

India journal www.wts.in

#8.2014

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Characterization of Income in case of Foreign Institutional Investors (FIIs).

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Riddle



Saskia Bonenberger
Executive Director
WTS India

Dear Reader,

New WTS India Journal

This month we will present you the new WTS India Journal in a new design with the most discussed business topic: The new budget. Signals to attract foreign investments and to remove red tape were given. Now the new government has to prove that these signals are followed by fundamental changes concerning red tape prone legislation. The steps were made in the right direction, but not solved retrospective amendment in direct taxes, pre-deposit and high interests in service tax legislation are some key words, where foreign investors get irritated. Sure, the deficit is tremendous, after 45 days of government in a half year budget expectations have to be realistic, but to uplift the hopes of foreign investors – especially from Europe, the largest investor after Mauritius- their concerns and the huge grey and black market have to be addressed more clearly.

Fortunately one objective is clear: infrastructure projects have received attention in this budget. Money will flow to railways, power, ports, shipping, and irrigation projects. In FDI in the defence sector, the rise from 26% to 49 % allowable foreign participation might not be enough to trigger enormous investments- but could be a start to open up for two more per cent points and therefore trigger the production in contrast to the predominant imports from abroad.

On the long run- persistence and continuous improvement in the governmental work will be the key for success- be it education, infrastructure or last but not least: tax administration. And there very silently with the TARC report published under the new government, steps for further improvement can be derived and show where long term development might go.

So let us have a look en detail, enjoy our new and fresh look and the riddle in the end.

A handwritten signature in black ink, appearing to read 'Saskia Bonenberger', written in a cursive style.

1. Corporate Tax Rate

No changes have been made in the corporate tax rates and applicable surcharge and cess for the financial year 2014-15.

2. Personal Taxation | Author: Jatinder Singh, New Delhi

a. Tax Rate

The changes made in the tax rates applicable to individuals, HUF, Association of Persons and Body of Individuals are enclosed here. No change has been made in the applicable surcharge and cess.

I. In the case of Individual aged below 60 years (i.e. other than those individuals mentioned in II and III below) or any HUF / AOP / BOI / artificial juridical person | Author: Jatinder Singh, New Delhi

S.No.	Income range	Tax Rates
i.	Where the total income does not exceed Rs. 2,50,000/-	NIL
ii.	Where the total income exceeds Rs. 2,50,000/- but does not exceed Rs. 5,00,000/-	10% of amount by which the total income exceeds Rs. 2,50,000/-
iii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-	Rs. 25,000/- + 20% of the amount by which the total income exceeds Rs. 5,00,000/-
iv.	Where the total income exceeds Rs. 10,00,000/-	Rs. 125,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-

II. Individual resident who is of the age of 60 years or more but below the age of 80 years at any time during the previous year (financial year) | Author: Jatinder Singh, New Delhi

S.No.	Income range	Tax Rates
i.	Where the total income does not exceed Rs. 3,00,000/-	NIL
ii.	Where the total income exceeds Rs. 3,00,000/- but does not exceed Rs. 5,00,000/-	10% of the amount by which the total income exceeds Rs. 3,00,000/-
iii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-	Rs. 20,000/- + 20% of the amount by which the total income exceeds Rs. 5,00,000/-
iv.	Where the total income exceeds Rs. 10,00,000/-	Rs. 120,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-

III. Individual resident who is of the age of 80 years or more at any time during the previous year (financial year) | Author: Jatinder Singh, New Delhi

S.No.	Income range	Tax Rates
i.	Where the total income does not exceed Rs. 5,00,000/-	NIL
ii.	Where the total income exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/-	20% of the amount by which the total income exceeds Rs. 5,00,000/-
iii.	Where the total income exceeds Rs. 10,00,000/-	Rs. 100,000/- + 30% of the amount by which the total income exceeds Rs. 10,00,000/-

Note: In addition, surcharge & cess would continue to be levied, wherever applicable. There are no changes proposed in respect of surcharge and cess.

b. Deductions

Limit of deductions from total income, allowed under section 80C of the Act to an individual or a Hindu Undivided Family in respect of certain investments and contributions, has been raised from Rs. 0.1 million to Rs. 0.15 million.

c. Limit for deduction of interest paid on self-occupied house property increased

The existing limit for deduction of interest paid of Rs. 0.15 million on self-occupied house property has been increased to Rs. 0.2 million.

The aforesaid amendments will be effective from Assessment year ("AY") 2015-16.

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3. Characterization of Income in case of Foreign Institutional Investors ("FII"s) |

Author: Jatinder Singh, New Delhi

The securities (including shares in companies) held by FII which has invested in such security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992, will be considered as 'Capital Asset' even if such securities are held as stock-in-trade. Accordingly, the definition of 'Capital Asset' under section 2 (14) of the Act has been amended. Consequently, any gain arising from transfer of the securities by FII's,

would be considered in the nature of capital gains only.

With this change, the dispute whether gain arising from transfer of securities constitute 'Business Profits', (not taxable in India in the absence of P.E.), is sought to be set at rest.

This amendment will take effect from AY 2015-16.

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4. Specified residents can obtain Advance Ruling | Author: Jatinder Singh, New Delhi

As per the existing provisions of the Act, 'Advance Ruling' can only be obtained for determining the tax liability of a Non-Resident and Public Sector Undertakings. An amendment in Section 245 N has been made to provide that 'Advance Ruling' can also be obtained by a specified Resident for determining his tax liability, arising out of a transaction undertaken or proposed to be undertaken by him.

Additional Benches of the Authority for Advance Rulings are proposed to be set up.

This amendment will take effect from October 1, 2014.

Contact: subhasis.banerjee@wts.co.in

5. Concessional rate of withholding tax on interest income in case of overseas borrowing referred to in Section 194LC extended to any long term bond | Author: Jatinder Singh, New Delhi

The existing provisions of section 194LC provide that if an Indian company borrows money (on or after July 1, 2012 but before July 1, 2015), in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds as approved by the Central Government, then the interest payment to a non-resident person would be subject to a concessional rate of withholding tax @ 5%.

The benefit of concessional rate of 5% has been extended to any long term bond and not limited to long term 'infrastructure bond' as approved by the central

government. Further, the sunset date for raising foreign currency loan has been extended by two more years i.e. before July 1, 2017.

Consequential amendment has been made under section 206AA to extend the benefit of exemption from the levy of higher rate of withholding tax in the absence of PAN of the recipient of income, to any long term bond, instead of a long term 'infrastructure bond'.

This amendment will be effective from October 1, 2014.

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6. Benefit of concessional rate for taxation of dividends from a specified foreign company extended for indefinite period | Author: Jatinder Singh, New Delhi

The Finance Act, 2011 had inserted section 115BBD to provide for taxation at concessional rate of gross dividends received by an Indian Company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% (plus surcharge and cess).

This was applicable only till AY 2014-15. This beneficial provision has been extended for an indefinite period.

This amendment will be applicable from AY 2015-16.

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7. Exemption to Government Securities transferred outside India between non-residents | Author: Jatinder Singh, New Delhi

With a view to facilitate listing and trading of government securities outside India without attracting capital gains tax, a new clause (viib) in section 47 has been inserted to provide that any transfer of a capital asset, being a government security carrying periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, from a non-resident

to another non-resident shall not be considered as transfer for the purpose of charging capital gains and accordingly capital gain derived, if any, shall not be chargeable to tax in India.

This amendment will be applicable from AY 2015-16.

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8. Exemptions for Real Estate Investment Trust ("REIT") and Infrastructure Investment Trust ("Invit") | Author: Jatinder Singh, New Delhi

A new Taxation regime has been introduced for REIT and Invit i.e. Business Trusts set up in accordance with SEBI regulations.

Under the income-investment model of such REITs and Invits (referred to as Business Trusts), the income bearing assets of the Business Trusts would be held by acquiring controlling or other specific interest in an Indian company (SPV) from the sponsor. The trust would raise capital by way of issue of units and can also raise debts directly both from resident as well as non-resident investors.

A single level taxation on various income streams arising

to Business Trust will be applicable.

Interest Income- Business Trust shall be exempt from income tax on interest from Special Purpose Vehicle (SPV) under section 10(23FC). Business Trust shall withhold tax on interest payment to non-resident investors @ 5% and to resident investors @ 10% as per section 194LBA.

Distributed income – Income distributed by SPV would be liable to Dividend Distribution Tax but exempt in the hands of the Trust. Dividend component of income (i.e. other than income referred to in section 10(23FC)) distributed by Business Trust to the unit holders will also

be exempt under section 10(23FD).

Capital gain- Listed units of Business Trusts when traded on stock exchange would attract Security Transaction Tax and accordingly long term capital gains would be ex-

empt, while short term capital gains would be taxable at 15%. However, the aforesaid exemptions and concessional rate will not be applicable to the transfer of units of a Business Trust which were acquired in consideration of transfer of shares of SPV by the sponsor.

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9. Rationalization of taxation regime in the case of charitable trusts and institutions |

Author: *Jatinder Singh, New Delhi*

In the case of trusts or institutions which are registered, when the income becomes taxable due to non-application of the income derived from property held under trust, then a claim of exemption under general provisions of section 10 in respect of such income is preferred by the Trust.

An amendment has been made 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)].

Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income).

Further, an amendment in the Act has been made to provide that under section 11 and section 10(23C), income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year.

These amendments will be applicable from AY 2015-16.

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10. Applicability to earlier years of the registration granted to a trust or institution |

Author: *Jatinder Singh, New Delhi*

The existing provisions of section 12A of the Act provide that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA has been granted.

Due to non-application of registration for the period prior to the year of registration, tax liability gets attached to charitable organizations (in the absence of registration) even though they may otherwise be eligible for exemption. The power of condonation of delay in seeking registration is not available under the section. This causes genuine hardship to charitable organizations.

In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Act has been amended to provide that in case where a trust or institution has been granted registration under section 12AA of the Act, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration,

if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

It has been further provided that no action for reopening of an assessment under section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

However, the above benefit would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA or a registration once granted was cancelled.

These amendments will take effect from October 1, 2014.

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11. Capital Gains on debt oriented Mutual Fund and Unlisted securities | *Author: Jatinder Singh, New Delhi*

Under the existing provisions of section 2(29A) read with 2(42A), the period of holding specified for units of debt oriented mutual funds and unlisted securities (including shares in a company), to qualify as long term capital asset, is more than 12 months. As per the amendment, an unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be considered long term capital asset only, if it is held for not more than 36 months. Accordingly, concessional rate of tax applicable on transfer of long term capital assets shall not be available to such securities unless they are held for more than 36 months. The above change will not be applicable to these securities if the same are transferred during April 1, 2014 to July 10, 2014 i.e. till the date of presentation of the Budget.

Further, as per the extant provisions of section 112, the long-term capital gains arising on transfer of units of debt oriented mutual funds is subject to maximum capital gains tax as does not exceed tax rate of 10% (without indexation benefits). In terms of the amendment, such concessional rate would not be applicable on transfer of units of debt oriented mutual funds (except for the units transferred during the period from April 1, 2014 to July 10, 2014), and the same would now be taxable at the rate of 20%.

This amendment will be applicable from AY 2015-16.

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12. Taxability of advance money forfeited | *Author: Jatinder Singh, New Delhi*

A new clause to sub-section 2 of section 56 has been inserted to provide that where any sum of money has been received as an advance or otherwise in the course of the negotiations, for transfer of a capital asset, such sum shall be taxable under the head 'income from other sources', if such sum is forfeited and the negotiations do not result in transfer of such capital asset.

Under the extant income-tax provisions, advance money forfeited, where the negotiation for transfer of a capital asset do not materialize, is required as per section 51 to be deducted from the cost of the asset for which the

asset was acquired or written down value or the fair market value as the case may be, in computing the cost of acquisition.

In order to avoid double taxation of the advance received and retained, a new proviso is inserted in section 51 to provide that such amount would not be deducted from cost of the asset, if the same has been taxed under the head 'income from other sources'.

This amendment will be applicable from AY 2015-16.

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13. Losses in Speculation Business | *Author: Jatinder Singh, New Delhi*

The existing provisions of section 73 of the Act provide that losses incurred in respect of a speculation business cannot be set off or carried forward and set off except against the profits of any other speculation business. The 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.

As per the amendment made to the Explanation, transactions in purchase and sale of shares of companies shall not be treated as speculation business, in the case of a company the principal business of which is the business of trading in shares.

This amendment will be applicable from AY 2015-16.

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14. Investment allowance for new Plant & Machinery | Author: Jatinder Singh, New Delhi

Currently, under section 32AC manufacturing companies are eligible for an incentive by way of an additional deduction of 15% of the cost of new plant and machinery (new asset), acquired and installed after the 1st April 2013 but before 1st April 2015, if the aggregate amount of actual cost of such new assets exceeds INR 1 Billion.

In order to encourage growth in the manufacturing sector and thus to make medium size investments in plant and machinery also eligible for deduction, it has been provided to allow additional deduction of 15% of the cost of new assets to the investment exceeding 250 million rupees in any previous year, if the company invests after 1st April, 2014.

However, where a deduction is already being claimed under existing provisions of sub-section (1) of section 32AC (i.e. for threshold limit of 1 Billion), then this deduction would not be allowed.

The existing deduction under sub-section (1) would continue to be allowed subject to satisfaction of the prescribed conditions, irrespective of the quantum of investments made in the current year.

The deduction under clause (1A) would be available for the investments made till March 31, 2017.

This amendment will be applicable from AY 2015-16.

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15. Investment linked deduction for specified businesses | Author: Jatinder Singh, New Delhi

The benefit of 100% deduction of specified capital expenditure under section 35AD has been extended to the following businesses subject to the commencement of operations on or after April 1, 2014:

a Laying and operating a slurry pipeline for transportation of iron ore;

b Setting up and operating a semi conductor wafer fabrication Manufacturing units subject to notification by the Central Board of Direct Taxes.

It has been also provided that the asset in respect of which the deduction is claimed should be used only for the specified business, for a period of eight years beginning with the year in which the asset is acquired or constructed. In the event that the asset is used for any

purpose other than the specified business during the specified period, then the amount of deduction claimed (net of the depreciation that would have been allowable had no such investment based deduction been claimed) would be deemed to be the business income of the year in which the asset is used.

Where a taxpayer has claimed deduction for this investment based incentive, it is prohibited from claiming a deduction under section 10AA of the Act for that or any other assessment year. A corresponding provision de-barring claim under section 35AD of this investment based deduction would apply if the tax payer has claimed deduction under section 10AA (profits of SEZ) for any year.

This amendment will be applicable from AY 2015-16.

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16. Extension of tax holiday to power generation/ distribution industries | Author: Jatinder Singh, New Delhi

The terminal date for tax holiday under Section 80 IA(4) (iv) available for power sector has been extended up to 31st March, 2017.

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17. Tax treatment of amount spent with respect to Corporate Social responsibility (“CSR”)

| Author: Jatinder Singh, New Delhi

Under the existing provisions of Section 37(1) of the Act, deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purpose of business.

An explanation to section 37 has been inserted to clarify that any expenditure incurred by the tax payer on the activities relating to CSR as required to be incurred under section 135 of the Companies Act 2013, would not be deemed to be an expenditure incurred for the purpose of carrying on business. Therefore, the same would not be allowed as a deduction under section 37 while com-

puting taxable income.

However, the CSR expenditure that is of the nature as described in other specified provisions of the Act, may be allowable as deduction subject to fulfillment of the conditions prescribed in those sections.

This amendment will be applicable from AY 2015-16.

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18. Alternate Minimum Tax (“AMT”) | Author: Jatinder Singh, New Delhi

Under the existing provisions of section 115JC, AMT (applicable to specified persons other than a company) is calculated at eighteen and one half percent of the adjusted total income. Further, to arrive at the adjusted total income, total income is increased by deductions claimed under part C of Chapter VI-A and deductions claimed under section 10AA.

The section is now amended to provide that the total income shall also be increased by the investment linked deduction under section 35AD for computing adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

Further, the tax credit for AMT was allowed under section 115JD, equal to the amount in excess of alternate minimum tax paid over the regular income tax payable. However, section 115JEE provides that the provision of this Chapter (which contains provisions relating to AMT)

shall not be applicable if the income does not exceed 2 million rupees. This has created difficulty in claim of credit of AMT under section 115JD in an assessment year where the income is not more than 2 million rupees or there is no claim of any deduction under section 10AA or Chapter VI-A.

With a view to enable an assessee who has paid alternate minimum tax in any earlier previous year to claim credit of the same, in any subsequent year, the section has been amended to provide that AMT credit will be available even in a year where no deduction is claimed under Chapter VI-A or Section 10AA or Section 35AD of the Act and even if the adjusted total income of specified taxpayers is below INR 2 million.

This amendment will be applicable from AY 2015-16.

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19. Grossing-up of Dividend Distribution Tax (“DDT”) | Author: Jatinder Singh, New Delhi

Presently, DDT is paid by a domestic company on the net amount of dividends declared, distributed or paid by such company. It is now provided to gross up the amount of dividend for the purpose of computing DDT. Therefore, section 115O has been amended to provide that for the purposes of determining the tax on distributed profits payable, the amount of net dividends shall be increased to such an amount as would, after reduc-

tion of the tax on such increased amount, be equal to the net dividends. This will have the effect of increasing DDT rate from 16.995% to 20.47%.

This amendment will take effect from October 1, 2014 and will as such apply to dividends declared after this date.

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20. Rationalization of the definition of International Transaction under Transfer Pricing provisions | *Author: Jatinder Singh, New Delhi*

The existing provisions of section 92B of the Act define 'International Transaction' as a transaction in the nature of purchase, sale, lease, provision of services, etc. between two or more Associated Enterprises, either or both of whom are Non-Residents.

Sub-section (2) of the said section 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. The sub-section as presently worded has led to a doubt whether or not, for the transaction to be treated as an international transaction, the unrelated person should also be a non-resident.

Therefore, as per the amended provision, the relevant transaction shall be 'deemed to be an international transaction', where the enterprise or the Associated Enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

This amendment will be applicable from AY 2015-16.

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21. Determination of Arm's Length Price when more than one price is determined by the most appropriate method | *Author: Jatinder Singh, New Delhi*

In terms of the present transfer pricing provisions as contained in first and second proviso to section 92C of the Act, for computing arm's length price, where more than one price is determined by most appropriate method, the arithmetic mean of all such prices is taken as Arm's Length Price (ALP) except where the variation between the ALP as determined and the price at which the transaction was undertaken does not exceed specified percentage, not exceeding 3% by more than 3%.

This section is now amended to include third proviso in section 92C which provides that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken

on or after 1st April, 2014 shall be computed in such manner as may be prescribed. It is proposed to introduce Rules to provide for:

(a) 'the range' concept for determination of arm's length price in addition to arithmetic mean;

(b) Use of multiple year data for justification of arm's length price is also proposed to be permitted.

Accordingly, the provisions as referred to in first and second proviso to Section 92C shall not apply.

This amendment will be applicable from AY 2015-16.

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22. Roll back provision in Advance Pricing Agreement Scheme | *Author: Jatinder Singh, New Delhi*

Under the existing provisions of section 92CC of the Act, an Advance Pricing Agreement ("APA") entered by CBDT (with prior approval of the Central Government) with an assessee is valid for a period, not exceeding 5 years, as may be agreed in the APA.

With a view to reduce litigation, in respect of transactions entered into during the period prior to APA, an amendment has been made to the Act to provide roll back mechanism in the APA scheme. The APA may, subject to such prescribed conditions, procedure and

manner, provide for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction entered into by a person during any period not exceeding four years preceding the first of the years for which the APA applies in respect of the international transaction to be undertaken in future.

This amendment will be applicable from October 1, 2014.

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23. Disallowance of expenditure for non-deduction of tax | Author: Jatinder Singh, New Delhi

Under the existing provisions of Section 40(a)(i), payments made outside India or to a non-resident on which tax is deductible at source, is not allowed as deduction if tax has not been deducted, or after deduction, has not been paid to the government within the specified time limit as prescribed under section 200(1) [i.e. the date of filing of withholding tax return], unlike in case of residents where the amounts are disallowed only when the taxes are not deposited till the due date of filing of tax return.

Similar extended period has now been provided to non-residents as well, for depositing tax deducted from

payments made outside India or to non-residents.

Further, in order to improve withholding tax compliances, all types of payments to residents have been covered for computing disallowance under section 40(a)(ia), instead of only specified payments as earlier covered. However, the disallowance under this section will be restricted to 30% of such expenditure, instead of the full amount as disallowed earlier in case of payment to residents.

These amendments will be applicable from AY 2015-16.

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24. Time limit for treating a person as assessee in default for failure to deduct/pay tax at source | Author: Jatinder Singh, New Delhi

The existing provisions of sub-section (3) of section 201 provide that no order under sub-section (1) shall be made deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of two years from the end of the financial year in a case where the statement referred to in section 200 has been filed, and in any other case six years 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 so as to provide that a person can be deemed as an assessee in default up to the expiry of seven years from the end of the financial year in which payment is made or credit is given.

This amendment will be applicable from October 1, 2014.

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25. Liability of interest for being an assessee in default | Author: Jatinder Singh, New Delhi

In terms of sub-section(1) of section 220 any amount specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice. The assessee is liable to pay interest if the demand is not paid within the time prescribed in the said notice.

As the liability of the assessee to pay interest is based on continuity of the proceedings, a new Sub-section (1A)

is inserted to provide that where such notice of demand has been issued and any appeal or other proceedings is filed or initiated in relation to the amount specified in that notice, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of the proceedings, as the case may be.

This amendment will take effect from October 1, 2014.

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26. Amendments relating to Power of survey | Author: Jatinder Singh, New Delhi

Section 133A has been amended to increase the period of retention of books of account or documents impounded during survey, from a maximum of 10 days to 15 days.

Further, Section 133A is also amended to empower income-tax authority to conduct survey for the purposes

of TDS/ TCS verification. However, the Income Tax Authority conducting survey for the said purposes have been prohibited to impound and retain any books of account or documents or make an inventory of any cash, stock or other valuables.

This amendment will be applicable from October 1, 2014.

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27. Amendment to Section 153C regarding assessment of income of a person other than the person who has been searched | *Author: Jatinder Singh, New Delhi*

Section 153C is amended to provide that in a case where the books of account or documents seized or requisitioned belonging to an assessee has been handed over to the assessing officer having jurisdiction over such person (other than the person who has been searched) by the AO making the search, then the AO having the jurisdiction shall proceed against such other person if

he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years.

This amendment will be applicable from October 1, 2014.

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28. Levy of Penalty under section 271G for failure to furnish information or document under section 92D by Transfer Pricing Officer ("TPO") | *Author: Jatinder Singh, New Delhi*

Under the existing provisions of section 271G, the Assessing Officer or the Commissioner (Appeals) are authorized to levy penalty on a person who has entered into an international transaction or specified domestic transaction and who fails to furnish any such information

or document as required by sub-section (3) of section 92D. TPO is now included as an authority competent to levy such penalty.

This amendment will take effect from October 1, 2014.

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29. Prosecution under section 276D for failure to produce accounts and documents | *Author: Jatinder Singh, New Delhi*

The existing provisions of section 276D of the Act provide that if a person willfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 or willfully fails to comply with a direction issued to him under sub-section (2A) of section 142, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine or with both.

The provisions of the said section have been amended to provide that such person shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

This amendment will take effect from October 1, 2014.

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30. Scope of Settlement Commission extended | *Author: Jatinder Singh, New Delhi*

As per the existing provisions of Act, an assessee cannot apply for settlement of cases under section 245C of the Act where re-assessment was pending before the Assessing Officer.

Similar changes have been made in Wealth-tax Act as well for settlement of cases.

These amendments will take effect from October 1, 2014.

With a view to reduce litigation, section 245C is amended to provide that the scope of settlement would include in its ambit the cases which are pending for re-assessment.

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1. Changes effective from the date of enactment of Finance Bill (i.e. August 6, 2014) |

Author: Shashank Goel, New Delhi

Discretionary powers of waiver of penalty under Section 80 upon demonstrating a reasonable cause for failure, has been withdrawn in cases of fraud, collusion etc as provided under Section 78, even if details of transactions are available in the records.

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2. Changes effective from a date to be notified by the Central Government after enactment of Finance Bill (i.e. August 6, 2014) |

Author: Shashank Goel, New Delhi

Pruning of Negative List

I Sale of space or time slots for advertisements other than advertisement broadcast by radio or television were part of Negative list. The amended clause (g) of section 66D seeks to exclude only 'Sale of Space for advertisement in Print Media' from the levy of service tax. Therefore, from effective date (yet to be notified), on-line and mobile advertisement, out-of-home media,

bill boards, conveyances, buildings etc, would be subject to service tax.

II Radio Taxis have now been removed from the Negative list and will now be taxable. Further Radio Taxis shall be taxed at par with Rent-a-cab services for abatement purposes.

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3. Changes effective from July 11, 2014 |

Author: Shashank Goel, New Delhi

1 Amendments in Mega Exemption Notification a Entry No.9 of the Mega Exemption Notification has been rationalized and auxiliary education services which are exempt have been specified as under:

- i Services provided by an education institution to its student, faculty and staff;
- ii Services provided to an education institution by way of:-
 - a Transportation of students, faculty and staff.
 - b Catering.
 - c Security or clearing or house keeping services.
 - d Services in relation to admission to or conduct of examination by such institutions.

b Exemption has been provided in respect of services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.

c Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India have been exempted from the levy of Service tax

2 Changes in reverse charge mechanism (vide Notification No.09/2014 and Notification No. 10/2014 dated July 11, 2014):

The following services shall also be subject to payment of service tax under reverse charge mechanism:

I Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a Non-Banking Financial Company, would be subject to 100% reverse charge.

II Services provided or agreed to be provided by a Director of a company or a body corporate to the said company or the body corporate. Earlier only company was liable to pay service tax on reverse charge basis in respect of services by Directors. Now, anybody corporate (other than a company) would also be liable pay service tax under reverse charge on services received from its directors.

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4. Changes effective from October 1, 2014 | Author: Shashank Goel, New Delhi

a Amendments in Service Tax (Determination of value) Rules, 2006 (vide Notification No. 11/2014 dated July 11, 2014) in relation to valuation in case of Works Contract

With effect from October 1, 2014, in the case of works contract other than 'works contract for execution of original works', service tax shall be payable on 70% of the total amount charged for the works contract. Earlier, service tax on works contract was either payable at 70% or 60 % of the total amount charged, depending on the nature of the works contract other than original works contract.

b Amendments in Place of Provision of Service Rules, 2012 (vide Notification No.14/2014 dated July 11, 2014)

Definition of 'Intermediary' has been amended to include agents for supply of goods also, at par with agents for supply of services. Now, with effect from October 1, 2014, the services of agents for supply of goods would be taxable on the basis of location of the service provider, instead of on the basis of location of the service recipient.

Thus, now the services provided by commission agents in India to a foreign entity for procuring orders for sale of goods in India, would not be exempt and will be taxable in terms of Rule 9 of Place of Provision of Service Rules, 2012.

c Changes in Point of Taxation Rules, 2011 (vide Notification No.13/2014 dated July 11, 2014)

In the case of payment of service tax under reverse charge basis by the recipient of service, the service tax was payable on the basis of date of payment to the service provider, if such payment was made within 6 months. With effect from October 1, 2014, the period of 6 months has been reduced to three months.

d Changes in rate of interest payable on delayed payment of service tax

With effect from October 1, 2014, the rates of interest on delayed payment of service tax would be as under:

Period of Delay	Rate of Simple Interest
Up to 6 Months	18%
More than 6 Months and up to 1 year	18% for first 6 months and 24% for the delay beyond 6 months
More than 1 Year	18% for first 6 months, 24% for delay beyond 6 months upto 1 year and 30% for any delay beyond one year

V Changes with respect to CENVAT Credit Rules

The Central Government has made certain changes in CENVAT Credit Rules, 2004 (vide Notification No.21/2014 dated July 11, 2014), effective from July 11, 2014 unless otherwise provided, which are as under:

I Proviso to Rule 4(1) & 4(7) has been inserted which has fixed the time limit of six months for availment of CENVAT Credit. This provision shall be effective from September 1, 2014. It may be noted that till date there is no prescribed period for availment of CENVAT Credit.

II The benefit of CENVAT Credit reversed for non-realization of export proceeds within the period as specified by the RBI has been allowed, provided the export proceeds are realized within a period of one year from such period as specified by RBI. (Proviso to Rule 6(8))

III Further, the availment of CENVAT Credit under Proviso to Rule 4(7) has been amended to provide that where whole of Service tax to be paid by service recipient, CENVAT Credit would be available after the service tax is paid, instead of payment of both the invoice as well as the service tax on reverse charge basis as required earlier. However, in the case of partial Reverse charge, the provisions would be similar to the earlier rule i.e. CENVAT Credit will be available after payment of input service and service tax.

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Author: Shashank Goel, New Delhi

1 Transaction Value to be considered in case goods sold at price less than manufacturing cost.

Proviso to Rule 6 of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 has been added vide Notification No 20/2014-CE (NT), dated July 11, 2014 as follows:

"Provided 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 transaction value."

This amendment seems to be in the light of Supreme Court decision in the case of Fiat India Pvt. Ltd. and consequent issues faced by the industry. Post this amendment, the relevant issue shall get resolved and therefore the Assessable value in the situations covered under the proviso will be the transaction value without any further additions thereon.

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TAX Indirect Taxes
Customs

Author: Shashank Goel, New Delhi

1 Safeguard Duty under Section 8B of Customs Tariff Act, 1975, was not imposed earlier upon the goods imported by SEZ/100% EOU or Free trade Zones. Now, the Safeguard Duty has been levied upon articles imported by 100% EOU or unit of SEZ if they are cleared into DTA as such or are used in manufacture of final products & cleared into DTA. (Effective from July 11, 2014)

2 Changes in Baggage Rules vide Notification No. 50/2014-Cus (NT), dated July 11, 2014:

I Free baggage allowance raised from Rs 15,000/- to Rs 17,500/- in case of stay of abroad of up to three days

II Free baggage allowance raised from Rs 35,000/- to Rs 45,000/- in case of stay of abroad of more than three days

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TAX Indirect Taxes

Certain Provision Applicable to Central Excise, Customs and Service Tax are as under

Author: Shashank Goel, New Delhi

1 The law with respect to pre-deposit of duty for appeal has been rationalized:

Vide substitution of Section 35F of the Central Excise Act, 1944 and section 129E of the Customs Act, 1962 with a new Section, mandatory fixed pre-deposit for filing appeal has been prescribed.

Pre-deposit of 7.5% of duty demanded or penalty imposed or both for filing appeal before the Commissioner (Appeals) or the Tribunal (as first stage Appeal).

Pre-Deposit of 10% of duty demanded or penalty

imposed or both for filing second stage appeal before Tribunal. The amount of pre-deposit payable would be subject to the ceiling of Rs 100 Million.

2 Advance Ruling

The scheme of Advance Ruling has been extended to Resident Private Limited Companies under Excise, Customs and Service Tax vide Notification No 18/2014-CE (NT), dated July 11, 2014, Notification No 51/2014-Cus (NT), dated July 11, 2014 and Notification No 15/2014-ST, dated July 11, 2014 respectively with effect from July 11, 2014.

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Riddle:

What is the origin of the term "red tape" ?

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