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## ABOUT THE COVER

**BCAS fraternity ka MODIJI Ko NamOskaar.**

After every night there is a day. The sun slowly rises, cutting through the darkness and spreading light. The morning rays are soft and one likes basking in them. Light is symbolic of happiness and prosperity. When the sun is overhead at noon, it is harsh and the light scorches. Maturity is in understanding the course of nature. Don't be in haste, it is yet dawn. Brace yourself for the inevitable but necessary strong rays of light. You cannot look forward to the accomplished, satisfying and relaxed rays of the evening without going through the entire day. The sun is rising on India's horizon. Let's receive its bounty.

The atmosphere is Modified. The environment is very Modivating. Mausam bada Modiyana hai.

अब देखिए **नमो**क्रिया

**नमो-कमल** लाएंगे अच्छे दिन !

**नमो** जनता को जिना सिखाएंगे !!!

**मोदीभजन** करीए - **सुखशांति** पाईए.

**Cover Concept : Narayan Varma and Naushad Panjwani**



Published by **Narayan K. Varma** for
**Bombay Chartered Accountants' Society,** 7, Jolly Bhavan No. 2, New Marine Lines, Mumbai 400 020. India

Printed by **Finesse Graphics & Prints Pvt Ltd.** | Tel: 4036 4600

The price of this publication is partly subsidised by a donation received from
**Pragnya Girish Sharedalal Foundation.**

# The Union Budget
## – An Analysis 2014-15

### ANALYSIS OF IMPORTANT AMENDMENTS PROPOSED IN THE FINANCE (NO. 2) BILL, 2014


| DIRECT TAXES | | |
|---|---|---|
| Arvind Dalal | Narayan Varma | Pinakin Desai |
| Rajan Vora | Kishor Karia | Shariq Contractor |
| Gautam Nayak | Sanjeev Pandit | Ameet Patel |
| Kirit Kamdar | Anil Doshi | Nina Kapasi |
| Sonalee Godbole | Jagdish Punjabi | Ganesh Rajgopalan |
| Bhadresh Doshi | | |
| **INDIRECT TAXES** | | |
| Govind Goyal | Pranay Marfatia | Hasmukh Kamdar |
| Puloma Dalal | Samir Kapadia | Bakul Mody |
| Rajkamal Shah | Bharat Shemlani | Naresh Sheth |
| Suhas Paranjpe | Mandar Telang | |


# DIRECT TAXES

- All amendments proposed in The Finance (No. 2) Bill, 2014 would be effective from Assessment Year 2015-16 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance (No. 2) Bill, 2014 are referred to as if the amendments have been actually made.

## TAX RATES

### 1. TAX RATES OF INDIVIDUALS, HUFs, AOPs, BOIs, etc.

The threshold limit for basic exemption has been raised by Rs. 50,000 in case of individuals, HUFs, AOPs & BOIs and also in case of resident senior citizens (of age 60 years and above, but below 80

years), resulting in tax benefit of Rs. 5,000 plus applicable surcharge and cess. However, in case of resident senior citizens of age 80 years and above, there is no change and hence no benefit to them, as shown in the chart below:

| Category | Old Threshold (Rs.) | New Threshold (Rs.) |
|---|---|---|
| Individual Resident seniors (60 years and above but below 80 years) | 2,50,000 | 3,00,000 |
| Individual Resident seniors (80 years and above) | 5,00,000 | 5,00,000 |
| Other individuals, HUFs, AOPs & BOIs | 2,00,000 | 2,50,000 |

There are no changes in other tax slabs, rates of income tax, surcharge or cess for the above-mentioned assessees or for other entities.

The rebate under section 87A of up to Rs. 2,000 available to resident individuals having total income up to Rs. 5,00,000 also remains unchanged.

## 2. CAPITAL ASSET – SECTION 2(14)

Currently there is a controversy regarding the characterisation of income of a Foreign Institutional Investors (FII) – rechristened as Foreign Portfolio Investors (FPI) under SEBI Regulations – as business income or capital gains.

To resolve the controversy, it is now specifically provided that securities held by a FII in accordance with regulations made under the Securities and Exchange Board of India Act, 1992 shall be treated as 'capital assets'. Thus, gains arising on transfer of such securities held by FII shall be treated as Capital Gains. The Explanatory Memorandum also refers to this amendment as applicable to FPI.

## 3. SHORT-TERM/LONG-TERM CAPITAL ASSET & RATE OF TAX ON CAPITAL GAINS – SECTIONS 2(42A), 2(29A) & 112

The period of holding for unlisted shares of companies and units other than units of equity-oriented funds to qualify as long-term capital assets should now exceed 36 months instead of current 12 months.

Accordingly, these assets will now be treated as short-term capital assets if they are held by the assessee for 36 months or less before the date of transfer, subject to applicable relaxation provided in the explanation 1 to section 2(42A).

Presently, under the proviso to section 112, an option is available to a taxpayer to pay tax at 10% on unindexed long-term capital gains or 20% on indexed long-term capital gains on transfer of units. For this purpose, the unit means unit of a mutual fund specified in section 10(23D) or of the Unit Trust of India as defined in explanation (b) of section 115AB. This option in respect of such units has now been removed and the same will now be taxed at 20% after indexing the cost. The reference of definition of 'unit' contained in section 115AB, in explanation (b) of section 112 has also been omitted.

## 4. CHARITABLE AND RELIGIOUS ENTITIES NOT ENTITLED TO CLAIM EXEMPTION UNDER GENERAL PROVISIONS OF SECTION 10 – SECTIONS 10(23C) & 11

A trust or institution which is registered or approved or notified as a charitable or religious entity under section 12AA or 10(23C) (iv), (v), (vi) and (via) will now not be entitled to claim exemption under any of the general provisions of section 10. The intention is that such entities should be governed by the special provisions of sections 11, 12 & 13 or section 10(23C), which is a code by itself, and should not be eligible to claim exemption under other provisions of section 10. Therefore, such entity will now not be entitled to claim that its income, like dividend income [exempt u/s. 10(34)] or income from mutual funds [exempt u/s. 10(35)], or interest on tax free bonds, is exempt under section 10 and hence not liable to tax. Such income continues to qualify for exemption under section 10(23C) or section 11.

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

## 5. DEPRECIATION FOR CHARITABLE AND RELIGIOUS ENTITIES – SECTIONS 10(23C) & 11

Expenditure incurred to acquire a capital asset for carrying out charitable or religious activity is treated as application of income

on objects of the trust and hence fully allowed as a deduction in computing the income of the trust. There is a controversy whether such trust is also entitled to claim depreciation on such assets where full deduction has been claimed at the time the asset was acquired. In order to deny this double benefit, it is now provided that depreciation will not be allowed in computing the income of the trust in respect of an asset, where its cost of acquisition has already been claimed as deduction by way of application of income in the current or any earlier year.

## 6. EDUCATIONAL AND MEDICAL INSTITUTIONS SUBSTANTIALLY FINANCED BY THE GOVERNMENT – SECTION 10(23C)

The existing sub-clause (iiiab) and (iiiac) of section 10(23C) grants exemption to educational institutions, universities and hospitals that satisfy certain conditions and which are wholly or substantially financed by the Government. The term "substantially financed by the Government" was not defined and hence has resulted in litigation [Refer IT vs. Indian Institute of Management 196 Taxman 276 (Kar.)]. It is now clarified that if the Government grant to such institutions exceeds the prescribed percentage of the total receipts, (including voluntary contributions), then it will be considered as being substantially financed by the Government.

## 7. BENEFIT OF REGISTRATION APPLICABLE FOR PRIOR YEARS – SECTIONS 12A & 12AA

Presently, a trust or an institution can claim exemption only from the year in which the application for registration under section 12AA has been made. As such, registration was applicable only prospectively and this used to cause genuine hardship to several charitable organisations. It is now provided that the benefit of sections 11 and 12 will be available to such trusts for all pending assessments on the date of such registration, provided the objects and activities of such trusts in these earlier years are the same as those on the basis of which registration has been granted. It is also provided that no action for reopening under section 147 shall be taken by the Assessing Officer merely on the ground of non-registration. Accordingly, completed assessments in which benefit under section 11 has been granted, will not be adversely affected on account of non-registration.

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

This amendment is effective from 1st October, 2014.

## 8. CANCELLATION OF REGISTRATION – SECTION 12AA

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

1) The activities of the trust are not genuine; or

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

Now, from 1st October 2014, the Commissioner also has power to cancel registration if it is noticed that the trust carries on activities in contravention of section 13(1) i.e.:

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

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

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

(iv) Funds are invested in prohibited modes.

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

## 9. INCREASE IN LIMIT OF DEDUCTION FOR INTEREST FROM HOUSE PROPERTY INCOME – SECTION 24(b)

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

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

## 10. INVESTMENT ALLOWANCE – SECTION 32AC

A company engaged in the business of manufacture or production of any article or thing ("manufacturing company") acquiring and installing any new plant and machinery after 31st March, 2013 but before 1st April, 2015 where the aggregate amount of actual cost of such new assets exceeds Rs. 100 crore, is allowed a deduction under section 32AC(1). The amount of deduction is –

(a) For assessment year 2014-15 a sum equal to 15% of the actual cost of new assets acquired and installed during financial year

2013-14, if the aggregate amount of actual cost of such new assets exceeds Rs. 100 crore; and

(b) For the assessment year 2015-16, a sum equal to 15% of the aggregate amount of actual cost of such new assets acquired and installed during financial years 2013-14 and 2014-15 as reduced by the amount of deduction allowed, if any, under clause (a).

With a view to extend the benefit of this section to companies which acquire and install new assets whose actual cost during any previous year exceeds Rs. 25 crore, sub-section (1A) is inserted. Sub-section (1A) provides that where a manufacturing company acquires and installs new assets and the actual cost of the new assets acquired and installed during any previous year exceeds Rs. 25 crore, it shall be allowed a deduction of 15% of the actual cost of such new assets. Such deduction is allowable up to A.Y. 2017-18.

For A.Y. 2015-16, deduction under sub-section (1A) shall not be allowed to an assessee who is eligible to claim deduction under sub-section (1). The operation of sub-sections (1) and (1A) has been illustrated in the Explanatory Memorandum as under:

(Rs. in Crore)

| 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/ss. 32AC(1) & 32AC(1A) |
| | Deduction allowable | 22.5 | 3 | 10.5 | Nil | |

Other provisions of section 32AC shall also apply to this new deduction allowed under sub-section (1A).

## 11. INVESTMENT LINKED DEDUCTIONS BY SEZ UNDERTAKINGS – SECTIONS 10AA & 35AD

Under section 10AA, newly established undertakings in Special Economic Zones can claim deduction in respect of profits and gains derived from export of articles or things or from providing services. Presently, deduction can be claimed even by such undertakings carrying on 'Specified Business' under section 35AD.

Sub-section (10) is now inserted to provide that where deduction under section 10AA has been availed by any assessee in respect of the profit of the Specified Business for any assessment year, no deduction under section 35AD shall be allowed in relation to such Specified Business for the same or any other assessment year.

Similarly, section 35AD has also been amended to prohibit claim of deduction under secion 10AA in respect of Specified Business where deduction under section 35AD has been claimed and allowed for the same or any other assessment year. Effectively, the assessee will, therefore, have to choose between deduction under section 10AA and under section 35AD in respect of Specified Business.

## 12. INVESTMENT LINKED DEDUCTIONS – SECTION 35AD

Section 35AD provides for a deduction in respect of any capital expenditure other than on the acquisition of any land or goodwill or financial instrument, incurred wholly and exclusively for the purposes of any specified business. Further, section 28(vii) taxes any sum received on account of demolition, destruction, discarding or transfer of such asset, the entire cost of which was allowed as a deduction under section 35AD.

The following changes are made:

(a) The above benefit is extended to the following two businesses, commencing operation on or after 1st April, 2014:

(i) Laying and operating a slurry pipeline for the transportation of iron ore;

(ii) Setting up and operating a semi-conductor wafer fabrication manufacturing unit notified by the Board in accordance with the prescribed guidelines.

(b) Sub-section (7A) is inserted to provide that any asset in respect of which deduction has been claimed and allowed under this section shall be used only for the specified business, for a period of 8 years beginning with the previous year in which such asset is acquired or constructed;

(c) Sub-section (7B) is inserted to provide that where any asset, in respect of which a deduction is claimed and allowed under this section, is used for any other purpose during the specified period of 8 years [otherwise than by way of a mode referred to in section 28(vii)], the total deduction so claimed and allowed in one or more previous years, as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD was allowed, shall be deemed to be the business income of the assessee of the previous year in which the asset is so used. Under the newly inserted sub-section (7C), this provision will not apply to a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the specified period of 8 years.

## 13. EXPENDITURE ON CORPORATE SOCIAL RESPONSIBILITY (CSR) – SECTION 37(1)

An explanation is inserted to section 37(1) to provide that any expenditure incurred by an assessee on CSR activities referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred for the purposes of the business or profession. However, the Explanatory Memorandum clarifies that CSR expenditure can qualify for deduction under sections 30 to 36, subject to the fulfilment of the conditions laid down in those sections.

## 14. DISALLOWANCES FOR NON DEDUCTION OF TDS – SECTIONS 40(a)(i) & 40(a)(ia)

Section 40(a)(i) *inter alia* provides for disallowance of expenditure payable outside India or to a non-resident, in case of non-deduction of tax or non-payment of tax after deduction during the previous year, or in subsequent year before the expiry of time prescribed under section 200(1). This section has been amended to provide that disallowance will not be attracted if, after deduction of

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

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

The section is now amended to:

a) Include all expenses payable to residents on which tax is deductible at source; and

b) To restrict the disallowance to only 30% of the expenditure.

Effectively, payments such as salaries, directors' fees, purchase of immovable property as stock-in-trade, non-compete fees etc. will now also be covered by this section. This section applies only to computation of business income.

## 15. COMMODITY DERIVATIVES – SECTION 43(5)

Commodity derivative transactions were excluded from the purview of speculative transactions with effect from A.Y. 2014-15 by insertion of clause (e) of section 43(5) by the Finance Act, 2013. It is now clarified with immediate effect i.e. from A.Y. 2014-15, that in order to be eligible for such exclusion, such transactions should be chargeable to Commodities Transaction Tax.

## 16. PRESUMPTIVE INCOME IN RESPECT OF BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES – SECTION 44AE

Section 44AE(2) is amended to provide that the presumptive amount of profit and gains for all types of goods carriages shall be Rs. 7,500 per month or part of a month for which each goods carriage is owned by the assessee or the amount claimed to have been actually earned by the assessee, whichever is higher. The earlier amounts were Rs. 5,000 for heavy goods carriages and Rs. 4,500 for other goods carriages. The distinction between goods carriages and heavy goods carriages has been done away with.

## 17. CAPITAL GAINS ARISING ON COMPULSORY ACQUISITION, ETC. – INTERIM AWARD – SECTION 45(5)(b)

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

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

## 18. TRANSACTIONS NOT REGARDED AS TRANSFER – SECTION 47

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

## 19. COST INFLATION INDEX – SECTION 48

At present, cost inflation index for a particular financial year means such index as may be notified by the Government having regard to 75% of the average rise in Consumer Price Index for urban non-manual employees for the immediately preceding year to such financial year.

Since the release of consumer price index for urban non-manual employees has been discontinued, it is provided that cost inflation index shall mean such index as may be notified by the Government having regard to 75% of the average rise in Consumer Price Index (Urban) for the immediately preceding previous year to such financial year.

This provision applies from A.Y. 2016-17.

## 20. TREATMENT OF FORFEITED ADVANCE RELATING TO CAPITAL ASSET – SECTIONS 51, 56(2)(ix) & 2(24)(xvii)

Section 51 provides that where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received or retained by the taxpayer in

respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, while computing cost of acquisition.

It is now provided in section 56(2)(ix) that the amount received as advance or otherwise in the course of negotiations for transfer of capital asset shall be chargeable to tax under the head "Income from other sources" if:

a. Such advance money is forfeited; and

b. The negotiations do not result in transfer of the capital asset.

Corresponding amendment is made in section 51 to provide that any such forfeited advance, taxed under section 56(2)(ix), shall not be deducted from the cost or the written down value or the fair market value of capital asset while computing the cost of acquisition.

## 21. CAPITAL GAINS EXEMPTION FOR INVESTMENT IN RESIDENTIAL HOUSE PROPERTY – SECTIONS 54 & 54F

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

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

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

## 22. CAPITAL GAINS EXEMPTION ON INVESTMENT IN SPECIFIED BONDS – SECTION 54EC

Section 54EC provides that where capital gain arises from the transfer of a long-term capital asset ('original asset') and the assessee has, within a period of six months after the date of such transfer, invested the whole or part of capital gains in the long-

term specified asset (specified bonds), such capital gains shall proportionately not be charged to tax. However, it was provided that the investment made in the long-term specified asset during any financial year shall not exceed Rs. 50 lakh.

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

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

## 23. SPECULATION LOSS FOR COMPANIES – EXPLANATION TO SECTION 73

A company whose principal business is that of trading in shares has now also been excluded from the purview of the Explanation to section 73. Effectively, the loss from share-trading business of such companies would not be regarded as speculation loss.

## 24. DEDUCTION IN RESPECT OF LIP, PPF, ETC. – SECTIONS 80C, 80CCD & 80CCE

Presently, an individual or HUF is eligible for a deduction from income of an amount not exceeding Rs.1 lakh with respect to specified investments or expenditure. Such specified investments / expenditures include Life Insurance Premium, PPF, Deferred Annuity, ELSS, Tuition fees etc. The limit of Rs. 1 lakh is raised to Rs. 1.5 lakh. The Finance Minister has in his Budget Speech stated that in the PPF Scheme, annual ceiling will be enhanced to Rs. 1.50 lakh per annum from Rs. 1 lakh at present.

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

## 25. EXTENSION OF TIME LIMIT FOR POWER SECTOR UNDERTAKINGS ELIGIBLE FOR DEDUCTION – SECTION 80IA(4)(iv)

At present, deduction under section 80IA is *inter alia* allowed to undertakings which commences their business of generation and / or distribution of power, transmission or distribution of power, complete substantial renovation or modernisation of existing transmission or distribution lines on or before 31st March, 2014.

The aforesaid time limit for commencement of eligible activity has now been extended to 31st March, 2017.

## 26. ANONYMOUS DONATIONS – SECTION 115BBC

Anonymous donations in excess of 5% of the total donations received or Rs. 1 lakh, (whichever is higher), are taxed at the rate of 30% in case of certain charitable entities. The residual income of such trust is computed after deducting the anonymous donations. Thus 5% of the total donations or Rs. 1 lakh whichever is higher is neither taxed as anonymous donation nor considered as part of the residual income of the entities. It is therefore provided that the residual income of the entities will be computed by reducing from the total income of the entities, the anonymous donations that have been taxed at the rate of 30% and not the total anonymous donations received by the entities. Such residual income will be eligible for exemption under sections 11/10(23C), subject to satisfaction of conditions of that section.

## 27. TAX ON DIVIDEND RECEIVED FROM FOREIGN COMPANIES – SECTION 115BBD

Dividend received by an Indian company from a foreign company in which it has equity shareholding of 26% or more is taxed at concessional rate of 15% plus applicable surcharge and education cess. The said concessional treatment was available till A.Y. 2014-15. Now, the sunset clause has been removed and concessional tax treatment will continue.

## 28. ALTERNATIVE MINIMUM TAX (AMT) – SECTIONS 115JC & 115JEE

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

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

A new sub-section (3) in section 115JEE has been inserted to provide that notwithstanding sub-sections (1) and (2), credit for AMT paid shall be available in accordance with the provisions of section 115JD. Thus, even if provisions of the Chapter are otherwise not applicable in that year either because non-corporate assessee's (other than partnerships and LLPs) adjusted total income does not exceed Rs. 20 lakh or it has not claimed deduction under Chapter VI-A, section 10AA or section 35AD, it will be entitled to claim credit for the AMT paid in the earlier years.

## 29. DIVIDEND DISTRIBUTION TAX (DDT) – SECTIONS 115-O & 115R

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

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

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

* Subject to applicable surcharge and cess.

The amended provisions are effective from 1st October, 2014.

## 30. INCOME TAX AUTHORITIES – SECTION 116

The following new Income-tax authorities have been created:

i) Principal Directors General of Income-tax;

ii) Principal Chief Commissioners of Income-tax;

iii) Principal Directors of Income-tax;

iv) Principal Commissioners of Income-tax.

The above changes will be effective retrospectively from 1st June, 2013.

## 31. POWER OF SURVEY – SECTION 133A

Presently under section 133A the income-tax authorities could retain the custody of impounded books of account and documents for a period of 10 days without obtaining the approval of the Chief Commissioner or Director General. This period is now increased to 15 days.

Sub-section (2A) has been inserted in section 133A to specifically grant additional powers to the Income-tax authorities to carry out survey for the purpose of verification of compliance of provisions of deduction of tax at source and collection of tax at source. In such survey, the Income-tax authorities cannot impound any books of account or any document nor make an inventory of cash, stock or other valuable article or thing.

The amendments shall take effect from 1st October, 2014.

## 32. POWER TO CALL FOR INFORMATION – SECTION 133C

Section 133C has been inserted with effect from 1st October, 2014 to empower prescribed Income-tax authorities to call for information or documents from any person for the purpose of verification of information in its possession relating to any person, which may be useful for any inquiry or proceedings.

## 33. MANDATORY FILING OF RETURN OF INCOME – SECTIONS 139(4C) & 139(4E)

It is now made mandatory for a mutual fund referred to in section 10(23D), securitisation trust referred to in section 10(23DA) and venture capital company/fund referred to section 10(23FB) to file its return of income if its income without considering provisions of section 10, exceeds the non-taxable limit. Every Business Trust (Real Estate Investment Trust and Infrastructure Investment Trust) as defined by newly inserted section 2(13A), is also compulsorily required to file its return of income.

## 34. VALUATION BY VALUATION OFFICER – SECTIONS 142A, 153 & 153B

The substituted section 142A provides that the Assessing Officer can make a reference to the Valuation Officer to estimate the value or fair market value of any asset, property or investment, whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. The Valuation Officer shall estimate the value based on the evidence gathered after giving an opportunity of being heard to the assessee. If the assessee does not co-operate, the Valuation Officer may estimate the value based on his judgment. The Valuation Officer is required to send a copy of his report to the Assessing Officer and to the assessee within a period of six months from the end of the month in which reference is made by the Assessing Officer. The Assessing Officer will then complete the assessment after taking into account such report, after giving the assessee an opportunity of being heard. The period from the date of reference to the Valuation Officer to the date of receipt of the report by the Assessing Officer shall be excluded while computing the period of limitation for the purpose of sections 153 and 153B.

The amendments shall take effect from 1st October, 2014.

## 35. METHOD OF ACCOUNTING – SECTION 145

Central Government may notify Income Computation and Disclosure Standards for computing income under the heads 'Profits and gains of business or profession' and 'Income from other sources'. Such standards are required to be regularly followed by the assessee and the income is required to be computed in accordance with such standards in order to avoid best judgment assessment under section 144.

## 36. ASSESSMENT OF INCOME OF OTHER PERSON IN SEARCH CASES – SECTION 153C

In cases of search, if the Assessing Officer is satisfied that the assets seized or books of account or other documents requisitioned belong to another person, then he has to hand over the same to the Assessing Officer having jurisdiction over such other person. Hitherto, it was mandatory for the other Assessing Officer to assess/reassess income of such other person in accordance with the provision of section 153A in such cases. The section is amended with effect from 1st October, 2014 to provide that such other Assessing Officer shall proceed against such other person to assess/reassess his income in accordance with the provisions of section 153A, only if he is satisfied that the books of account or documents or assets seized have a bearing on the determination of the total income of such other person for the relevant assessment year or years.

## 37. DEDUCTION OF TAX FROM PROCEEDS OF LIFE INSURANCE POLICY – SECTION 194DA

A new section has been inserted to provide for deduction of tax at the rate of 2% from the taxable amount (including bonus) paid under a life insurance policy. Accordingly, no tax will be deducted from the payments which are exempt u/s. 10(10D). Further no deduction is required where the aggregate of taxable payments does not exceed Rs. 1 lakh in a financial year.

The provision is effective from 1st October, 2014.

## 38. INTEREST IN RESPECT OF MONIES BORROWED IN FOREIGN EXCHANGE – SECTIONS 194LC & 115A

Presently, interest paid by an Indian company to a non-resident or a foreign company in respect of monies borrowed in foreign currency under a loan agreement or by issue of long-term infrastructure bonds (as approved by the Government) is taxed at a concessional rate of 5% plus applicable surcharge and cess. This concession was available for monies borrowed on or after 1st July, 2012 but before 1st July, 2015.

The concessional rate of tax has now been extended to interest in respect of monies borrowed before 1st July, 2017. Further, the restriction that the bonds should be infrastructure bonds has been removed. Consequential amendment has also been made in section 206AA.

Accordingly, tax is also required to be deducted at the rate of 5% plus applicable surcharge and cess.

The concessional rate of tax will also be available for interest paid by a 'Business Trust' as defined by the newly introduced section 2(13A) as mentioned the explanatory memorandum.

The amendments shall take effect from 1st October, 2014.

## 39. CORRECTION STATEMENT FOR TAX DEDUCTED AT SOURCE – SECTIONS 200 & 200A

Section 200(3) provides for filing of statement of tax deducted at source. A proviso has been inserted in sub-section (3) specifically providing that the deductor may file a correction statement for rectification of any mistakes or to add, delete or update information. Consequential amendment has been made to section 200A.

The amendments shall take effect from 1st October, 2014.

## 40. TIME LIMIT FOR DEEMING A PERSON AS AN ASSESSEE IN DEFAULT – SECTION 201

Presently, no order treating a person as an assessee in default for failure to deduct tax can be passed after the expiry of two years from the end of the financial year in which statement of tax deducted at source has been filed and after the expiry of six years where statement for tax deducted at source has not been filed, from the end of the financial year in which payment is made or credit is given.

Sub-section (3) of section 201 has been substituted to provide for a common time limit of seven years from the end of the financial year in which payment is made or credit is given, for deeming a person as an assessee in default. Thus, even if the statement of tax deducted at source has been filed, a person can be deemed as an assessee in default at any time within seven years. In such cases, the limit has been extended from two years to seven years.

The amendment shall take effect from 1st October, 2014.

## 41. INTEREST PAYABLE BY ASSESSEE CONSEQUENT TO CHANGE IN DEMAND – SECTION 220(2)

Section 220(2) provides for payment of interest in respect of unpaid amount of demand. Such interest is payable for the period commencing from the due date of payment of demand to the date of payment. It is further provided that if as a result of any order passed subsequently under sections 154, 250, 254 etc., the amount on which interest was payable is reduced, then the interest shall also be reduced accordingly.

The section is now amended to provide that in such cases, subsequently, as a result of any order under the aforesaid sections or under section 263, the amount on which interest was payable is increased, then the assessee shall be liable to pay interest under section 220(2) for the period from the original due date of payment of demand, up to the date of payment.

Further, sub-section (1A) has been introduced to provide that when the notice of demand has been served upon the assessee and any appeal or other proceedings, as the case may be, are filed or initiated in respect of the amount of such demand, then, such demand shall be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be and the same shall have the effect as specified in section 3 of the

Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

These amendments are effective from 1st October, 2014.

## 42. MODE OF ACCEPTANCE OR REPAYMENT OF LOANS OR DEPOSITS – SECTIONS 269SS & 269T

Sections 269SS & 269T prohibits every person from taking/ accepting or repaying any loan or deposit otherwise than by an account payee cheque or account payee bank draft, if the amount of loan or deposit exceeds the specified threshold.

Now, taking/accepting or repaying such loan or deposit by use of electronic clearing system through a bank account (i.e., by way of internet banking facilities or by use of payment gateways) is permitted.

## 43. LEVY OF PENALTY FOR FAILURE TO FURNISH TDS/TCS STATEMENTS ETC. – SECTION 271H

The existing provisions of section 271H provide for levy of penalty for failure to furnish TDS/TCS statements or furnishing of incorrect information in TDS/TCS statements. However, it does not specify the authority who is competent to levy the penalty under the section. Therefore, provisions of section 271H are amended to provide that such penalty shall be levied by the Assessing Officer.

This amendment is effective from 1st October, 2014.

## 44. PUNISHMENT FOR FAILURE TO PRODUCE ACCOUNTS & DOCUMENTS – SECTION 276D

Section 276D provides that if a person wilfully fails to produce accounts and documents as required in any notice issued under section 142(1) or wilfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both. Now in such a case, such person shall be punished with rigorous imprisonment for a term which may extend to one year and also with fine.

This amendment is effective from 1st October, 2014.

## 45. POWER OF EXTENSION OF A PERIOD OF PROVISIONAL ATTACHMENT – SECTION 281B

Under the provisions of Section 281B, the Assessing Officer may provisionally attach the properties of the assessee during the pendency of the assessment proceedings. Such order of provisional attachment can remain into operation for a maximum period of six months from the date of the order. However, the Chief Commissioner, Commissioner, Director General or Director were given the power to extend such period up to two years.

Under the amended provisions, the Chief Commissioner, Commissioner, Director General or Director can extend the period for which such order of provisional attachment may remain effective for a period up to two years or up to sixty days after the date of assessment or reassessment, whichever is later.

This amendment is effective from 1st October, 2014.

## 46. STATEMENT OF FINANCIAL TRANSACTIONS OR REPORTABLE ACCOUNT– SECTION 285BA

The section is substituted with effect from 1st October, 2014 to also provide for furnishing of statement of information by a prescribed reporting financial institution in respect of any specified financial transaction or reportable account to the Income tax authority or prescribed authority or agency. The statement shall be furnished for such period, within such time, and in such form and manner as may be prescribed. The Central Government may notify the persons required to be registered with the prescribed Income tax authority, the nature of information, the manner in which such information shall be maintained by the person and the due diligence to be carried out by the person for the purpose of identification of any reportable account. Any person who furnishes a statement of information, or discovers any inaccuracy in the information provided in the statement, shall within a period of ten days of discovering the mistake, inform the income tax authority or any other prescribed authority of the inaccuracy and furnish the revised information.

## 47. PENALTY FOR FAILURE TO FURNISH OR FURNISHING INACCURATE STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT – SECTIONS 271FA & 271FAA

In line with the amendments under section 285BA as mentioned in para 46 above, providing for statement of financial transaction or

reportable account as against the existing provisions for furnishing Annual Information Return, provisions of Section 271FA have been suitably modified to provide for levy of penalty for failure in furnishing such new statement.

Further, Section 271FAA has been inserted which provides for a penalty of Rs. 50,000 which can be levied by the prescribed income-tax authority on concerned reporting financial institution which provides inaccurate information in such statement and where –

1. The inaccuracy is due to a failure to comply with the due diligence requirement prescribed under section 285BA(7) or is deliberate on the part of the person; or

2. The person knows of the inaccuracy at the time of furnishing such statement, but does not inform the prescribed Income-tax authority or such other authority or agency; or

3. The person discovers the inaccuracy after such statement is furnished and fails to inform and furnish correct information within the time specified under section 285BA(6).

## 48. BUSINESS TRUSTS [REAL ESTATE INVESTMENT TRUST (REIT) AND INFRASTRUCTURE INVESTMENT TRUST (INVIT)] – SECTIONS 2(13A), 2(42A), 10(23FC), 10(23FD), 10(38), 47(xvii), 111A, 115UA, 139(4E), 194A & 194LBA

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

Section 2(13A) – new definition is inserted to define a Business Trust as Real Estate Investment Trust and Infrastructure Investment Trust, the units of which are listed on recognised stock exchange in accordance with SEBI Regulations and which are notified by the Central Government in this behalf.

Section 47(xvii) – new clause has been introduced to provide that the transfer of shares of a Special Purpose Vehicle (SPV) to a Business Trust by a shareholder (referred to as the Sponsor in the Explanatory Memorandum) in exchange of units allotted by the trust to the shareholder would not be considered as a transfer for the purpose of capital gains in the hands of the shareholder. For the purpose of determining the holding period of such units, the period for which the share(s) are/were held will also be taken

into consideration vide new clause (hc) inserted in section 2(42A). Similarly, the cost of acquisition of the share(s) would be deemed to be the cost of such units vide section 49(2AC). The long term capital gains from transfer of such units will not qualify for exemption under section 10(38) by virtue of a specific provision made in the proviso to the said section. Similarly, the short term capital gains in such cases would not qualify for the concessional rate of tax under section 111A, as specifically provided in the proviso to the said section. In case of other unitholders, capital gains arising on transfer of units will qualify for exemption under section 10(38) or for the concessional rate under section 111A, as the case may be, subject to satisfaction of the conditions laid down in those sections.

Section 10(23FC) – a new clause has been introduced to provide for exemption in the hands of a Business Trust, in respect of interest income received or receivable from a SPV being an Indian company in which the trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which the trust is registered. Such interest income would not be subject to TDS under section 194A (with effect from 1st October, 2014) and the payer SPV would not be required to deduct any tax at source. The distribution of such interest income by the Business Trust will be taxed in the hands of the non-resident unitholders at the rate of 5% plus applicable surcharge and cess and the tax would be deducted at source as provided in section 194LBA (with effect from 1st October, 2014). The distribution of such interest will be taxed in the hands of the resident unitholders at the applicable rate plus applicable surcharge and cess and would be subjected to a TDS at the rate of 10% plus applicable surcharge and cess, as provided in section 194LBA.

Any other income [other than interest referred to in section 10(23FC)] distributed by the Business Trust to its unitholders would be exempt in their hands as provided in section 10(23FD).

A new Chapter XII-FA consisting of section 115UA has been introduced to provide for special provisions relating to Business Trusts. Basically, the pass through status is sought to be provided for certain income of such trusts. The income of the Business Trust distributed by the trust to its unitholders would be deemed to be of the same nature and in the same proportion in the hands of the unitholder as it had been received by or accrued to the trust. The income of the trust, other than the income referred to in sections 10(23FC), 111A and 112, would be chargeable to tax in the hands of the trust at maximum marginal rate. When a unitholder receives any income distributed by a Business Trust and that income is of the nature referred to in section 10(23FC), then such income will be taxed in the hands of the unitholder. The Business Trust will have to furnish

an information statement to the unitholder and to the prescribed authority in the prescribed form giving the prescribed details.

Capital gains earned by the Business Trust will be subject to tax in its hands as per provisions applicable to capital gains contained in sections 111A and 112.

A Business Trust is required to file a Return of Income as provided in section 139(4E).

## 49. TRANSFER PRICING – SECTIONS 92B, 92CC & 271G

Section 92B(2) extends the scope of the definition of 'international transaction' by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise or the terms of the relevant transaction are determined in substance between the other person and the associated enterprise.

A doubt was expressed as to whether or not, for the transaction to be treated as an international transaction, the unrelated person should be a non–resident.

It is now provided that such transaction shall be deemed to be an international transaction entered into between two associate enterprises, whether or not such other person is a non-resident.

Section 92CC dealing with Advance Pricing Agreements (APA) is amended to provide for roll-back mechanism. Accordingly, the APA may provide for determining the Arm's Length Price (ALP) or specify the manner in which ALP is to be determined in relation to an international transaction entered into, during any period not exceeding four previous years preceding the first of the previous year for which the APA applies in respect of the international transaction to be undertaken. This roll-back provision would be subject to conditions, procedure and manner to be prescribed, providing for determining the ALP or for specifying the manner in which ALP is to be determined.

The amendment in section 92CC is effective from 1st October, 2014.

Penalty under section 271G can be levied upon any person, who has entered into an international transaction or specified domestic transaction and fails to furnish any such document or information as required by Section 92D(3). Such penalty can now be levied not only by the Assessing Officer or Commissioner (Appeals) but also by the Transfer Pricing Officer.

This amendment in section 271G is effective from 1st October, 2014.

The Finance Minister in his budget speech, has made the following two announcements:

1. Inter-quartile range concept for determination of ALP, in addition to arithmetic mean concept will be introduced.

2. For comparable analysis instead of only one year data, use of multiple year data will be allowed.

For both the announcements, appropriate rules will be prescribed or regulations would be amended.

## 50. ADVANCE RULING & INCOME TAX SETTLEMENT COMMISSION

The Finance Minister in his Budget Speech, has stated that the facility of obtaining advance ruling will be extended to resident tax-payers in respect of their income-tax liability above a defined threshold. He has also stated that to strengthen the Authority for Advance Ruling additional benches will be constituted.

He further stated that the scope of the Income-tax Settlement Commission will be enlarged so that taxpayers may approach the Commission for settlement of disputes. This would continue to be once in a life time opportunity for any taxpayer.

It is stated that necessary legislative amendments for these will be moved in the current session of the Parliament.

# INDIRECT TAXES

## SERVICE TAX

All amendments proposed in the Finance (No. 2) Bill, 2014 of Chapter V of the Finance Act, 1994 (the Act), Notifications issued and the following Rules framed thereunder are discussed below:

- Service Tax Rules, 1994 (The Rules or Service Tax Rules)
- Point of Taxation Rules, 2011 (POT Rules)
- Service Tax (Determination of Value) Rules, 2006 (Valuation Rules)
- Place of Provision of Services Rules, 2012 (PoP Rules)
- CENVAT Credit Rules, 2004 (CCR)

The amendments come into effect from a date to be notified after the enactment of the Finance (No. 2) Bill except those specified otherwise.

### 1. RATE OF TAX

The effective rate of service tax remains unchanged at 12.36%.

### 2. THRESHOLD EXEMPTION

The basic exemption of Rs. 10 lakh is maintained.

### 3. LEGISLATIVE CHANGES

#### i. Negative List of services

a. Radio taxi service is excluded from the Negative List and hence it is now taxable. Consequently the definition of "Metered Cab" is amended to exclude Radio taxi [Section 65B(32), 66D(o)(vi)].

b. Scope of sale of space for advertisement covered under the negative list is now restricted to 'print media' only, which is defined to mean 'book' and 'newspaper' as defined u/s. 1(1) of the Press and Registration of Books Act, 1867 and does not include business directory, yellow pages and trade catalogues primarily meant for commercial purpose. Earlier, sale of space or time slot for advertisement (other than advertisement broadcast by radio or television) was in the negative list. Thus,

sale of space or time slots for advertisements on internet website, cell phones, bill boards, conveyances, automated teller machines, aerial advertising, theatre screen etc. are now taxable [Sections 65B(39a), 66D(g)].

**ii. Rate of Exchange for foreign currency transactions**

Rate of exchange is now delinked from the custom notified rates for which separate rules will be prescribed by the Central Government. Hitherto, conversion of foreign currency transactions was done at custom notified rates of exchange [Explanation to Section 67A].

**iii. Time Limit for completion of adjudication**

a. Time limit is prescribed for passing adjudication order whereever show cause notice is issued as under:

| Period of limitation | Prescribed time limit* |
|---|---|
| Normal period | 6 months |
| Extended period | 12 months |

*The time limit to be adhered to whereever it is possible to do so.

[Section 73(4B) effective from the date of enactment of Finance (No. 2) Bill, 2014].

**iv. Rate of Interest**

Variable rates of interest are introduced depending upon the extent of delay in payment of tax as under.

| S. No | Period of delay | Rate of simple interest |
|---|---|---|
| 1. | Up to six months | 18% |
| 2. | More than six months and up to one year | 18% for the first six months of delay and 24% for the delay beyond six months. |
| 3. | More than one year | 18% for the first six months of delay; 24% for the period beyond six months up to one year and 30% for any delay beyond one year. |

[Notification No. 12/2014-ST effective from 1-10-2014]

**v. Power to waive penalty**

In case of suppression or misstatement of facts, etc., where the true and complete details of transactions are available in specified records, power to waive penalty levied on the ground of reasonable cause is now withdrawn [Section 80].

**vi. Power to search premises**

In addition to the Joint Commissioner, power to search any premises and seize any documents, books or things is granted to the Additional Commissioner or any other notified Central Excise Officer [Section 82].

**vii. Other amendments in the Act**

**a. Applicability of Central Excise provisions to service tax**

Consequent upon introduction of provisions of sections 5A(2A), 15A and 15B and amendment of already applicable section 35F in section 83, the following provisions apply to service tax:

- The Central Government is empowered to clarify the scope or applicability of any exemption notification or order within one year from the date of issue of the original notification or the order.
- Assessee or a concerned third party like a bank, a government agency etc. is required to furnish periodic information return in the prescribed form. Penalty of Rs. 100/- per day is imposable for failure to provide such information.
- Provision is made for mandatory pre-deposit of 7.5% /10% of duty/penalty/both, as the case may be, in case of first/second appeal, respectively subject to a maximum of Rs.10 crore. With this amendment the right to apply for a stay of demand before appellate authorities is effectively withdrawn. This provision is not applicable to pending stay applications/appeals made prior to the date of applicability of these provisions.

b. The Board is empowered to constitute committee of Commissioners to review orders, by passing an order instead of notification [Section 86(1A)].

c. The words "for grant of stay or" are omitted in section 86(6A).

d. The Commissioner is now empowered to recover dues of a predecessor assessee from the assets transferred to his successor [Section 87].

e. Additional powers granted to the Central Government in relation to levy and collection of tax, furnishing of information, imposition on persons liable for service tax to maintain records, withdraw facility or restrict CENVAT credit utilisation and authorising CBEC to issue instructions for incidental or supplementary issues [Section 94(2)].

f. The Central Government is empowered to issue order for removal of difficulty for any amendment made by the Finance (No. 2) Act, 2014 within one year from the date of its enactment [Section 95].

[(v) to (vii) above are effective from the date of enactment of Finance (No.2) Bill, 2014].

### viii. Advance Ruling

The benefit of applying for Advance Ruling is extended to resident private limited company.

[Notification No. 15/2014-ST effective from 11-7-2014]

## 4. EXEMPTIONS

### i. New Exemptions

a. Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto [entry 2B].

b. Services of life insurance business provided in relation to life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees [entry 26A(c)].

c. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves [entry 41].

d. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India [entry 42].

**ii. Modifications in existing exemption entries**

a. Services provided by educational institution to its students, faculty and staff [entry 9(a)].

b. Services provided to an educational institution by way of:

- Transportation of students, faculty and staff;
- Catering including any mid-day meal sponsored by the Government;
- Security or cleaning or house-keeping services performed in such educational institution; and
- Services relating to admission or conduct of examination by such institution.

Earlier, "auxiliary educational services" as defined in Para 2(f) provided to educational institutions viz., any service relating to imparting any skill, knowledge, education or development of course content or any other knowledge enhancement activity whether for student or faculty or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced from any other person were exempt. Now services other than those specified above are taxable. Further, services in relation to renting of immovable property to an educational institution in respect of education were exempt and now taxable [substitution of entry 9 and omission of Para 2(f)].

The "educational institution" is now defined to mean an institution providing services specified in section 66D(l) [para 2 (oa)].

c. Service by a hotel, inn, guest house, club or campsite, whether commercial or otherwise, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent [substitution of entry 18].

d. Service by way of transportation of organic manure and cotton, ginned or baled, by rail or a vessel or by road, from one place in India to another [insertion in/of entries 20 (j) and (k) & entry 21(e) and (i)].

e. Services by way of transportation of passengers with or without accompanied belongings, excluding for tourism,

conducted tour, charter or hire, is now restricted to transportation by non air-conditioned contract carriage other than radio taxi [substitution of entry 23(b)].

"radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS) [Para 2 (za)]

f. Services provided to Government, a local authority or a Governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation.

Earlier, such activities in relation to any function ordinarily entrusted to a municipality were exempt [Substitution of entry 25(a)].

g. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled is now exempt. Earlier the exemption was restricted to such activities in relation to rice only [Substitution of entry 40].

**iii. Exemption withdrawn**

Service by way of technical testing or analysis of newly developed drugs including vaccines and herbal remedies on human participants by approved clinical research organisations [omission of entry 7]

[All entries referred above are of Mega Exemption Notification No.25/2012-ST and are effective from 11-7-2014]

**iv.** Retrospective exemption is provided for services provided prior to 1-7-2012 by Employees' State Insurance Corporation set up under the Employees' State Insurance Act, 1948 [Section 100].

## 5. ABATEMENT

i. In relation to service of goods transport agency for transportation of goods, it is clarified that the non-availment of CENVAT credit is qua service provider only. [entry.7 effective from 11-7-2014].

ii. Renting of "motor cab" – The word, "motor cab" is substituted for the words, "any motor vehicle designed to carry passengers". For a service provider providing output service of renting of motor cab, CENVAT credit in relation to input service of renting of motor cab is allowed if taken in the following manner:

- Full CENVAT credit if on such input service, service tax is paid on 40% of the value, or
- Up to 40% of CENVAT credit if on such input service, service tax is paid on full value [entry 9 effective from 1-10-2014].

iii. Abatement of 60% is provided for service in relation to transport of passengers, with or without accompanied belongings by a contract carriage other than a motor cab (and radio taxi, as and when taxable) with a condition that CENVAT credit on input, capital goods and input services used for providing the taxable services is not taken [insertion of entry 9A effective from 11-7-2014].

iv. The abatement is restricted to 40% for service in relation to transport of goods in vessel [entry 10 effective from 1-10-2014]

v. For service in relation to tour operator, the restriction of taking of CENVAT credit shall be applicable in relation to inputs, capital goods and input services other than input service of a tour operator [entry 11 effective from 1102014].

[All entries referred above are of Notification No. 26/2012-ST – Notification No.8/2014-ST]

## 6. SERVICE TAX RULES, 1994 (THE RULES)

### i. Payment under Reverse Charge

- In relation to service by a recovery agent to a banking company, a financial institution or a NBFC, the recipient of service is now liable to pay tax in full on reverse charge basis [ Rule 2(1)(d)].
- In addition to service provided by directors of a company, reverse charge is also applicable to services provided by directors to a body corporate.

- In case of service by way of renting of motor cab (where no abatement is availed), the receiver of service who is a business entity registered as body corporate, is required to pay 50% of service tax under partial reverse charge mechanism as against earlier 40%.

[Notification No. 9 & 10/2014 – ST effective from 11-7-2014]

**ii. Mandatory e-payment of service tax for all assessees**

Every assessee is now required to pay service tax electronically through internet banking [Rule 6(2)] [effective from 1-10-2014].

## 7. SERVICES PROVIDED TO SEZ OR THE DEVELOPER OF SEZ

i. The jurisdictional Deputy Commissioner is required to issue authorisation within 15 working days from the date of submission of Form A-1.

ii. Such authorisation shall be valid from the date of verification of Form A-1 by the specified officer of the SEZ. If Form A-1 is not submitted to the jurisdictional AC / DC within 15 days of verification by the specified officer, the authorisation shall be valid from the date on which the same is submitted.

iii. Pending issuance of the authorisation, the provider of specified service may provide such service without payment of service tax on the basis of Form A-1 and the unit or developer shall provide a copy of authorisation to the service provider immediately on receipt of such authorisation. If the SEZ unit or developer does not provide copy of the said authorisation to the provider of specified service within the period of 3 months from the date of provision of the specified service, then such service shall be deemed to have been provided in terms of POT Rules, and the service provider shall pay service tax on such service.

iv. For the purpose of this notification, a service shall be treated as used exclusively for the authorised operations if the service is received by the SEZ unit or the Developer under an invoice in the name of such unit or the Developer and the service is used only for furtherance of authorised operations in the SEZ.

v. Service Tax Registration No. is not applicable in Forms A-1 and A-3 if the specified service is covered under full reverse charge.

[Notification No. 7/2014-ST effective from 11-7-2014]

## 8. POINT OF TAXATION RULES, 2011 (POT RULES)

The point of taxation in respect of person required to pay tax as recipient of service under Reverse Charge Mechanism is the date on which payment is made if the said payment is made within 3 months from the date of invoice, failing which the point of taxation shall be the first day that occurs immediately after a period of 3 months from the date of invoice. Earlier, this period was 6 months from the date of invoice. This amendment is applicable only to invoices issued on or after 1-10-2014.

[Notification No. 13/2014-ST effective from 1-10-2014]

## 9. PLACE OF PROVISION OF SERVICE RULES, 2012 (POP RULES)

i. The definition of 'intermediary' is amended to also include a broker, an agent or any other person, by whatever name called, who arranges or facilitates supply of goods. Thus all commission agents for goods are now covered under Rule 9(c) of POP Rules which provides location of service provider as the place of provision of service. [Rule 2(f)]

ii. The place of performance rule is not applicable in case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair. It means that if the said goods are put to use in the taxable territory, the service is taxable. [Rule 4(a)]

iii. Services of hiring of aircraft and vessels (excluding yachts) are excluded from Rule 9(d). Thus, hiring of aircraft or vessels irrespective of period of hiring is covered by general Rule 3 i.e. the place of location of the service receiver [Rule 9(d)].

[Notification No. 14/2014-ST effective from 1-10-2014]

## 10. SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 (VALUATION RULES)

In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax is payable on 70% of the total amount charged for the works contract instead of 60% of the total amount charged. In

view of this amendment, for all works contracts other than those relating to original works, service tax is payable on 70% of the total amount charged [Rule 2A – Notification No.11/2014-ST effective from 1-10-2014.]

## 11. CENVAT CREDIT RULES, 2004 (CCR)

### i. Definition

"Place of removal" is defined in Rule 2(qa) to mean:

- A factory or any other place or premises of production or manufacture of the excisable goods;
- A warehouse or any other place or premises wherein the excisable goods are permitted to be deposited without payment of duty;
- A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed. (Effective from 11-7-2014)

### ii. Conditions for allowing CENVAT credit

a. Time limit for taking CENVAT credit.

A manufacturer or provider of output service cannot take CENVAT credit of duty/service tax paid on inputs or input services after six months of the date of issue of any of the documents specified in Rule 9(1) of CENVAT Credit Rules, 2004 [Rule 4(1) and 4(7) effective from 1-9-2014]

b. In respect of input services where the whole of the service tax is liable to be paid by the recipients of service, it is now provided that CENVAT credit shall be allowed after the service tax is paid. Hence, the earlier condition which stipulated payment of invoice value to the service provider for availing credit of input services is withdrawn. However there is no change in conditions for availing CENVAT credit of input services in respect of payments made under partial reverse charge [Rule 4(7) effective from 11-7-2014].

### iii. Obligation of a manufacturer or producer of final products and provider of output service

In case of exported services, a provision is made whereby if payments are received after the specified or extended period allowed by RBI but within one year from such period, the provider of output service shall be entitled to take the credit of an amount equivalent to

the CENVAT credit paid earlier in terms of Rule 6(3) to the extent it relates to such payment, on the basis of documentary evidence of the payments received [Rule 6(8) effective from 11-7-2014]

**iv. Large taxpayer**

Transfer of CENVAT credit by a larger taxpayer from one unit to another is now not permitted [Rule 12A effective from 11-7-2014].

# CENTRAL EXCISE

[Changes in the Central Excise Act, 1944 (the Act) are effective from the date of enactment of the Finance (No. 2) Bill 2014, except where stated otherwise.]

## 1. CHANGES IN THE CENTRAL EXCISE ACT, 1944

i. Section 2(b) of the Act is amended to provide for inclusion of Principal Chief Commissioner of Central Excise and Principal Commissioner of Central Excise in the definition of the Central Excise Officer. Further any reference to a Chief Commissioner of Central Excise or a Commissioner of Central Excise may also include a reference to the Principal Chief Commissioner of Central Excise or Principal Commissioner of Central Excise, as the case may be.

ii. A new section 15A is inserted in the Act to provide that any person being an assessee, or a local authority or other public body or association or VAT/sales tax authority, or income tax authority, or a banking company, or State Electricity Board, Registrar or sub Registrar under Registration Act, or Registrar of Companies, RTO, or Collector appointed under Land Acquisition Act, or Officer of recognised Stock Exchange, or Security Depository or an Officer of RBI shall furnish an information return to such an authority or agency as may be prescribed. If such a person fails to submit the information within the time prescribed, the authority may direct the person to pay a penalty of Rs. 100 for each day for such a failure.

iii. Section 31 of the Act is amended to rename the "Customs and Central Excise Settlement Commission" as "Customs, Central Excise and Service Tax Settlement Commission".

iv. Section 35B(1) is amended to increase the discretionary powers of the Tribunal to refuse admission of appeal from existing Rs. 50,000/- to Rs. 2,00,000/-.

v. Section 35F of the Act is substituted with a new section. The substituted section 35F provides for a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing an appeal with Commissioner (Appeals) or Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. However the amount of pre-deposit payable shall be subject to a ceiling of Rs.10 crore. Further first, second and third provisos to section 35C(2A), relating to granting of stay are omitted.

vi. At present, appeal against the Tribunal's order in respect of determination of any question having relation to rate of duty lies with the Supreme Court. It is now provided that the term 'determination of any question having relation to rate of duty' shall also include determination of disputes relating to taxability or excisability of goods. Appeal against Tribunal orders in such matters would lie before the Supreme Court.

vii. The Commissioner (Appeals) may refuse to consider the earlier judgment cited by the Appellant as binding precedent, taking into account that the non-filing of appeal was due to the amount involved being less than the monetary limits prescribed by the Board [Section 35R].

viii. The Scheme of Advance Ruling is extended to 'resident private limited companies'. The 'private limited company' shall have the same meaning as defined in the Companies Act, 2013, and 'resident' has the same meaning as defined in Income-tax Act, 1961.

## 2. CHANGES IN CENTRAL EXCISE RULES, 2002

i. W.e.f. 1-10-2014, every assessee is required to pay the excise duty electronically through internet banking, except where Assistant Commissioner of Central Excise, for reasons to be recorded in writing, allows an assessee to make payment of duty by any mode other than internet banking.

ii. W.e.f. 11-7-2014, if an assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, penalty at the rate of 1 per cent per month or part thereof on such amount of duty not paid is payable for the period during which such failure continues.

## 3. CHANGES IN THE CENTRAL EXCISE VALUATION RULES, 2000

Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is amended to provide that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.

The adverse impact of Supreme Court decision in FIAT's case is thus nullified.

## 4. CHANGES IN CENVAT CREDIT RULES, 2004

Refer to Sr. No. 9 under Service Tax.

## 5. UNIT QUANTITY OF CODES

The Schedules to the Central Excise Tariff Act, 1985 are amended in respect of selected goods to match the unit quantity prescribed therein with the ones that are actually used in trade and commerce. This would facilitate trade and improve data quality and compliance.

## 6. MAJOR CHANGES IN RATES OF DUTY [EFFECTIVE FROM 11-7-2014]

i. An additional duty of 5% is imposed on aerated waters containing added sugar falling under chapter heading 2202.10.

ii. Specific rate of duty on cigarettes is increased by 72% on cigarettes of length not exceeding 65 mm and by 11 % to 21% on other cigarettes.

iii. Basic excise duty is increased from 12% to 16% on pan masala, from 50% to 55% on unmanufactured tobacco and from 60% to 70% on jharda, scented tobacco, gutkha and chewing tobacco.

iv. Excise duty on branded petrol is reduced from Rs. 7.50 per litre to Rs. 2.35 per litre.

v. Excise duty of 6% is levied on writing and printing paper for printing educational text books instead of optional excise duty of 2% without CENVAT and 6% with CENVAT

vi. Excise duty on footwear of retail price exceeding Rs. 500/- per pair but not exceeding Rs. 1,000/- per pair is reduced from 12% to 6%.

vii. Excise duty on machinery for preparation of meat, poultry, fruits, nuts or vegetables, wine, cider, fruit juices etc. is reduced from 12% to 6%.

viii. Full exemption is provided to:

- LPG supplied to non-exempted category customers of IOL, HPCL and BPCL
- Specified raw materials and solar tempered glass used for manufacture of solar photo voltaic cells or modules
- Security thread and security fibre supplied to paper mills manufacturing security paper
- Parts consumed within the factory of production for manufacture of non-conventional energy devices
- Reverse osmosis membrane element for water filtration or purification equipment
- Specified HIV/AIDS drugs and diagnostic kits supplied under National Aids Control Programme
- Education Cess and Secondary and Higher Secondary Cess (customs component) on goods cleared by an EOU into DTA

# GOODS AND SERVICES TAX (GST)

The Finance Minister, in his budget speech has stated that the debate whether to introduce a Goods and Services Tax (GST) must now come to an end. Necessary discussion has taken place with regard to concern of some of the States about surrendering of their taxation jurisdiction, adequate compensation etc. With his assurance to all the States to be more than fair in dealing with such issues, he expressed a hope to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST. This will streamline the tax administration, avoid harassment of the business and result in higher revenue collection both for the Centre and the States.

# BCAS at your service

A voluntary organisation established on 6th July, 1949, BCAS has more than 9,000 members from all over the country at present and is a principle-centred and learning-oriented organisation promoting quality service and excellence in the profession of Chartered Accountancy and is a catalyst for bringing out better and more effective Government policies & laws and for clean & efficient administration and governance.

The diverse activities of BCAS include:

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**Representations:** BCAS makes representations to various authorities on different laws as well as on procedural issues, with a view to making them just and friendly to the general public. The representations include pre and post-budget memoranda to the Ministry of Finance, Government of India, Ministry of Company Affairs, and Central Board of Direct Taxes among others.

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