions relating to RPF are contained in Part A of the Fourth Schedule (Schedule IV-A) to the Income-tax Act.

41.2 Under the existing provisions of rule 8 of Schedule IV-A of the Income-tax Act, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation. However, in order to discourage pre-mature withdrawal and to promote long term savings, it has been provided that such withdrawal shall be taxable if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, closure of business, etc.) and does not opt for transfer of accumulated balance to any recognised provident fund maintained by the new employer. Rule 9 of the said Schedule further provides computation mechanism for determining tax liability of the employee in respect of such pre-mature withdrawal. For ensuring collection of tax in respect of these withdrawals, rule 10 of Schedule IV-A provides that the trustees of the RPF, at the time of payment, shall deduct tax as computed in rule 9 of Schedule IV-A.

41.3 Rule 9 of Schedule IV-A to the Income-tax Act provides that the tax on withdrawn amount is required to be calculated by re-computing the tax liability of the years for which the contribution to RPF has been made by treating the same as contribution to unrecognized provident fund. The trustees of PPFS, being generally part of the employer group, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under rule 9 of the Schedule-IV-A of the Act. However, at times, it is not possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes

of computation of the amount of tax liability under rule 9 of the Schedule-IV-A of the Income-tax Act.

41.4 In view of the above, a new section 192A has been inserted in Income-tax Act for deduction of tax at the rate of 10% on pre-mature taxable withdrawal from EPFS. However, deduction of tax on pre-mature withdrawal from the PPFS i.e. private provident fund exempted under section 17 of the EPF & MP Act,1952 and recognised under the Income-tax Act shall continue to be made in accordance with the rule 10 of the schedule IV-A read with sub-section (4) of section 192 of the Income-tax Act.

41.5 Further, to reduce the compliance burden of the employees having income below the taxable limit, a threshold of payment of Rs.30,000/- for applicability of this newly inserted section has been provided. In spite of providing this threshold for applicability of deduction of tax, there may be cases where the tax payable on the total income of the employees may be nil even after including the amount of pre-mature withdrawal.

41.6 For reducing the compliance burden of these categories of employees, it is further provided that the facility of filing self-declaration for non-deduction of tax under section 197A of the Income-tax Act shall be available to the employees receiving pre-mature withdrawal i.e. an employee can give a declaration in Form No. 15G to the effect that his total income including taxable pre-mature withdrawal from EPFS does not exceed the maximum amount not chargeable to tax and on furnishing of such declaration, no tax will be deducted by the trustee of EPFS while making the payment to such employee. Similar facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A of the Income-tax Act has been extended to the senior citizen employees receiving pre-mature withdrawal.

41.7 Some employees making pre-mature withdrawal may be paying tax at higher slab rates (20% or 30%). Therefore, the shortfall in the actual tax liability *vis-à-vis* TDS is required to be paid by these employees either by requesting their new employer to deduct balance tax or through payment of advance tax / self-assessment tax. For ensuring the payment of balance tax by these employees, furnishing of valid Permanent Account Number (PAN) by them to the EPFS is a prerequisite. The existing provisions of section 206AA of the Income-tax Act provide for deduction of tax @ 20% in case of non-furnishing of PAN where the rate of deduction of tax at source is specified. As mentioned earlier, there may be employees who may be liable to pay tax at the highest slab rate. In order to ensure the collection of balance tax from these employees, it has also been provided that non-furnishing of PAN to the EPFS for receiving these payments shall attract deduction of tax at the maximum marginal rate.

41.8 Applicability:- These amendments take effect from 1st June, 2015.

42. Rationalisation of provisions relating to deduction of tax on interest (other than interest on securities)

42.1 Section 194A(1) read with section 194A(3)(i) of the Income-tax Act provides for deduction of tax on interest (other than interest on securities) over a specified threshold, i.e. Rs.10,000 for interest payment by banks, co-operative society engaged in banking business (co-operative bank) and post office and Rs.5,000 for payment of interest by other persons. Further, sub-section (3) of section 194A *inter alia* also provides for exemption from deduction of tax in respect of following interest payments by co-operative society:

(i) Interest payment by a co-operative society to a member thereof or any other co-operative society. [Section 194A(3)(v)of the Income-tax Act]

(ii) Interest payments on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank. [Section 194A(3)(viia)(a) of the Income-tax Act]

(iii) Interest payment on deposits other than time deposit by a co-operative society engaged in the business of banking other than those mentioned in section 194A(3)(viia)(a) of the Act. [Section 194A(3)(viia)(b) of the Income-tax Act]

42.2 Therefore, as per the provisions of section 194A(1) read with provisions of sections 194A(3)(i)(b) and 194A(3)(viia)(b), co-operative bank is required to deduct tax from interest payment on time deposits if the amount of such payment exceeds specified threshold of Rs.10,000/-. However, as the provisions of section 194A(3)(v) of the Income-tax Act provide a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories.

42.3 This has led to dispute as to whether the co-operative banks, for which the specific provisions of tax deduction exist in the form of section 194A (1), section 194A(3)(i)(b) and section 194A(3)(viia)(b) of the Income-tax Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. The matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3)(viia)(b) of the Income-tax Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence, the co-operative banks are required to deduct tax on payment of interest on time deposit and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3)(v) of the Income-tax Act. This is because the specific provision of tax deduction provided under section 194A(3)(i)(b) and 194A(3)(viia)(b) of the Income-tax Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3)(v) of the Income-tax Act.

42.4 As there is no difference in the functioning of the co-operative banks and other commercial banks, the Finance Act, 2006 and Finance Act, 2007 amended the provisions of the Income-tax Act to provide for co-operative banks a taxation regime which is similar to that for the other commercial banks. Therefore, there is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail the exemption meant for smaller credit co-operative societies formed for the benefit of small number of members. However, as mentioned earlier, a doubt has been created regarding the applicability of the specific provisions mandating deduction of tax from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption is also applicable for payment of interest to member depositors.

42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of 1st June, 2015, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. Hence, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

42.6 However, the existing exemption provided under section 194A(3)(viia)(a) of the Income-tax Act to primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these co-operative credit societies/banks referred to in said clause (viia)(a) of section 194A(3) of the Income-tax Act shall not be required to deduct tax on interest payment to depositors even after the said amendment.

42.7 Further, the existing exemption provided under section 194A(3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

42.8 The existing provision of tax deduction at source (TDS) on payment of interest by banking company or co-operative bank applies only to the interest payment on time deposits made on or after the 1st day of July, 1995. The definition of "time deposits" provided in the section 194A of the Income-tax Act excludes recurring deposit from its scope. Therefore, payment of interest on recurring deposits by banking company or co-operative bank was not subject to TDS. The recurring deposit is also made for a fixed tenure and, therefore, is akin to time deposit. In view of this, the definition of 'time

deposits' as provided in Explanation 1 below clause (xi) of sub-section (3) of section 194A of the Income-tax Act has been amended so as to include recurring deposits within its scope for the purposes of deduction of tax under section 194A of the Income-tax Act. However, the existing threshold limit of Rs 10,000 for non-deduction of tax shall also be applicable in case of interest payment on recurring deposits to safeguard interests of small depositors.

42.9 The proviso to clause (i) of sub-section (3) of section 194A of the Income-tax Act provides that the interest income for the purpose of deduction of tax by the banking company or the co-operative society engaged in carrying on the business of banking or the public company shall be computed with reference to a branch of these entities. As currently, most of these entities are computerised and follow core banking solutions for crediting interest, there is no rationale for continuing branch wise calculation of interest by the entities which have adopted core banking solutions. Therefore, a new proviso has been inserted to section 194A(3)(i) of the Income-tax Act so as to provide that in case of a banking company or co-operative society or the public company which has adopted core banking solution, the computation of interest income for the purposes of deduction of tax under section 194A of the Income-tax Act shall be made with reference to the income credited or paid by the banking company or the co-operative society or the public company.

42.10 Under section 194A(3)(ix) of the Income-tax Act, tax is not required to be deducted from the interest credited or paid on the compensation amount awarded by the Motor Accident Claim Tribunal if the amount of such interest credited or paid during a financial year does not exceed Rs.50,000/-. Finance (No.2) Act, 2009 amended the provisions of section 56 of the Income-tax Act and substituted section 145A of the income-tax Act to, *inter alia,* provide that interest income received on compensation or enhanced compensation shall be deemed to be the income of the year in which the same has been received. However, the provisions of section 194A(3)(ix) of the Income-tax Act provided for deduction of tax from interest paid or credited on compensation, whichever is earlier. Section 145A (b) of the Income-tax Act provides an exception to method of accounting contained in section 145 of the Income-tax Act and provides for taxation of interest on compensation on receipt basis only. Therefore, deduction of tax on such interest on mercantile/accrual basis results into undue hardship and mismatch. Hence, the provisions of section 194A(3) of the Income-tax Act has been amended so as to provide that deduction of tax under section 194A of the Income-tax Act from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds Rs.50,000/-.

42.11 Applicability:- These amendments takes effect from 1st June, 2015.

43. Clarification regarding deduction of tax from payments made to transporters

43.1 Under the provisions of section 194C of the Income-tax Act payment to contractors is subject to TDS at the rate of 1% in case the payee is an individual or Hindu undivided family and at the rate of 2% in case of other payees if such payment exceeds Rs. 30,000 or aggregate of such payment in a financial year exceeds Rs. 75,000. Prior to 1.10.2009, section 194C of the Income-tax Act provided for exemption from TDS to an individual transporter who did not own more than two goods carriage at any time during the previous year.

43.2 The Finance (No.2) Act, 2009 substituted section 194C of the Income-tax Act with effect from 1.10.2009, which *inter alia* provided for non- deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if the contractor furnishes his Permanent Account Number (PAN) to the payer. The memorandum explaining the provisions of Finance (No.2) Bill, 2009 indicates that the intention was to exempt only small transport operators (as defined in section 44AE of the Act) from the purview of TDS on furnishing of Permanent Account Number (PAN). Thus, the intention was to reduce the compliance burden on the small transporters. However, the language of sub-section (6) of section 194C of the Income-tax Act did not convey the desired intention and as a result all transporters, irrespective of their size, were claiming exemption from TDS under the existing provisions of sub-section (6) of section 194C of the Income-tax Act by furnishing their PAN.

43.3 As there is no rationale for exempting payment to all transporters, irrespective of their size, from the purview of TDS, the provisions of section 194C(6) of the Income-tax Act have been amended so as to expressly provide that the relaxation under sub-section (6) of section 194C of the Income-tax Act for non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Income-tax Act (i.e a person who is not owning more than 10 goods carriages at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN, to the person paying such sum.

43.4 Further, this exemption from TDS is applicable only in respect of transport charges received for plying, hiring or leasing of goods carriage (s) owned by the transporter. Therefore, if a person receives payment in respect of plying, hiring or leasing of goods carriage (s) which are not owned by him, he shall not be entitled to claim exemption from TDS in respect of these payments.

43.5 The condition of not owning more than ten goods carriages by the transporter is required to be fulfilled on the date on which the amount is credited or paid, whichever is earlier. In case a transporter does not own ten goods carriages on the date on which the amount is credited or paid but becomes owner of ten goods carriages later in the previous year, the payer shall not be required to deduct tax from the payment made to

the transporter during the period of the previous year when he was not owning more than ten goods carriages. However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transporter owned more than ten goods carriages.

43.6 Further, for determining the aggregate amounts of sum credited or paid for the purposes of proviso to sub-section (5) of section 194C all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial year during which the transporter was not owning more than ten goods carriages. However, as the provisions of section 194C(6) were amended with effect from 1st June, 2015, for determining the aggregate payments for the financial year 2015-16, the payments made on or after 1st June, 2015 shall only be taken into account. This is explained by way of following illustration:-

'T', an individual owns five goods carriages from 1st April, 2015 to 31st October, 2015. On 1st November, 2015, he purchased 6 more goods carriages. On 1st January, 2016, he sold 8 goods carriages. 'P' makes following payment of transport charges to 'T' during the financial year 2015-16:

15th April, 2015	-	Rs. 35,000
15th July, 2015	-	Rs. 40,000
15th November, 2015	-	Rs. 20,000
15th December, 2015	-	Rs. 20,000
15th February, 2016	-	Rs. 50,000

No tax is deductible on payment made on 15th April, 2015 if 'T' furnishes his PAN as per the pre-amended provisions of section 194C (6) of the Income-tax Act. No tax is deductible from payment made on 15th July, 2015 if 'T' furnishes a declaration that he does not own more than 10 goods carriages during the relevant financial year along with his PAN as per the requirement of the amended provision of section 194C(6) of the Income-tax Act. The tax is also not deductible from payment made on 15th November, 2015 as the payment does not exceed Rs.30,000 and the aggregate of payments during the period from 1st June, 2015 [i.e. the date of effectivity of the amended provision of section 194C(6)] to15th November, 2015 does not exceed Rs.75,000 as specified in proviso to section 194C(5) of the Income-tax Act. Tax at the rate of 1% i.e. Rs.200/- is deductible from payment made on 15th December, 2015 as 'T' owns more than 10 goods carriages on that date and the aggregate of the payments made during the period from 1st June, 2015 to 15th December, 2015 exceeded the threshold of Rs.75,000. Tax is also deductible from the payment made on 15th February, 2016 even though 'T' did not own more than 10 goods carriages on 15th February, 2016. This is because 'T' owned more than10 goods carriages during the financial year 2015-16 and the payment exceeded both the specified threshold for individual and aggregate payments. In view of this, 'T' is

not eligible to claim the exemption under section 194C(6) of the Income-tax Act by furnishing declaration along with the PAN in accordance with the provisions of section 194C(6) in respect of payments made on 15th December,2015 and 15the February,2016.

43.7 Further, for the purposes of ensuring uniformity in the format of declaration to be furnished by the payee under section 194C(6) of the Income-tax Act for receiving the payment without deduction of tax, the following format for furnishing of declaration is specified:

"DECLARATION UNDER SECTION 194C(6) OF THE INCOME-TAX ACT, 1961

No………(To be provided by payee) Date……………..

From : (Name & address of the payee)

To : (Name & address of the payer)

The freight/transport charges amounting to Rs…………for transportation of goods by goods carriages having Registration Number …………may be paid or credited to my account without deduction of tax under section 194C of the Income-tax Act, 1961. I/We, ……………….. in the capacity of ……………hereby declare that I/We do not own more than ten goods carriage and also did not own more than ten goods carriage at any time duringthe period from 1st April …….. to ……………..My Permanent Account Number (PAN) is ……….I hereby enclose a self-attested photocopy of my PAN Card.

…………….……………..

Place: Signature of the person making declaration"

43.8 It may be mentioned here that the person responsible for paying to transporter is required to report the particulars of payment made to transporters without deduction of tax in compliance to the provision of section 194C(6) of the Income-tax Act in the statement of deduction of tax (Form 26Q) as per the provision of rule 31A(4)(vi) of the Income-tax Rules, 1962. Non-furnishing or incomplete furnishing of this information shall make the deductor liable for penalty as per the provision of section 271H of the Income-tax Act.

43.9 **Applicability:-** This amendment takes effect from 1st June, 2015.

44. Extension of eligible period of concessional tax rate under section 194LD of the Income-tax Act

44.1 The provisions of section 194LD of the Income-tax Act provide for lower withholding tax at the rate of 5 per cent. in case of interest payable to FIIs and QFIs on their investments in Government securities and rupee denominated corporate bonds provided that the rate of interest does not exceed the rate notified by the Central Government in this regard. Before amendment by the Act, this benefit was available on interest payable at any time on or after the 1st day of June, 2013 but before the 1st day of June, 2015

44.2 The limitation date of the eligibility period for benefit of reduced rate of tax available under section 194LC in respect of external commercial borrowings (ECB) had been extended from 30th June, 2015 to 30th June, 2017 by Finance (No.2) Act, 2014.

44.3 Accordingly, section 194LD has been amended to provide that the concessional rate of 5% withholding tax on interest payment under section 194LD will now be available on interest payable upto 30th June, 2017.

44.4. ***Applicability: -*** This amendment takes effect from 1st June, 2015.

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

45.1 The Finance (No.2) Act, 2014, inserted section 194DA in the Income-tax Act with effect from 1.10.2014 to provide for deduction of tax at source at the rate of 2% from payments made under life insurance policy, which are chargeable to tax. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year is less than Rs. 1,00,000.

45.2 In spite of providing high threshold for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including the payment made under life insurance, will be nil. The existing provisions of section 197A of the Income-tax Act *inter alia* provide that tax shall not be deducted, if the recipient of the certain payment on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No.15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil.

45.3 In order to reduce the compliance burden for those recipients whose tax liability on estimated total income is nil, the provisions of section 197A of the Income-tax Act has been amended so as to provide that the recipients of payments referred to in section 194DA of the Income-tax Act shall also be eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A of the Income-tax Act.

45.4 **Applicability:-** This amendment takes effect from 1st June, 2015.

46. Relaxing the requirement of obtaining TAN for certain deductors

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

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

46.3 Applicability:- This amendment takes effect from 1st June, 2015.

47. Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)

47.1 Under Chapter XVII-B of the Income-tax Act, a person is required to deduct tax on certain specified payments at the specified rate if the payment exceeds the specified threshold. The person deducting tax ('the deductor') is required to file a quarterly Tax Deduction at Source (TDS) statement containing the details of deduction of tax made during the quarter by the prescribed due date. Similarly, under Chapter XVII-BB of the Income-tax Act, a person is required to collect tax on certain specified receipts at the specified rates. The person collecting tax ('the collector') is also required to file a quarterly Tax Collection at Source (TCS) statement containing the details of collection of tax made during the quarter by the prescribed due date.

47.2 In order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Income-tax Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under section 234E of the Income-tax Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector.

47.3 Finance (No.2) Act, 2009 inserted section 200A in the Income-tax Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 243E was inserted after the insertion of section 200A in the Income-tax Act, the existing provisions of section 200A of the Income-tax Act did not provide for determination of fee payable under section 234E of the Income-tax Act at the time of processing of TDS statements. Therefore, the provisions of section 200A of the Income-tax Act has been amended so as to enable computation of fee payable under section 234E of the Income-tax Act at the time of processing of TDS statement under section 200A of the Income-tax Act.

47.4 Currently, the provisions of sub-section (3) of section 200 of the Income-tax Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Income-tax Act *inter alia* provides processing of the TDS correction statement. However, there did not exist any provision in the Income-tax Act for allowing a collector to file correction statement in respect of TCS statement already furnished. Therefore, the provision of section 206C of the Income-tax Act has been amended so as to allow the collector to furnish TCS correction statement.

47.5 The Income-tax Act contains detailed provisions for processing of TDS statements, however, there did not exist any provision for processing of TCS statement. As the mechanism of TCS statement is similar to TDS statement, a new section 206CB has been inserted in the Income-tax Act for enabling processing of TCS statements on the lines of existing provision for processing of TDS statement contained in section 200A of the Income-tax Act. This newly inserted section also incorporates the mechanism for computation of fee payable under section 234E of the Income-tax Act for late furnishing of TCS statement.

47.6 Under the existing provisions of the Income-tax Act, after processing of TDS statement, an intimation is generated specifying the amount payable or refundable. This intimation is (i) subject to rectification under section154 of the Income-tax Act; (ii) appealable under section 246A of the Income-tax Act; and (iii) deemed as notice of demand under section 156 of the Income-tax Act. As the intimation generated after the processing of TCS statement is similar to the intimation generated after processing of TDS statement, the provisions of the Income-tax Act have been further, amended to provide that intimation generated after processing of TCS statement shall also be—

(i) subject to rectification under section 154 of the Income-tax Act;

(ii) appealable under section 246A of the Income-tax Act; and

(iii) deemed as notice of demand under section 156 of the Income-tax Act.

47.7 As the intimation generated after proposed processing of TCS statement shall be deemed as a notice of demand under section 156 of the Income-tax Act, the failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions

of section 220(2) of the Income-tax Act. However, section 206C (7) of the Income-tax Act also contains provisions for levy of interest for non-payment of tax specified in the intimation to be issued. To remove the possibility of charging interest on the same amount for the same period of default both under section 206C (7) and section 220(2) of the Income-tax Act, the provisions of section 220 of the Income-tax Act have been amended so as to provide that where interest is charged for any period under section 206C (7) of the Income-tax Act on the tax amount specified in the intimation issued under amended provision, then, no interest shall be charged under section 220(2) of the Income-tax Act on the same amount for the same period.

47.8 Under the existing scheme of payment of TDS and TCS, Government deductors/collectors are allowed to make payment of tax deducted/collected by them without production of challan i.e. through book entry. For payment of tax deducted/collected through book entry, the Drawing and Disbursing Officer (DDO) intimates the TDS/TCS amount to the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer (PAO/TO/CDDO) who credits the TDS/TCS amount to the credit of Central Government through book entry. For granting credit to the deductee for TDS/TCS paid through book entry by the Government deductors, a system of capturing information about the credit by PAO/TO/CDDO has been introduced by amending rule 30 and rule 37CA of the Income-tax Rules, 1962 with effect from 1st April, 2010.

47.9 The said rules provide that the PAO/TO/CDDO shall file the details of payment of TDS/TCS made through book entry in Form 24G. This system of reporting of payment of TDS/TCS made through book entry has improved the mechanism of reporting of TDS/TCS by the Government deductor to some extent.

47.10 However, in the absence of any specific provisions in the Income-tax Act for enforcing the furnishing of Form 24G, it has been noticed that in a large number of cases, PAO/ TO/CDDOs did not file Form 24G in prescribed time. Delay in furnishing of the Form 24G results into delay in furnishing of the TDS/TCS statement by the DDO.

47.11 In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, the provisions of sections 200 and 206C of the Income-tax Act have been amended so as to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars.

47.12 To ensure compliance, provisions of section 272A of the Income-tax Act have also been amended to provide that a penalty of Rs.100/- for every day of default, subject

to the limit of the amount deductible or collectible, shall be levied in case of failure to furnish the said statement.

47.13 Under section 192 of the Income-tax Act, the person responsible for paying income chargeable under the head "salaries" under the Income-tax Act (DDO) is authorised to allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Income-tax Act for the purposes of estimating income of the assessee or computing the amount of the tax deductible under the said section.

47.14 The evidence/proof/particulars for some of the deductions/exemptions/allowances/set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self occupied house property etc. is generally not available with the DDO. In these circumstances, the DDO has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc. As the provisions of the Income-tax Act did not contain any guidance regarding nature of evidence/documents to be obtained by the DDO, there was no uniformity in the approach of the DDO in this matter.

47.15 In order to bring uniformity and certainty in this matter, the provisions of section 192 of the Income-tax Act have been amended so as to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1) of the Income-tax Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Income-tax Act in the prescribed form and manner.

47.16 The existing provisions of sub-section (6) of section 195 of the Income-tax Act, prior to its amendment by the Act, provided that the person referred to in section 195(1) of the Income-tax Act shall furnish prescribed information. Section 195(1) of the Income-tax Act provides that any person responsible for paying any interest (other than interest referred to in sections 194LB or 194LC or 194LD of the Income-tax Act) or any sum chargeable to tax (not being salary income) to a non-resident, not being a company, or to a foreign company, shall deduct tax at the rates in force.

47.17 The mechanism of obtaining of information in respect of remittances fulfils twin objectives of ensuring deduction of tax at appropriate rate from taxable remittances as well as identifying the remittances on which the tax was deductible but the payer has failed to deduct the tax. Therefore, obtaining of information only in respect of remittances which the remitter declared as taxable defeats one of the main principles of obtaining information for foreign remittances i.e. to identify the taxable remittances on which tax was deductible but was not deducted.

47.18 In view of this, the provisions of section 195 of the Income-tax Act have been amended so as to provide that the person responsible for paying any sum, whether

chargeable to tax or not, to a non-resident, not being a company, or to a foreign company, shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed. Further, there was no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident.

47.19 For ensuring submission of accurate information in respect of remittance to non-resident, a new section 271-I has been inserted in the Income-tax Act to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195 of the Income-tax Act, a penalty of one lakh rupees shall be levied. Further, the provisions of section 273B of the Income-tax Act have been amended so as to provide that no penalty shall be imposable under this new provision if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under sub-section (6) of section 195 of the Income-tax Act.

47.20 Applicability:- These amendments take effect from 1st June, 2015.

48. Interest for defaults in payment of advance tax in case of re-assessment and where additional income is disclosed before the Settlement Commission under section 245C

48.1 The provisions contained in sub-section (3) of section 234B of the Income-tax Act, before its amendment by the Act, provided that where the total income is increased on reassessment under section 147 or section 153A the assessee shall be liable for interest at the rate of 1 per cent. on the amount of the increase in total income for the period commencing from date of determination of total income under sub-section (1) of section 143 or on regular assessment and ending on the date of reassessment under section 147 or section 153A of the Income-tax Act.

48.2 Interest is charged under section 234B on the principle that the amount of tax determined on the total income determined under section 143(1) or on assessment or reassessment or total income declared in a settlement application was the tax payer's true liability right from the beginning and it was with reference to that amount the advance tax should have been paid within the prescribed due date. Accordingly, clause (3) of section 234B of the Income-tax Act has been amended so as to provide that the period for which the interest is to be computed will begin from the 1st day of April next following the financial year and end on the date of determination of total income under section 147 or section 153A.

48.3 The provision contained in sub-section (4),prior to its amendment by the Act, provided that where on an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced

accordingly. However, in case an application is filed before the Settlement Commission under section 245C declaring an additional amount of income-tax, there is no specific provision in section 234B for charging interest on that additional amount.

48.4 Accordingly, a new sub-section (2A) has been inserted in section 234B of Income-tax Act so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section.

48.5 It has also been provided that where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.

48.6 Sub-section (6B) of section 245D of the Income-tax Act provides that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4) of section 245D of the Income-tax Act, as a result of which the total income determined by the Commission may increase or decrease. Accordingly, section 234B of the Income-tax Act has been amended so as to provide that where as a result of rectification order under sub-section (6B) of section 245D, the amount on which interest was payable under clause (b) of sub-section (2A) of section 234B is increased or reduced, the interest shall also be increased or reduced accordingly .

48.7 **Applicability:** These amendments have taken effect from 1st day of June, 2015.

49. Settlement Commission

49.1 As per the provision of section 245A of the Income-tax Act an application for settlement can be made in a case, for which, any proceeding for assessment is pending before an Assessing Officer on the date of application. The assessment proceedings in a case of re-assessment under section 147, before amendments made by the Act, were defined to commence from the date of issue of notice under section 148 of the Act.

49.2 It was observed that issue relating to escapement of income often involves more than one assessment year. Therefore, before amendment made by the Act, in such case the assessee was eligible to approach Settlement Commission only for the assessment

year for which notice under section 148 has been issued. For all other assessment years where there is escapement, the assessee was eligible to file settlement application only after notice under section 148 has been issued for all such assessment years.

49.3 In order to obviate the need for issue of notice in all such assessment years, clause (i) of the Explanation to clause (b) of section 245A of the Income-tax Act has been amended to provide that where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued, but such notice could have been issued on such date if the return of income for such other assessment years have been furnished under section 139 or in response to notice under section 142 of the Income-tax Act.

49.4 The provision contained in clause (iv) of the Explanation to clause (b) of section 245A of the Income-tax Act, before its amendment by the Act, provided that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia) of the said Explanation, shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment was made. Clause (iv) of the Explanation to clause (b) of section 245A of the Income-tax Act has been amended so as to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia) of the said Explanation, shall be deemed to have commenced from the date on which a return of income of that assessment year is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made.

49.5 The provision contained in sub-section (6B) of section 245D of the Income-tax Act, before its amendment by the Act, provided that the Settlement Commission may rectify any order passed by it under sub-section (4) within a period of six months from the date of the order. There was no provision for additional time where the assessee or the Commissioner files an application for rectification towards the end of the limitation period.

49.6 Accordingly, sub-section (6B) of section 245D of the Income-tax Act has been amended so as to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4), at any time within a period of six months from the end of month in which the order was passed or, on an application made by the Principal Commissioner or Commissioner or the applicant before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

49.7 The provision contained in sub-section (1) of section 245H of the Income-tax Act, before its amendment by the Act, provided that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, immunity from prosecution. With a view to provide for justification for grant of immunity from penalty and prosecution, sub-section (1) of section 245H of the Income-tax Act has been amended to provide that the Settlement Commission while granting immunity from prosecution to any person shall record the reasons in writing in the order passed by it.

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

49.9 The provision contained in section 245K of the Income-tax Act, before its amendment by the Act, provided that in certain situations a person shall not be entitled to subsequent application for settlement before Settlement Commission. However, bar on subsequent application for settlement was applicable to only that person. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeated the purpose of restricting the opportunity of approaching the Settlement Commission only once.

49.10 Accordingly, section 245K of the Income-tax Act has been amended to provide that any person 'related' to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,- (i) where such person is an individual, any company in which such person holds more than fifty percent. of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent. of the profits at any time, or any Hindu undivided family in which such person is a karta; (ii) where such person is a company, any individual who held more than fifty percent. of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person; (iii) where such person is a firm or association of persons or body of individual, any individual who was entitled to more than fifty percent. of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person; (iv) where such person is an Hindu undivided family, the karta of that Hindu undivided family.

49.11 The provision contained in section 132B of the Income-tax Act, before its amendment by the Act, provided that the asset seized under section 132 or requisitioned under section 132A may be adjusted against the amount of existing liability under the Income-tax Act, the Wealth-tax Act etc. and the amount of liability determined on completion of assessment. It was observed that in many cases applicants request the Settlement Commission to direct the Commissioner to adjust seized cash in their cases towards the tax liability arising on additional income disclosed in the application. Since such liability was not an 'existing' liability and in the absence of specific provision, the Assessing Officer was unable to adjust the same.

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

49.13 Applicability: These amendments have taken effect from 1st day of June, 2015.

50. Eligibility for appointment as Law Member in the Authority for Advance Rulings (AAR)

50.1 The provision of section 245-O of the Income-tax Act, before its amendment by the Act, provided that a person from Indian legal Service shall be qualified for appointment as law member who is an Additional Secretary to the Government of India.

50.2 In order to widen the scope for eligibility, section 245-O has been amended to provide that a person from Indian legal Service who is, or is qualified to be, an Additional Secretary to the Government of India shall be qualified for appointment as a law Member.

50.3 Applicability: This amendment has taken effect from 1st April, 2015.

51. 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

51.1 Sub-clause (vi) of clause (23C) of section 10 of the Income-tax provides that any income received by a person on behalf of any university or other educational institution existing solely for educational purposes and not for purpose of profit and which may be approved by the prescribed authority is not liable to tax. Similarly, sub-clause (via) of clause (23C) of section 10 of the said Act provides that any income received by a person on behalf of any hospital or other institution for treatment of persons suffering from illness or mental defectiveness or treatment of persons during convalescence or persons requiring medical attention, existing solely for philanthropic purposes and not for the purpose of profit is not liable to tax if such hospital or institution is approved by the prescribed authority.

51.2 The provisions contained in sub-section (1) of section 253 of the Income-tax specify orders that are appealable before ITAT. Order passed by the prescribed authority under sub-clauses (vi) and (via) of clause (23C) of section 10 was not included in this sub-section. The decision of the prescribed authority to refuse to grant approval can have significant implications for the educational or medical institution under the Income-tax Act.

51.3 Further, under a comparable provision an order for refusal to register a charitable trust under section 12AA of the Income-tax Act is appealable before the Appellate Tribunal. Accordingly, sub-section (1) of section 253 of the Income-tax Act has been amended to provide that an assessee aggrieved by the order passed by the prescribed authority under sub-clause (vi) or (via) of section 10(23C) of the Income-tax Act may appeal to the Appellate Tribunal.

51.4 ***Applicability:*** This amendment has taken effect from 1st day of June, 2015.

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

52.1 The provision contained in sub-section (3) of section 255 of the Income-tax Act, before amendment by the Act, provided for disposal of appeals by single member bench of Tribunal in cases where total income of assessee as computed by the Assessing Officer did not exceed five lakh rupees. This limit of total income of five lakh rupees for a single member bench was last revised in 1998.

52.2 Considering the rise in number of cases before ITAT where total income of assessee exceeded five lakh rupees, sub-section (3) of section 255 of the Income-tax Act has been amended to provide that a single member bench may dispose of a case where the total income of assessee as computed by the Assessing Officer does not exceed fifteen lakh rupees.

52.3 **Applicability:** This amendment has taken effect from 1st day of June, 2015.

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

53.1 The provisions contained in sub-section (1) of section 263 of the Income-tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

53.2 The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the

issue, section 263 of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,— (a) the order is passed without making inquiries or verification which, should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

53.3 Applicability: This amendment has taken effect from 1st day of June, 2015.

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

54.1 Provisions contained in section 269SS of the Income-tax Act, before amendment by the Act, provided that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more. However, certain exceptions were provided in the section.

54.2 Similarly, the provisions contained in section 269T of the Income-tax Act, before amendment by the Act, provided that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more.

54.3 In order to curb generation of black money by way of dealings in cash in immovable property transactions, section 269SS of the Income-tax Act has been amended to provide that no person 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(specified sum) otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

54.4 Section 269T of the Income-tax Act has also been amended 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 bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

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

54.6 **Applicability:** These amendments have taken effect from 1st day of June, 2015.

55. 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

55.1 The provisions contained in clause (c) of sub-section (1) of section 271 of the Act, before amendment by the Act, provided that penalty for concealment of income or furnishing inaccurate particulars of income is to be levied on the "amount of tax sought to be evaded", which has been defined, inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.

55.2 Problems have arisen in the computation of amount of tax sought to be evaded where the concealment of income or furnishing inaccurate particulars of income occurs in the computation of income under provisions of section 115JB or 115JC of the Income-tax Act and also under the provisions other than the provisions of section 115JB or 115JC of the Income-tax Act (hereafter referred as general provisions). Further, courts have held that penalty under clause (c) of sub-section (1) of section 271 of the Income-tax Act cannot be levied in cases where the concealment of income occurs with regard to the income computed under general provisions and the tax is paid under the provisions of section 115JB or 115JC of the Income-tax Act.

55.3 Tax paid under the provisions of section 115JB or 115JC over and above the tax liability arising under general provisions is available as credit for set off against future tax liability. Understatement of income and the tax liability thereon under general provisions results in larger amount of such credit becoming available to the assessee for set off in future years. Therefore, where concealment of income, as computed under the general provisions, has taken place, penalty under clause (c) of sub-section (1) of section 271 should be leviable even if the tax liability of the assessee for the year has been determined under provisions of section 115JB or 115JC of the Income-tax Act.

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

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

56. Certain accountants not to give reports/certificates

56.1 The Income-tax Act contains several provisions (e.g. section 44AB, section 80-IA, section 92E, section 115JB, etc.) which mandate the taxpayers to furnish audit reports and certificates issued by an 'accountant' for ensuring correct reporting/computation of taxable income by the tax payers. Explanation below section 288(2) of the Income-tax Act defines an 'accountant' as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2) of the Companies Act, 1956, of the companies registered under any State).

56.2 The Comptroller and Auditor General of India (C&AG) published its report on "Appreciation of Third Party (Chartered Accountant) Certification in Assessment Proceedings" (No.32 of 2014). In para 3.9 of the Report, it has been stated that the Chartered Accountant Act, 1949 debars an auditor to express his opinion on the financial statement of any business or any enterprise in which he, his relative, his firm or partner in the firm, has substantial interest. However, during the course of audit, it has been noticed that an auditor has furnished his report in Form 56F [Report of accountant under section 10A(5) of the Income-tax Act] in respect of a closely held company in which the auditor's brother was the managing director.

56.3 To ensure the independence of auditor, sub-section (3) of section 141 of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor. The audit/certification function under the Income-tax Act is mainly provided for protecting the interests of revenue. An auditor who is not independent cannot meaningfully discharge his function of protecting the interests of revenue. Therefore, the provisions of section 288 of the Income-tax Act have been amended so as to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Income-tax Act in respect of that company.

56.4 On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Income-tax Act in respect of non-company has also been provided. However, it is provided that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Income-tax Act as authorised representative on behalf of that assessee. It has been further provided that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for

a period of 10 years from the date of such conviction. The definition of 'accountant' in Explanation below section 288(2) of the Income-tax Act has also been revised on the lines of definition of 'chartered accountant' in the Companies Act, 2013.

56.5 Applicability:- These amendments takes effect from 1st June, 2015.

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

57.1 Sub-section (1) of section 91 of the Income-tax Act provides relief to Indian residents in respect of income-tax on the income which is taxed in India as well as in the country with which there is no Double Taxation Avoidance Agreement (DTAA) by providing a deduction from the Indian income-tax of a sum calculated on such doubly taxed income, at the Indian rate of tax or the rate of tax of said country, whichever is lower. In cases of countries with which India has entered into an agreement for the purposes of avoidance of double taxation under section 90 or section 90A, a relief in respect of income-tax on doubly taxed income is available as per the respective DTAAs.

57.2 Income-tax Act, before amendment made by the Finance Act, 2015, did not provide the manner for granting credit of taxes paid in any country outside India. Therefore, sub-section (2) of section 295 of the Income-tax Act has been amended to enable CBDT to prescribe 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 section 90, or under section 90A, or under section 91, against the income-tax payable under the Income-tax Act.

57.3 Applicability: These amendments have taken effect from 1st day of June, 2015.

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

58.1 Wealth-tax Act, 1957 ('the WT Act') was introduced w.e.f. 01.04.1957 on the recommendation of Prof. Nicholas Kaldor for achieving twin major objectives of reducing inequalities and helping the enforcement of Income-tax Act through cross checks. Accordingly, all the assets of the assessees were taken into account for computation of net-wealth. The levy of wealth-tax was thoroughly revised on the recommendation of Tax Reform Committee headed by Raja J. Chelliah vide Finance Act, 1992 with effect from 01.04.1993. The Chelliah Committee had recommended abolition of wealth-tax in respect of all items of wealth other than those which can be regarded as unproductive forms of wealth or other items whose possession could legitimately be discouraged in the social interest.

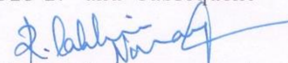
58.2 As per the Wealth-tax Act, prior to its amendment by the Act, wealth-tax was levied on an individual or HUF or company, if the net wealth of such person exceeded Rs.30 lakh on the valuation date, i.e. last date of the previous year. For the purpose of computation of taxable net wealth, only few specified assets are taken into account.

58.3 The actual collection from the levy of wealth-tax during the financial year 2011-12 was Rs.788.67 crore and during the financial year 2012-13 was Rs.844.12 crore only. The number of wealth-tax assessee was around 1.15 lakh in 2011-12. Although only a nominal amount of revenue is collected from the levy of wealth-tax, this levy created a significant amount of compliance burden on the assessees as well as administrative burden on the department. This is because the assessees are required to value the assets as per the provisions of Wealth-tax Rules for computation of net wealth and for certain assets like jewellery, they are required to obtain valuation report from the registered valuer.

58.4 Further, the assets which were specified for levy of wealth-tax, being unproductive, such as jewellery, luxury cars, etc. are difficult to be tracked and this gives an opportunity to the assessees to under report/under value the assets which are liable for wealth-tax. Due to this, the collection of wealth-tax over the years has not shown any significant growth and has only resulted into disproportionate compliance burden on the assessees and administrative burden on the department.

58.5 Therefore, the levy of wealth tax under the Wealth-tax Act, 1957 has been abolished with effect from the 1st April, 2016. It has also been provided that the objective of taxing high net worth persons shall be achieved by levying a surcharge on tax payer earning higher income as levy of surcharge is easy to collect & monitor and also does not result into any compliance burden on the assessee and administrative burden on the department. The details regarding levy of enhanced surcharge on this account are given under the heading **"Rates of Income-tax"**. Further the information relating to assets which is currently required to be furnished in the wealth-tax return shall be captured by suitably modifying income-tax return for assessment year 2016-17 and subsequent assessment years.

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



[R. Lakshmi Narayanan]
Under Secretary to the Government of India
Dated .11.2015
[F. No. 142/14/2015-TPL]

Copy to:-
1. PS to FM/OSD to FM/OSD to MoS(R).
2. PS to Secretary (Revenue)/OSD to Advisor to FM.
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/Director General of Income-tax – with a request to circulate amongst all officers in their regions/charges.
5. DGIT (International Taxation)/DGIT (Systems)/DGIT (Vigilance)/DGIT (Admn.)/DGIT (NADT)/DGIT (L&R).
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7. DIT (IT)/ DIT (RSP&PR)/DIT (Audit)/ DIT (Vig.)/ DIT (Systems)/DIT (O &MS)/ DIT (Spl. Inv.)
8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Charted Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list.

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