

DIRECT TAXES



GLIMPSES OF FINANCE ACT, 2014

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Key Highlights



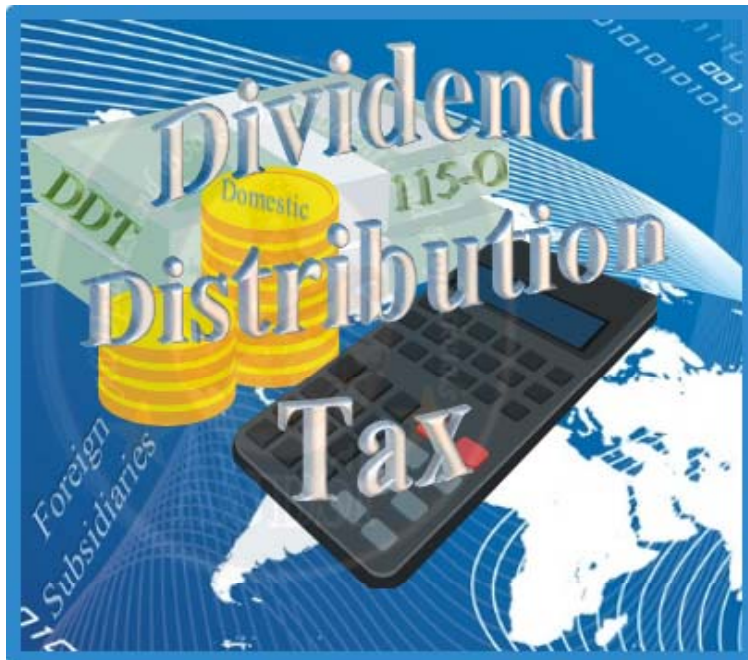
KEY HIGHLIGHTS



- Finance Act 2014 has introduced new concept of tax by Tax Structure of DDT S.115-O
- Another new concept a trust can get listed and traded at stock exchange by new format of PPP as Business Trust is being introduced in the Finance Act 2014
- There is only one retrospective amendment in S. 45 relating to CTT in the Finance Act 2014 with effect from AY 2014-15



DIVIDEND DISTRIBUTION TAX



Dividend & Income Distribution Tax

S.115-O : Grossing-up of DDT



- **S.115-O:** Earlier dividend tax was paid on the amount of dividend distributed. However from the time of amendment i.e 1st October 2014, the Dividend distributed shall be considered as 85% and shall be increased to 100%. The DDT is computed on such grossed up amount.
- **Example:**
 - **Dividend amount distributed = Rs.100**
 - DDT payable u/s 115-O is **Rs.17.647** (as 15% of Rs.117.647 is Rs.17.647 and net amount is Rs.117.647 - Rs.17.647 = **Rs.100**) + 10% surcharge + 3 % cess Total 19.994%
- Amendment made with effect from 1st October, 2014.

S.43(5)



- Finance Act, 2013 made provision for levy of commodities transaction tax (CTT) on commodity derivatives in respect of commodities other than agricultural commodities.
- As a consequence to levy of CTT, clause (e) was inserted in the proviso to S.43(5) to provide that eligible transaction in respect of trading in commodity derivatives carried out in recognized association shall not be considered as speculative transaction.
- Circular No. 3 dated 24-01-2014 clarified eligible transaction shall include only those commodity derivatives transactions which are liable to CTT.
- Accordingly, clause (e) of proviso to S.43(5) will **provide that eligible transaction in respect of trading in commodity derivatives carried out in recognized association and chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be considered to be a speculative transaction.**

W.R.E.F A.Y 2014-15

BUSINESS TRUST



Business Trusts



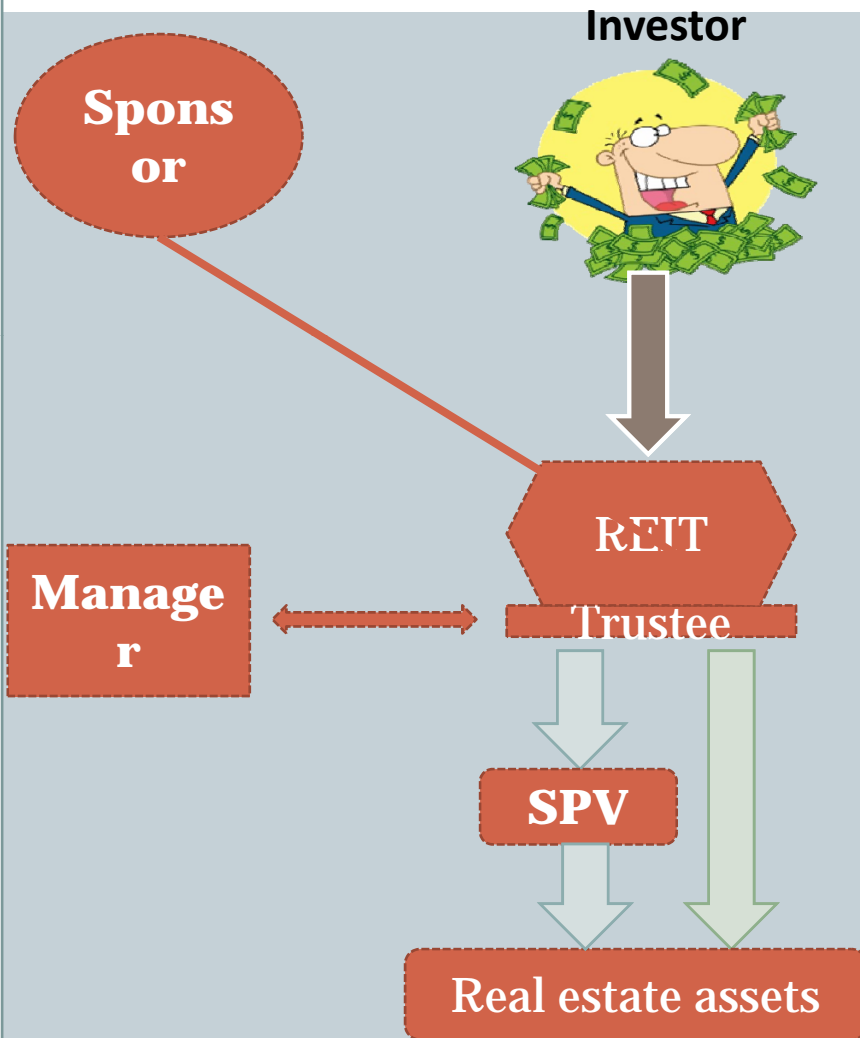
- Aimed towards promoting investment in real estate and infrastructure in India via PPP model
- New definition under S.2(13A) defines “Business Trusts” to mean **a trust registered as an Infrastructure Investment Trust (*Invits*) or Real Estate Investment trust (*REITs*), the units of which are required to be listed on a recognized stock exchange**, in accordance with SEBI Act, 1992 and notified by Central Government in this behalf

Business Trusts



- **Income-investment model of REITs and Invits:**
 - Trust would raise capital by way of issue of units (to be listed on recognized stock exchange) and can also raise debts directly from both resident & non-resident investors
 - Income bearing assets would be held by the trust by acquiring controlling or other specific interest in an Indian company (SPV) from the Sponsor
- **Business Trust (Chapter XII-FA) shall file Return of Income (S.139(4E)) and furnish Income & Expenditure Statement to its unit holders (S.115UA(4))**
- **In case of ECBs by the trust, the TDS will be 5% for such period as provide in S. 194LC.**
- **Amendment made with effect from 1st October, 2014.**

Business Trusts



- **SPV:** All entities that REIT has majority interest will qualify as SPV. Explanation to S.10(23FC) “an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration
- **Investors:** Unit holders of the REIT
- **Trustees:** Holds property on behalf of the investor
- **Sponsor (Transferor):** Required to hold minimum 15% (25% for first 3 years) of total outstanding units of REIT at all times to show “skin-in the game”
- **Distribution:** 90% of net distributable income after tax of REIT is required to be distributed to unit holders after 15 days of declaration

Business Trusts



Taxable Event	For REIT/Invit	For Unit Holders (Investors)	For Sponsor (Transferor)	For SPV
Capital Gain on sale of units of business trust	N/A	Subject to STT and given tax treatment similar to equity shares of company (S.10(38))		N/A
Dividend income from SPV on shares held by Business Trust	Dividend received exempt from tax	Dividend component distributed by Business Trust exempt from tax		DDT will be payable by SPV
Other income (S.115UA(2))	Taxable at maximum marginal rate	Any distributed income from Business Trust (other than interest income) will be exempt from tax (S.10(23FD))		N/A

Business Trusts



Taxable Event	For REIT /Invit	For Unit Holders (Investors)	For Sponsor (Transferor)	For SPV
Capital gains on exchange of shares of SPV for units of business trust	N/A	N/A	<ul style="list-style-type: none"> • No capital gains at time of exchange (S.47(xvii)) • CG taxable at time of sale of units received in exchange of shares even if transaction of sale of units carried out on a recognized stock exchange • Cost of shares exchanged will be cost of units (S.49(2AC)) • Period of holding of shares will be included for period of holding of units 	N/A

Business Trusts



Taxable Event	For REIT/Invit	For Unit Holders (Investors)	For Sponsor (Transferor)	For SPV
<p>Interest income from SPV on money lent by Business Trust (S.10(23FC))</p>	<ul style="list-style-type: none"> • Interest received exempt in hands of Business Trust • SPV not required to withhold tax (S.194A(3)(xi)) • Business Trust to withhold at time of distribution of its income (S.194LBA) <ul style="list-style-type: none"> - 5% in case of non-resident unit holders - 10% in case of resident unit holders 	<p>Interest component distributed taxable in hands of unit holders:</p> <ul style="list-style-type: none"> - 5% in case of non-resident unit holders - At normal income-tax rates for resident unit holders 		<p>Deduction will be available to SPV as per normal provisions of IT Act</p>

HOUSE PROPERTY

**DEDUCTION OF INTEREST IN CASE OF ONE SELF OCCUPIED
RESIDENTIAL PROPERTY S.24(b)**

Deduction of interest in case of one self occupied residential house property increased to Rs. 2,00,000 from Rs. 1,50,000



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INCOME FROM BUSSINESS AND PROFESSION



CSR Section 37(1)



- Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR).
- Under the existing provisions of the Act (S.37), expenditure incurred wholly and exclusively for the purposes of the business is allowed as a deduction for computing taxable business income.
- Government view is that CSR cannot come under the ambit of S.37 - wholly and exclusively used for purpose of business

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CSR Section 37(1)



- For the purpose of section 37(1) **any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall NOT be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under S.37.**
- However, the CSR expenditure which is of the nature described in S.30 to S.36 of the Act shall be allowed deduction under those sections subject to fulfillment of conditions, if any, specified therein.

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BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES (s. 44AE)



- **Existing Provision**

Any assessee engaged in the business of plying, leasing or hiring of trucks if he owns not more than 10 goods carriages at any time during the previous year **Deemed Income:**

Type of Goods Carriage	Amount of Presumptive income
Heavy goods vehicle (HGV)	Rs. 5,000 for every month (or part of a month) during which the goods carriage is owned by the tax payer
Vehicle other than HGV	Rs. 4,500 for every month (or part of a month) during which the goods carriage is owned by the tax payer

- **New Provision**

A uniform amount of presumptive income of Rs. 7,500/- for every month (or part of a month) for all types of goods carriage without any distinction between HGV and vehicle other than HGV

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TDS Overview of changes



- **S.40(a)(i)** - Deduction allowed if paid before filing of return
- **S.40(a)(ia)** - Restriction of disallowance to 30% of sum payable to resident
- **S.194DA** – TDS on life insurance policy
- **S.194LC** – Concessional rate on bonds
- **S.200 & S.200A** - Correction statement
- **S.201(3)(i) & S.201(3)(ii)** - Time limits for proceedings
- **S.271H** – Penalty on failure to furnish TDS statements

TDS S.40(a)(i)



- The existing provisions of S.40(a)(i) provide that certain payments such as interest, royalty and FTS services made to non-resident shall not be allowed as deduction if tax on such payments was not deducted, or after deduction, was not paid within time prescribed under S.200(1)
- Also, under Section 40(a)(ia) of the Act, in case of payments made to resident, the deductor is allowed to claim deduction for payments as expenditure in the previous year of payment, if tax is deducted during the previous year and same is paid on or before due date under section 139(1)
- Now, as in S.40(a)(ia), **similar extended time limit of payments of tax deducted from payments to non-residents u/S. 40(a)(i) i.e. before due date of return u/s 139(1)**

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TDS S.40(a)(ia)



- S.40(a)(ia) disallowance **shall extend to all expenditure on which tax is deductible under Chapter XVII-B of the Act** (salary, Director's fee etc.)
- Disallowance u/S. 40(a)(ia) shall be restricted to ***“thirty per cent of any sum payable to a resident”***
 - Word “payable” retained. **SC recently dismissed SLP in CIT vs. Vector Shipping Services** (CC Nos.8068/2014 arising out ITA No.122/2013 dated 09/07/2013 passed by Allahabad HC)

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TDS S.194DA – TDS on Life Insurance Policy



- A new S.194DA is inserted to provide for deduction of tax at the rate of 2% on sum paid under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D)
- No deduction under this provision shall be made if the aggregate sum paid in a financial year to an assessee is less than Rs.1,00,000/-.
- Amendment made with effect from 1st October, 2014.

TDS S.194LC



- **S. 194LC is amended to extend the benefit of 5% concessional rate of withholding tax to borrowings by way of issue of any long-term bond, and not limited to a long term infrastructure bond**
 - Benefit extended to Business Trusts also
- The period of borrowing for which the said benefit shall be available is extended by two years i.e, this rate will now be available in respect of borrowings made before 1.7.2017.
- Consequential amendment is done in S.206AA to ensure this benefit of exemption is extended to payment of interest on any long-term bond referred to in S.194LC.
- Amendments with effect from 1st October, 2014.

TDS Section 200 & 201



- Currently, a deductor is allowed to file correction statement for rectification/updation of the information furnished in the original TDS statement vide Notification No. 03/2013 dated 15th January 2013. **Section 200 and 200A** to be amended accordingly
- **S.201(3)(i)** which refers to two years from end of FY in which statement is filed in a case where statement referred to in S.200 has been filed **is to be omitted**
- **Extension of period for which the assessee shall be deemed to be in default for failure to deduct tax** (section 201(3) :In order to align the time limit provided under section 201 (3)(ii) and section 148 of the Act, the **time limit provided under section 201 (3)(ii) of the Act for passing order under section 201(1) of the Act shall be extended by one more year.** i.e from 6 years to 7 years.
- **Amendments with effect from 1st October, 2014.**

TDS Section 271H



- The existing provisions of section 271 H of the Act provides for levy of penalty for failure to furnish TDS/TCS statements in certain cases or furnishing of incorrect information in TDS/TCS statements.
- However existing S.271 H does NOT specify the authority which would be competent to levy the penalty under the said section. Therefore, provisions of section 271H are amended to provide that the **penalty under section 271H shall be levied by the Assessing officer i.e. penalty of Rs. 10,000 to 1,00,000/- penalty for failure to furnish statement.**
- [Amendment applicable from 1 st October, 2014](#)

Investment Allowance Section 32AC



- To encourage companies engaged in business of manufacture or production of an article or thing to invest substantial amount in acquisition and installation of new machinery
- Finance Act 2013 inserted S.32AC in the IT Act to provide that where an assessee, being a company, is engaged in the business of manufacture of an article or thing and invests a sum of more than Rs.100 crore in new assets (plant and machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015, then the assessee shall be allowed a deduction of 15% of cost of new assets for assessment years 2014-15 and 2015-16.
- Eligible plant & machinery should be acquired and installed up to 31-03-2017 to claim exemption under section 32AC(1A)

Investment Allowance Section 32AC



- To make medium size investments in plant and machinery eligible for deduction, **the deduction under S. 32AC of shall be allowed if company on or after 1st April, 2014 invests more than Rs.25 crore in plant and machinery in a previous year.**
- Also the assessee who is eligible to claim deduction under existing combined threshold limit of Rs.100 crore for investment made in FYs 2013-14 and 2014-15 shall continue to be eligible to claim deduction under existing provisions contained in sub-section (1) of section 32AC *EVEN IF* its investment in year 2014-15 is below the new threshold limit of investment of Rs. 25 crore during previous year
- Phrase “acquired and installed” – is it necessary for both to be in same year? This might not be practical!

Investment Allowance Section 32AC



Sl. No.	Particulars	P.Y. 2013-14	P.Y. 2014-15	P.Y. 2015-16	P.Y. 2016-17	Remarks
1.	Amount of investment	20	90	-	-	Under the existing section 32AC(1)
	Deduction allowable	Nil	16.5	-	-	
2..	Amount of investment	30	40	-	-	Under the proposed section 32AC(1A)
	Deduction allowable	Nil	6	-	-	
3.	Amount of investment	150	10	-	-	Under the existing section 32AC(1)
	Deduction allowable	22.5	1.5	-	-	
4.	Amount of investment	60	20	-	-	No deduction either u/s 32AC(1) or 32AC(1A)
	Deduction allowable	Nil	Nil	-	-	
5.	Amount of investment	30	30	30	40	Under the proposed section 32AC(1A)
	Deduction allowable	Nil	4.5	4.5	6	
6.	Amount of investment	150	20	70	20	Deduction both u/s 32AC(1) & 32AC(1A)
	Deduction allowable	22.5	3	10.5	Nil	

Capital Expenditure Section 35AD



- **Two new business in the list of “specified business” u/S. 35AD** so as to promote investment in these sectors. Currently there are **11** specified businesses now they have become **13**
 - Laying and operating a slurry pipeline for transportation of iron ore
 - Setting up and operating a semiconductor wafer fabrication manufacturing unit (notified by Board)
- Date of commencement of operations for S.35AD deduction for these specified businesses shall be from 1st April, 2014
- **Sub-section (7A) inserted in S.35AD** to provide that any asset in respect of which a deduction is claimed & allowed under S.35AD, shall be used only for the specified business for a period of eight years beginning with previous year in which such asset is acquired or constructed

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Capital Expenditure Section 35AD



- New sub-section (7B) to provide that if asset is used for any purpose other than the specified business, total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of S.32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head “Profits and gains of business or profession” of the previous year in which the asset is so used.
- Example:
 - Deduction under section 35AD on capital asset : Rs. 100
 - Depreciation eligible on such asset u/S. 32 : Rs. 15
 - Profit chargeable to tax under S.35AD(7B) : Rs. 85

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Capital Expenditure Section 35AD



- Sub-section (7B) to S.35AD not applicable to sick industrial company
- Where any deduction has been availed of by the assessee on account of capital expenditure u/s 35AD, **no deduction under section 10AA shall be available to the assessee** in the same or any other assessment year in respect of such specified business. (Section 10AA also has been suitably amended to reflect if S.10AA deduction is claimed no deduction u/s 35AD can be availed)

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CAPITAL GAINS



Capital Gains



- S.2(14) – Characterization of Income in case of FII
- S.2(42A) – Period of Holding of unlisted securities & units of debt funds
- S.45(5) – Capital Gains on Compulsory Acquisition
- S.47(viib) – Transfer of Govt. Securities between NR's
- S.48 – Indexation computation for CG
- S.54EC – Investment of Rs.50 lakhs
- S.54F – Investment in one residential house in India
- S.56(2)(ix), S.51 and S.2(24)(xvii) – Advance received in for transfer of capital asset
- S.111A – Tax at concessional rate for Business Trusts
- S.112 – Long-term Capital Gains for debt funds

Capital Gains S.2(14)



- The definition of “capital asset” is amended to provide that any “securities” held by an FII which have been invested in accordance with the regulations made under the SEBI Act will be considered as “capital asset”.
 - Aimed to end uncertainty in characterization of income arising out from transactions in securities by foreign portfolio investors as to whether it is Capital Gains or Business Income
- Consequently, the income arising from the transfer of such “securities” will be subject to tax as capital gains only and not as business income

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Capital Gains S.2(42A) – Period of holding



- Currently, in case of shares held in a company and units of Mutual Funds, the minimum holding period for qualifying as ‘long-term capital asset’ is 12 months.
- As per the amended provisions **to qualify as ‘long-term capital asset’, the minimum holding period for unlisted securities and units of Mutual Funds (other than equity-oriented funds) will be at par with other capital assets at 36 months.**

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Capital Gains S.45(5) – Compulsory acquisition



- **With respect to CG arising from transfer by compulsory acquisition**, it is provided that the amount of compensation received in pursuance of an interim order of the Court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made
 - What happens if interim award is contested and subsequently reversed?
 - Note that this is applicable only to awards for compensation on compulsory acquisition and not for other awards such as damages or for withdrawing litigation

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Capital Gains

S.47(viib) – Transfer of Govt. Securities between NR's



- With a view to facilitate trading of Government securities outside India, S.47(viib) is inserted so as to provide **that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India** through an intermediary dealing in settlement of securities, by a non-resident to another non-resident **shall not be considered as transfer for the purpose of charging capital gains.**

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Capital Gains

S.54EC – Investment in specified bonds



- Earlier it was contended that for transfer of one asset two investments of Rs. 50 lakhs in two successive previous years, within 6 months of sale, can be invested:
 - *Aspi Ginwala, Shree Ram Engg. & Mfg. Industries v. ACIT [2012] 20 taxmann.com 75/52 SOT 16 (Ahd.)*
 - *Vivek Jairazbhoy v. Dy. CIT (ITA No.236/Bang/2012)*
 - *Smt. Sriram Indubal v. ITO (32 taxmann.com 118 Chennai)*
 - *ITO v. Ms. Rania Faleiro (33 taxmann.com 611 Panaji)*
- New Proviso in 54EC(1), applicable so as to provide that investment made by assessee in long-term specified asset, out of CG, arising from transfer of original asset, **during FY in which original asset(s) are transferred and in subsequent FY does not exceed fifty lakh Rupees.**

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Capital Gains S.54F



- S.54 and S.54F now specify “one residential house in India” instead of “a residential house”
 - Investments in houses outside India no longer entitled to exemption. Overrules decisions such as
 - ✦ *Mrs. Prema P. Shah, Sanjiv P. Shah vs ITO (2006) 282 ITR (AT) 211 (Mumbai)*
 - ✦ *Vinay Mishra vs. Asstt.CIT –ITA NO.895(Ban) of 2012-order dated 12-10-12-[2012] 79 DTR (Bang) (Trib.) 1*

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Capital Gains S.111A - Tax at concessional rate



- S. 111A(1) provides for levy of tax at concessional rate of 15% in certain cases. The said sub-section is amended so as to **provide that concessional rate of tax shall apply to the transfer of a unit of a business trust as they apply in case of a unit of an equity oriented fund.**
- The provisions of S.111A(1) shall not apply in respect of any income arising from transfer of units of a business trust which were acquired by assessee in consideration of transfer referred to in S.47 (xvii) i.e. transfer of share of SPV to business trust

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Capital Gains S.112



- Currently, as per provisions of S.112, long-term capital gains arising on transfer of units of mutual funds are eligible for concessional tax rate of 10% without indexation.
- **Finance Act 2014 has withdrawn this concessional tax rate of 10% without indexation for units of mutual funds (other than equity oriented funds) i.e. taxable at 20% after indexation.**

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INCOME FROM OTHER SOURCES



S.56(2)(ix), S.51 and S.2(24)(xvii) – Forfeiture of Advance received in for transfer of capital asset



- Any sum of money, advance or otherwise, received and forfeited in the course of negotiation of transfer of capital asset is to be made chargeable to income-tax under the head 'income from other sources'
 - if such sum is forfeited and
 - negotiations do not result in transfer of such capital asset.
- Consequential amendment in S.2(24) is also being made to include such sum in the definition of the term 'income'.
- **Consequential amendment in S.51 to avoid double taxation:** S.51 also modified to provide that any such amount which has been included in the total income of the assessee as per S.56(2)(ix) shall not deducted from the cost for which the asset was acquired or the WDV or fair market value, as case may be, in computing cost of acquisition.

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Speculation provisions Overview of changes



- S.73 : Speculation Business
- S.43(5) : Commodities Transaction Tax

Speculation Provisions

S.73 – Speculation Business



- *Explanation* to section 73 provides that in case of a company deriving its income mainly under the head “Profits and gains of business or profession” (other than a company whose principal business is business of banking or granting of loans and advances), and where any part of its business consists of purchase or sale of shares, such business shall be deemed to be speculation business
- The aforesaid *Explanation is amended* so as to provide that **the provision of *Explanation* shall also not be applicable to a company the principal business of which is the business of trading in shares.**
- Hence, there is some relief from the ridiculous treatment of loss on sale of shares from business of purchase and sale of shares as speculative loss .

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Trusts Overview of Changes



- S.10(23C) – Depreciation
- S.10(23C) – Exempt Income
- S.10(23C)(iiiab)/(iiiac) – “Substantially financed by Government”
- S.12A/S.12AA – Applicability of Registration granted to a Trust in earlier years
- S.12AA - Cancellation of Registration

TRUSTS



Trusts Section 10(23C) – Exempt Income



- The Act is amended to provide specifically that where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then **such trust or institution cannot claim any exemption under any provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)].**
 - In short, exempt income also has to be applied; if you don't that becomes taxable

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Trusts

Applicability of Registration granted to a Trust in earlier years



- Currently, charitable trust or institution can claim exemption under section 11 of the Act only after obtaining registration under section 12A / 12AA of the Act.
- **Benefits of exemption now available by Provisos to S.12A(2) to such trust in respect of its income for any earlier FY for which assessment proceedings are pending before AO as on date of registration, provided that objects and activities in such earlier years are same as those for which registration has been granted.**
- **Furthermore no action for reopening of an assessment will be taken by the AO for any FY preceding the FY for which registration is obtained merely for reason that such trust or institution has not obtained registration for said year.**
- Amendment will take effect from 1 October 2014.

Trusts Cancellation of Registration



- Currently, Registration of charitable trust granted under Section 12A/12AA can be cancelled by the Commissioner if activities of trust are not genuine or activities not carried out in accordance with its objects.
- **The registration may be withdrawn even in those cases where its income is not exempt due to the operation of sub-section (1) of section 13 of the Act i.e.:**
 - Where any part of its income does not endure for the benefit of general public, or,
 - If it is created for the benefit of any particular religious community or caste, or,
 - Where any part of its income endures or is used or applied for the benefit of specified persons, or,
 - Its funds are invested in prohibited modes.
- The amendment will take effect from 1 October 2014.

AMT Overview of changes



- **S.115JC : Computation of adjusted total income**
- **S.115JD : AMT Credit**

AMT S.115JC / S.115JD



- Earlier **Book Profits** applicable to companies & LLPs. Extended to all persons who claim deduction Chapter VIA, S.10AA and now S. 35AD
 - It will not apply to HUF, Individuals etc. if adjusted total income is < Rs. 20 lakhs
 - **Deductions u/s Chapter VIA, 10AA, S.35AD will be added back to compute adjusted total income for AMT**
- S.115JD – Credit for such AMT will be available for ten years.
 - By this amendment tax credit has been made easier in that even if in subsequent year person does not attract S.115JC, tax credit will be available

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AMT S.115JC – Total adjusted income



- S.115JC is amended to provide that total income shall be increased by the deduction claimed under S.35AD for purpose of computation of adjusted total income.
- The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.
- Example:
 - Total income : Rs.50
 - Deduction under Chapter VI-A : Rs. 30
 - Deduction u/S.35AD : Rs. 100
 - **Total** : **Rs. 180**
 - **Adjusted total income for AMT** : Rs.50 + Rs. 30 + (Rs.100– Rs.15 being depreciation u/S.32) : **Rs.165/-**

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Tax Authorities & Procedural Aspects Overview of Changes



- S.133(2A) & S.133A : Survey
- S.133C : Information with Department
- S.139(4C) : Mutual Funds, Securitization Trusts, VC Companies & Funds to file Return of Income
- S.140A : Signing and verification of Return
- S.142A, S.153 & S.154B : Reference to Valuation officer
- S.145(2) : Accounting Standards
- S.153C : Third Party information during search
- S.220(1) : Interest on demand
- S.285BA : Furnishing of statement by financial institution
- S.271FA, S.271FAA : Penalty related to S.285BA

Tax Authorities S.133(2A) & S.133A – Survey



- **Proviso to clause (b) of S.133A(3)(ia)**
 - Books of accounts or documents impounded during a survey can be retained for a period of up to 15 days , exclusive of holidays, without the approval of the higher authorities (as opposed to 10 days before)
- **S.133(2A)**
 - An Income Tax authority may conduct survey of a business premises to verify compliance with the TDS and TCS provisions.
 - However, in such cases, the authority will not impound the books of account or documents so inspected or make an inventory of cash, stock or other valuables.
- **These amendments applicable from 1st October, 2014**

Tax Authorities S.133C



- **With view to verify information in the possession of prescribed Income-tax authority relating to any person**, a new section 133C is inserted in the Act so as to provide that for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, **issue a notice to such person requiring him, on or before a date to be therein specified, to furnish information or documents**, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under this Act.
- **This amendment will take effect from 1st October, 2014.**

Procedural Aspects

Mutual Funds, Securitization Trusts, VC Companies or Funds to file Return of Income



- **Sub-section (4C) of section 139 to be amended** to provide that Mutual Fund (S.10(23D)), securitization trust (S.10(23DA)) and Venture Capital Company or Venture Capital Fund (S.10(23FB)) **shall be required to file Return of Income** (as if it were a return required to be furnished u/S.139(1))
- Further, in the case of the Mutual Funds and securitization trusts referred to above, the **requirement of filing of statements before an income-tax authority is to be dispensed with** by omitting sub-section (3A) of section 115R and sub-section (3) of section 115TA.

W.E.F A.Y 2015-16

Procedural Aspects

S.140 – Signing and verification of Return of Income



- With a view to enable the verification of returns either by a **sign in manuscript or by any electronic mode**, section 140 of the Act is amended so as to provide that the return shall be verified by the persons specified therein.
- The manner of verification of return is prescribed under section 139 of the Act
- Amendment made with effect from 1st October, 2014.

Tax Authorities

S.142A : Reference to Valuation Officer



- Section 142A to be amended so as to provide that the AO may, for the purposes of assessment or reassessment, require the assistance of a Valuation Officer to estimate the value, of any asset, property or investment. The AO may refer whether or not AO is satisfied about correctness or completeness of the accounts of the assessee.
- Valuation Officer required to estimate the value after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.
- If the assessee does not co-operate or comply with the directions of the Valuation Officer, the VO may, estimate the value of the.

Tax Authorities S.142A, S.153 & S.154B



- **Valuation Officer (VO) shall send a copy of estimate to AO and the assessee within a period of six months from the end of the month in which the reference is made. T**
- AO on receipt of the report from the VO may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.
- **S. 153 & 153B is amended** so as to provide that time period beginning with date on which reference is made to VO and ending with date on which his report is received by the AO shall be excluded from time limit provided under aforesaid section for completion of assessment/reassessment.
- Amendments will take effect from 1st October, 2014.

Tax Authorities S.145(2) – Accounting Standards



- CBDT constituted Accounting Standard Committee in 2010
 - Committee recommended that the AS notified under the Act should be made applicable only to computation of taxable income and taxpayer not required to maintain books of account on basis of AS notified under the Act
- The Central Government notified in Official Gazette that income computation & disclosure standards to be followed in respect of any class of income.
- **Also it is provided that AO may make an assessment u/S. 144 of Act (Best Judgment Assessment), if income has not been computed in accordance with standards notified under S.145(2)**

W.E.F A.Y 2015-16

Tax Authorities S.153C



- When in the course of search, papers are found which belong to a third party, the papers are to be forwarded to the AO who has jurisdiction over the third party. Thereafter the assessment of third party is made.
 - Now the assessment of third party is to be made only if the AO of the third party is satisfied that seized papers etc. have a bearing on determining the income of the third party.
 - Here the AO of the third party may have to *record satisfaction* that the seized papers have a bearing in determining the income of the third party.
- Amendment made with effect from 1st October, 2014.

Tax Authorities S.220(1) – Interest on demand



- This section charges interest for delay in payment of tax. **Earlier the section provided that if the tax is reduced on appeal the interest also will be reduced.** There was no provision for increasing the same if the tax is subsequently restored on appeal (as present in 234B).
 - Thus there was a dispute whether on restitution of demand by higher Appellate authority, S.220 interest should be charged from original date or from subsequent date of giving-effect to the Appellate order by which the tax was restored.
- Now this amendment states that whenever tax is increased by orders of appellate authority, S.220 interest also will be increased from original date of assessment.
- Amendment made with effect from 1st October, 2014.

Tax Authorities S.285BA



- **Amendment provides for furnishing of statement by prescribed reporting financial institution in respect of a specified financial transaction or reportable account along with AIR in respect of residents and non residents to the prescribed income-tax authority (ITA)**
- Rules have been made to specify that,-
 - (a) the persons referred to in S. 285BA(1) to be registered
 - (b) the nature of information and the manner in which such information shall be maintained by such persons
 - (c) the due diligence to be carried out by such persons for purpose of identification of any reportable account referred to in S.285BA(1)

W.E.F A.Y 2015-16

Tax Authorities S.271FA, S.271FAA - Penalty



- **S. 271FA** of the Act currently provide for penalty for failure to furnish an annual information return. The said section is amended so as to **provide for penalty for failure to furnish statement of information or reportable account.**
- **A new section 271FAA** is inserted so as to provide that if a person referred to in clause (k) of sub-section (1) of section 285BA provides inaccurate information (as listed in S.271FAA(a), (b) and (c)) in the statement then, such person shall pay a sum of **fifty thousand rupees.**

W.E.F A.Y 2015-16

Budget 2014 : Miscellaneous Issues



- S.115BBC – Anonymous donation
- S.269SS & S.269T – Mode of repayment
- S.13(1) - SUUTI

Anonymous Donation S.115BBC



- Section 115BBC is amended to provide that the **income-tax payable shall be the aggregate of**
 - the amount of income-tax calculated at rate of thirty per cent on aggregate of anonymous donations received in excess of five per cent of total donations received by the assessee or one lakh rupees, whichever is higher, *and*
 - Amount of income-tax with which assessee would have been chargeable had his total income been reduced by aggregate of anonymous donations which is in excess of five per cent of the total donations received by the assessee (or one lakh rupees)

W.E.F A.Y 2015-16

Budget 2014 : S.269SS & S.269T



- Currently no person is allowed to repay any deposit or loan otherwise than by an Account Payee cheque / bank draft, if the amount of such loan or deposit or aggregate of such loans or deposit is Rs.20,000 or more.
- **Acceptance or repayment of any loan or deposit can be done by use of electronic clearing system through a bank account only.**

W.E.F A.Y 2015-16

INDIVIDUAL & HUFs

INCOME TAX SLAB AND SLAB RATES



- Basic Exemption limit of Rs.2,00,000 increased to Rs. 2,50,000/- for individual and HUF (Non senior citizens)
- Tax rates is as follows:

INDIVIDUAL – MALES & FEMALES AND HUF (NON SENIOR CITIZENS)

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

W.E.F A.Y 2015-16

INCOME TAX SLAB AND SLAB RATES



- Basic Exemption limit of Rs.2,50,000 increased to Rs. 3,00,000/- for individual and HUF (Senior citizens- 60 years and above but less than 80 years)

INDIVIDUAL –SENIOR CITIZENS (60 YEARS & ABOVE BUT LESS THAN 80 YEARS)

Upto Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 5,00,000	10%
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

W.E.F A.Y 2015-16

INCOME TAX SLAB AND SLAB RATES



- No change in slab rates for Super senior citizens (80 years and above)
- Tax rates is as follows:

INDIVIDUAL – SUPER SENIOR CITIZENS (80 YEARS & ABOVE)	
Upto Rs. 5,00,000	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

W.E.F A.Y 2015-16

INCOME TAX SLAB AND SLAB RATES



SURCHARGE

- Surcharge applicable @ 10% if taxable income exceeds 1 crore

EDUCATION CESS

- Education cess remains same @ 3%

W.E.F A.Y 2015-16

Personal taxation

S.80C, S.80CCD & S.80CCE



- Limit of **deduction of interest on housing loan** taken on or after 1st April 1999 for self-occupied property now **increased to Rs.2,00,000/-**
- **S.80C limit of deduction increased to Rs.1.5 lakhs** from Rs.1 lakh. Same consequential amendments made to **S.80CCD and S.80CCE**.
 - Also S.80CCD joining date of 1.1.2004 removed for private sector employees

W.E.F A.Y 2015-16

EXTENSION OF THE SUN DATE UNDER SECTION 80-IA FOR THE POWER SECTOR (SECTION 80-IA)



CA. MADHU SUDAN AGARWAL

Power sector S.80-IA



- With a view to provide further time to the undertakings to commence the eligible activity u/s 80-IA to avail the tax incentive, the provisions of S.80-IA is amended to extend the terminal date for a further period up to 31st March, 2017 i.e. till the end of the 12th Five Year Plan.

Transfer Pricing



Transfer Pricing Overview of changes



- **S.92CC** (APA) - Rollback provision introduced
- **S.92B** (International Transaction) – “Rationalization” of definition
- **Rule 10B(4) - Use of Multiple year Data**
- **Introduction of range concept** for ALP determination
- **S.271G** - TPO empowered to levy Penalty

Transfer Pricing APA “Roll-back”



- Many countries (such as UK, USA etc.) provide “roll back” mechanism for dealing with APA-Advance Pricing Agreement for dealing with issues relating to transactions entered into period prior to APA
- The “roll back” provisions refers to the applicability of methodology of determination of ALP- Arm Length Price, or the ALP, to be applied to such (i.e., pre-APA) international transactions.
- IT Act to be amended to provide such roll back mechanism in Indian APA scheme by determining ALP in relation to an international transaction entered into by a person during any period not exceeding FOUR previous years preceding the FIRST of the previous years for which APA applies in respect of the international transaction to be undertaken in future
- Amendment made with effect from 1st October, 2014.

Transfer Pricing

S.92B – Definition of International Transaction



- S.92B(2) extends scope of international transaction by providing that a **transaction entered into with an unrelated person shall be deemed to be a transaction with an AE –Associate Enterprise**, if there exists a prior agreement in relation to the transaction between such other person and the AE, or the terms of the relevant transaction are determined in substance between the other person and the AE.
- **Whether unrelated person should also be a non-resident?** Yes, according to taxpayer view and as affirmed by *Swarnandhra IJMII Integrated Township Development Company Pvt. Ltd (ITA No 2072/Hyd/2011)*

W.E.F A.Y 2015-16

Transfer Pricing

S.92B – Definition of International Transaction



- Amendment includes transactions between domestic Parties if the terms of contract are determined by the AE
 - Therefore irrespective of fact the transaction occurs between resident enterprises it can now, under certain circumstances, be deemed to be an international transaction!

W.E.F A.Y 2015-16

Transfer Pricing

Use of Multiple year data



- **Use of multiple year data (instead of single year data) would be allowed for comparability analysis**
 - The detailed rules in this regard would be notified subsequently
- Rule 10B(4) of the current Income Tax Rules, 1962 specifies that the data to be used in comparability analysis shall be the data of that particular year in which the subject transaction is entered
- **The proviso to current Rule 10B(4) allows use of multiple year data (previous two years data) in the instances where such data reveals facts which have an influence on the determination of transfer prices for the current year**
 - However in practice this is seldom accepted.

Transfer Pricing

Use of Multiple year data



- Number of judicial decisions against the taxpayer for use of multiple year data:
 - *Aztech software Technology [294 ITR (AT) 32 (Bang)(SB)]*
 - *Honey Well Automation India Ltd. [2009-TIOL-104-ITAT-Pune]*
 - *Customer Services India (P) Ltd. [2009-TIOL-424-ITAT-Del]*
 - *Global Vantedge Pvt. Ltd. [2010-TIOL-424-ITAT-Del]*
 - *Panasonic India Pvt. Ltd. [2010-TII-47-ITAT-DEL-TP]*
 - *Haworth (India) Pvt. Ltd. AY: 2006-07 [ITA No. 5341/DEL/2010]*
 - *ST Micro Electronics [ITA Nos. 1806, 1807/DEL/2008, ITAT DELHI]*
 - *Deloitte Consulting India Pvt. Ltd. [2011-TII-88-ITAT-HYD-TP]*
 - *Actis Advisers Pvt. Ltd. [2012-TII-136-ITAT-DEL-TP]*

Transfer Pricing

Introduction of range concept for ALP



- The range concept is to be introduced for determination of ALP to align Indian TP regulations international best practices (OECD advocates usage of “inter-quartile range”)
 - At least seventeen developed & developing countries use inter-quartile ranges
- Using Arithmetic Mean vitiates comparability analysis, **as extreme results, being outliers, distort the comparable set.** An “inter-quartile range” provides a more accurate result for ALP, as extreme results or outliers are left out as part of the first and fourth quartiles
 - **If a taxpayer’s result falls outside the “inter-quartile range”, then TP adjustment is made with reference to the median**
- The current concept of arithmetic mean is to be continued in cases where the number of comparables is inadequate

Transfer Pricing

S.271G – Penalty for failure to furnish information or document u/s 92D



- Existing provisions of 271G provide that if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such document or information as required by sub-section (3) of section 92D, then such person shall be liable to a penalty which may be levied by the Assessing Officer or the Commissioner (Appeals).
- **Section 271G of the Act is amended to include TPO- Transfer Pricing Officer, as referred to in Section 92CA, as an authority competent to levy the penalty under section 271G in addition to AO and CIT(A)**
- Amendment will take place with effect from 1st October 2014

Thanks!



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