



March 9, 2013

Dear Friends,

Mr. Chidambaram has always presented Budgets when growth was strong. This was his first 'slump' Budget and by this time next year we will know whether his maths works out.

The FM has at one stroke partly re-written several DTAA by taxing the buy-back of the shares in the hands of the Indian Companies. This will deny the DTAA benefit and also the tax credit to non-resident investors. He has also sizably increased the taxes on Royalty and FTS. The GAAR has been deferred but not its rigor.

The DTC is work in progress and is intended to be based on best international practices and brought back to the parliament before the end of the Budget session. There is a proposal to set up a Tax Administration Reform Commission. A consensus has been reached between the Centre and the States on the introduction of the GST. The FM has promised to come to Parliament with changes in retrospective amendments after resolving the Vodafone row.

Thanks and regards

Anand Mehta

Director

A copy is also available on our website www.amcount.com & www.amcoportal.com

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Union Budget 2013-14

FINANCE BILL, 2013

HIGHLIGHTS & COMMENTS

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direct taxes.....

Sr. No.	Subject	
1	Agricultural Land	
	Amended	
Sec.	+/-	w.e.f.
2(1A), ITA IT,2(ea) (b),WTA		AY 2014-15

Highlights

1. It is proposed to modify the following provisions:

- Sec 2(1A),ITA = Agricultural Income
- Sec 2(14),ITA = Capital Asset
- Sec 2(ea),WTA= Urban Land

2. At the 3 places, the parameters are proposed to be changed -

Land which is situated within (a) 2, (b) 6 and (c) 8 km, aerially from the local limits of the Municipality having population of

- more than 10,000 but less than 1 Lac,
- more than 1 Lac but less than 10 Lacs; and
- more than 10 Lacs respectively will be considered to be Agricultural Land.

Comments

1. Presently the above parameters are used as under:

- Sec 2(1A),ITA, situation of the building, income wherefrom is not exempt;
- Sec 2(14),ITA = situation of land, capital gain from which is not exempt; and
- Sec 2(ea),WTA= Urban Land which is taxable.

2. Presently, the land is defined on a combination of distance in km. and population as

- land within the local limits of the Municipality having population of more than 10,000 or
- within 8 km of such areas as may be notified by the CG.

3. Now, it is been sought to rationalize and bring these parameters within the Act itself.

4. The distance is now defined to be measured aerially or “as the crow flies”. This shall deal with the controversy created by the decisions in Satinder Pal Singh (188 Taxmann 54)(P&H), Ashok Shukla(139 ITR 666)(Indore),Lokik Developers (105 ITR 657) (Mum). Of course a question will arise as to where does one get such “aerial” distance from ?

Sr. No.	Subject	
2	Bad Debts – Banks	
	Amended	
Sec.	+/-	w.e.f.
36(1)(viii)		AY 2014-15

Highlights

1. The bill proposes to insert a new Explanation 2 to section 36(1)(vii) to clarify that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one accounts referred to therein is made in respect of provision for bad and doubtful debts under section 36(1)(vii) and such account relates to all types of advances, including advances made by rural branches. Therefore, in terms of the proposed amendment, for an assessee to whom clause (vii) of section 36(1) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(vii) without any distinction between rural advances and other advances;

Comments

1. Recently, the Hon'ble Supreme Court in the case of **Catholic SyrianBank Ltd. (343 ITR 270)** held that the proviso to section 36(1)(vii) applies only to provision made for bad and doubtful debts relating to rural advances. Thus, it has been interpreted that both the deductions u/s 36(1)(vii)

and u/s 36(1)(vii) are independent and separate deductions. It has also been interpreted that there are separate accounts in respect of provision for bad and doubtful debt under clause (vii) for rural advances and urban advances and if the actual write off of debt relates to urban advances, then, it should not be set off against provision for bad and doubtful debts made for rural advances.

2. The proposal will overrule such cases.

Sr. No.	Subject	
3	Buy-back of Shares	
	Amended	
Sec.	+/-	w.e.f.
115QA/B/C. 10(34A)		1 June 2013

Highlights

- Presently shares brought back by the Company are taxed in the hands of the Shareholders.
- There could be two types of buy-back.
 - In respect of quoted shares
 - In respect of un-quoted shares.
- As regards (b) above, there is a proposal now to
 - Tax the same on the hands of the Company u/s. 115QA and
 - Exempt the same in the hands of the shareholder u/s. 10(34).

Comments

1. The provisions are on the same lines as Dividend Distribution Tax. However the following table will demonstrate the subtle differences:

	Non Resident Shareholder	Unlisted Indian Company
Existing Situation		
Distribution of Dividend	Exempt	DDT @ 16.22%
Buy back of		

shares	Taxable but could be exempt under some treaties	May have to take care of TDS
Proposed Situation		
Distribution of Dividend	Exempt	DDT @ 17%
Buy back of shares	Exempt	Tax @ 22.66%

2. In respect of listed shares the provisions of Sec 46A will continue to apply.

- This will unsettle the position that prevailed hitherto that the amount received on buy back of shares is exempt except when the revenue established it to be a case of avoidance of tax in cases of
 - XYZ India 206 taxman 631 (AAR),
 - Armstrong world India 349 ITR 303 (AAR),
 - A in re 343 ITR 455 (AAR)

4. To an investor, this will mean that the entire proceeds will be taxed and not only the gain (i.e. after deducting the indexed cost). To a non-resident assessee, it will also mean losing the exemption under treaty and also credit in home country.

Sr. No.	Subject	
4	Deduction - Power	
	Amended	
Sec.	+/-	w.e.f.
80IA(4)		AY 2014-15

Highlights

1. The Sunset Clause has been extended from 31st March 2013 to 31st March 2014.

Comments

1. This time limit applies to undertakings which commence their business of generation and / or distribution, transmission or distribution of power,



complete substantial renovation and modernization of the existing transmission or distribution lines on or before this date.

Sr. No.	Subject	
5	Deduction – New Workman	
	Amended	
Sec.	+/-	w.e.f.
80JJAA		AY 2014-15

Highlights

- The present provision for deduction is being modified as explained below:
 - Eligibility : Profits and Gains derived from “an Industrial undertaking” changed to “Manufacture of Goods in a Factory”
 - Dis-qualification now includes the factory which is hived-off or transferred from another company.

Comments

The provision was originally intended only for creation of employment for the blue collar employee. However, it has been used for other sector also. The proposal speak to make the correction.

Sr. No.	Subject	
6	DTAA	
	Amended	
Sec.	+/-	w.e.f.
90/90A		AY 2013-14 & AY 2016-17

Highlights

- There are two situations of Double Taxation Relief.
 - In respect of Agreement between countries u/s. 90 and
 - In respect of Agreement between Associations u/s. 90A.
- There are changes proposed for both the situations;
 - Under proposed Sec.90(2A)/90A(2A), the provisions of GARR will have to be read into the Agreement even if the same are not beneficial to the Assessee.

b) Under proposed Sec. 90 (5)/90A(5) the Tax Residency Certificate (TRC), shall be a necessary but not a sufficient condition.

3. These proposal should applicable as under:

- In respect of 2a) above, w.e.f AY 2016-17
- In respect of 2b) above, w.e.f. AY 2013-14

Comments

- This will overrule the decision of the Supreme Court in the case of AzadiBachaoAndolan (263 ITR 706)(SC).
- However, this is to be read in light of the Press Release dated 1st March 2013, issued by CBDT to the contrary. It says that “the TRC produced by a Resident of the Contracting State will be accepted as evidence and the Income-tax Authorities in India will not go beyond the TRC and question the Residential Status”.
- The following extracts from a report which appeared in the “Business Standard” of 1st March 2013, will clarify the position of the Government –

The Finance Ministry said the tax authorities would not go beyond the tax residency certificate (TRC) in case the investor concerned was from Mauritius. For other countries with which India had double taxation avoidance agreements (DTAAs), tax authorities would also ask for other documents also, depending on the provisions of the respective treaties. (After the clarification, the BSE Sensex bounced back from three-month lows to end nearly 57 points higher at 18,918.52. The NSE Nifty rose by 26.65 points treaties

The finance ministry said in a statement here: “In the case of Mauritius, circular number 789, dated April 13, 2000, continues to be in force, pending ongoing discussions between India and Mauritius.”

Explaining the statement, ParthasarathiShome, advisor to the finance minister, told Business Standard that the DTAA between India and Mauritius says that circular 789 is sufficient for both residency and ownership. And the circular stands, pending negotiations between India and Mauritius over revision of DTAA. The other issue was about an investor coming from a jurisdiction other than Mauritius. Shome said for other countries, a residency



certificate was a proof for residence, but not sufficient for beneficial ownership. "So, residence has to be proved in case the question is raised." Then comes the issue of beneficial ownership. "We are saying we will go through the treaty provisions with respect to that country and, if beneficial ownership is proved to reside in that country, then treaty benefits will be given; if not, then the domestic law for non-residents will prevail. It reflects international practice," Shome added.

This provision was in the explanatory memorandum to the Finance Act, 2012. In this Budget, however, the provision was added to the Finance Bill itself "The same words are proposed to be introduced in the Income Tax Act as Sub-section (5) of Section 90. Hence, it will be clear that nothing new has been done this year which was not there already last year," the statement by the ministry said.

The ministry clarified that TRC would be taken as a proof of residence for these jurisdictions. For beneficial ownership, however, it may check other documents as well. As there were objections to the language in the Finance Bill, the ministry said these would be addressed when the Bill was taken up for discussion.

The statement said it had been pointed out that the language of the proposed provision could mean that TRC produced by a resident of a contracting state could be questioned by the Income Tax Authorities in India. "The government wishes to make it clear that it is not the intention of the provision," the statement

Sr. No.	Subject
7	Foreign Co. Royalty/FTS
Amended	
Sec.	w.e.f.
115A	AY 2014-15

Highlights

1. Uniform increased rate of 25% (plus SC/EC)
2. Applicable to non residents and foreign companies not having a PE in India.
3. Irrespective of date of the agreement.

Comments

1. The rate is subject to benefit under DTAA.
2. However, independent of that, the rise is really steep and the burden may be passed on to the Indian Companies after all.

Sr. No.	Subject
8	GAAR
Amended	
Sec.	w.e.f.
95 – 102	AY 2016-17

Highlights

1. The department can apply GAAR in addition to -
 - a. SAAR or
 - b. Any other Provision.
2. Main Steps in GAAR
 - a. Show Impermissible Avoidance Arrangement.
 - b. Determine Consequences.

Show Impermissible Avoidance Arrangement.

3. Impermissible Avoidance Arrangement.
 - a. There is an "Arrangement"
 - b. The main purpose="Tax Benefit"
---- and ----
 - ca. Creates Rights/Obligations beyond Arms Length
 - cb. Results in misuse or abuse of Act
 - cc. lacks Commercial Substance
 - cd. manner not bona fide
4. Arrangement means
 - a. Any step in or any part or whole of
 - b. Any transaction, operation, scheme, agreement or understanding
 - c. Whether enforceable or not and includes
 - d. the alienation of any property in such transaction, operation, scheme etc.

5. Tax Benefit

- a. Includes
 - aa. Reduction, avoidance, deferral of tax or other amount payable
 - ab. as per the provisions of the Act or a Treaty
- b and also includes
 - ba. reduction in total income or
 - bb. increase in loss



c. For determining whether a Tax benefit exists.

- ca. Many parties = one party.
- cb. Accommodating Party = Main Party.
- cc. a and b = one party.
- cd. Corporate Veil= No Veil

d. If the main purpose of even a step in or the part of an arrangement is to obtain tax benefit, the whole of the arrangement shall be presumed to have been carried out for the main purpose of obtaining tax benefit unless proved to the contrary by the assessee.

6. Lacks Commercial Substance, if

- a. substance different from form; or
- b. Involves Round Trip Financing, An Accommodating Party, off-setting elements, conduit and disguise true value, location, source, ownership and control of funds.
- c. Without substantial commercial purpose.
- d. Without significant effect on the business risk or net cash flow.

where the following are relevant but not sufficient considerations.

- a. Period for which it exists.
- b. Taxes are paid.
- c. Exit route is provided.

7. Round Trip Financing –

- a. Series of fund transfers.
- b. No substantial commercial purpose.

8. Accommodation Party.

- a. Purpose is to obtain Tax benefit.

Deal with the IAA

9. Main thrust

- a. Consequences
- b. Manner

10. Consequences include denial of tax benefit or benefit under a treaty.

11. Manner could be such as deemed appropriate and may include the following:

- a. Many steps = one step.
- b. IAA = no arrangement .
- c. Disregarding the accommodating party.
- d. Connected persons = one person.

For this purpose,

- a. Equity = Debt and vice versa
- b. Capital = Revenue Item and vice versa
- c. Expenditure/Reduction can be recharacterized.

12. Terms defined.

- a. Arrangement.
- b. Asset
- c. Benefit
- d. Connected Person
- e. Fund
- f. Party.
- g. Relative
- h. Step
- i. Tax benefit.
- j. Tax Treaty

13. CBDT is authorized to prescribe guidelines and conditions for applying this chapter.

Comments:

In order to give effect to the recommendations the following amendments have been made in GAAR provisions currently provided in the Act:

1. The provisions of Chapter X-A and section 144BA will come into force with effect from April 1, 2016 as against the current date of April 1, 2014.

2. An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision of section 96 providing that it should be "the main purpose or one of the main

purposes" has been proposed to be amended accordingly.

3. The factors like, period or time for which the arrangement had existed, the fact of payment of



taxes by the assessee; and the fact that an exist route was provided by the arrangement would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The current provisions of section 97 which provided that these factors would not be relevant has been proposed to be amended accordingly.

4. An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A. The current provisions as contained in section 97 are proposed to be amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.

5. The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision of section 144BA, that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service has been proposed to be amended accordingly.

6. The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The current provisions of section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been proposed to be amended accordingly.

7. The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from

time to time up to a period of three years. The provisions of section 144BA have been proposed to be amended accordingly.

8. The two separate definitions in the current provisions of section 102, namely "associated person" and "connected person" will be combined and there will be only one inclusive

provision defining a "connected person". The provisions of section 102 have been proposed to be amended accordingly.

9. Consequential amendments in other sections relating to procedural matters are also proposed.

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

Sr. No.	Subject	
9	GAAR – Mechanism	
	Amended	
Sec.	+/-	w.e.f.
144BA		AY 2016-17

Highlights

1. The present section 144BA has been substituted by a new Section.
2. The procedure in brief is as under:
 - a. AO makes a reference to CIT
 - b. CIT if he concurs with AO to issue notice to A
 - c. If A does not object, CIT can issue directions
 - d. If A objects, CIT to make reference to Approving Panel (AP)
 - e. AP makes inquiries and issues directions
 - f. Directions of AP final, not appealable.
 - g. AO proceeds to make the order
 - h. AO gets approval of CIT if tax determined
 - i. A can appeal to ITAT against AO but not to DRP.

Comments



There is an elaborate procedure to ensure that full justice is done while implementing GAAR.

Sr. No.	Subject	
10	Income : Transfer of Property	
	Amended	
Sec.	+/-	w.e.f.
43CA/56(2)		AY 2014-15

Highlights

1. There are two changes in respect of deemed income on transfer of an immovable property.

a. Deemed Gain in hands of seller

It is proposed to introduce Sec. 43CA, to deem in case of transfer of asset other than Capital Asset, being Land and/or Building, the Stamp Duty value to be the full value of consideration

b. Deemed Income in the hands of recipient:

It is proposed to modify sec. 56(2)(vii)(b) to cover transfer of any immovable property without consideration or without adequate consideration.

2. In both the cases, where there is a time gap between the date of Agreement and the date of Registration, the former date will be applicable. This of course will be applicable if the payment is made before the former date.

Comments

1. Sec 43CA is import of Sec. 50C, applicable to a Capital Asset to the case of Current Asset.

2. This will overrule the decisions in the cases of

- KAN Constructions (ALL) 20 Taxmann. Com 381
- Tiruvengudem investment PLimited (320 ITR 345(Mad)
- Excellent Land Developers Limited (1 ITR 563 (Trib) (Delhi).
- K.R. Palanisamy (180 Taxman 253) (Mad)

2. Sec 56(2)(vii)(b) extends the original law which was applicable only if there was no consideration to a case where there is a

consideration but there is a shortfall. This may overrule the decisions in cases of -

- Vallabhbai(27 taxmann. Com 306)(AHD)
- Harley Street (38 SOT 486)(Ahd)
- Khoobsurat Resorts (P)Ltd (211 Taxman 510) (Del).
- Suzaina foods (P) Ltd. (ITA No. 2731/Ahd/2010)

3. The FM may clarify that once income is taxed u/s 56, it will not be again taxed u/s 69 as unexplained investment.

Sr. No.	Subject	
11	Insurance	
	Amended	
Sec.	+/-	w.e.f.
10(10D)	+/-	AY 2014-15

Highlights

1. There are two types of Insurance which are covered.

- On persons with disability (refer Sec. 80U) disease (refer Sec.80DDB)
- On the Keyman

2. As regards (a) above, there are two events which are relevant in this regard.

- Payment of the Insurance Premium.
- Receipts of the Insurance Proceeds.

In both these events i) and ii), present sections 80C and 10(23D) exclude Insurance where the premium is more than 10% of the sum insured. It is proposed to change this limit to 15%.

3. As regards (b) above, it has been provided that the assignment of such policy will not make any difference.

Comments

1. As regards (a) above, the benefit has been increased.

2. As regards (b) above, a benefit was conferred in the cases of

- Rajan Nanda (349 ITR 1)(Del),

b. Escorts Heart Insituter (30 taxmann.com 4) (Del) that if the policy is assigned to the beneficiary, it ceases to be a Keyman Policy and accordingly the proceeds will be exempt u/s 10(23D). This is now taken back.

Sr. No.	Subject	
12	Investment Allowance	
	Amended	
Sec.	+/-	w.e.f.
32AC,ITA	+	A.Y. 2014-15

Highlights.

- This is a new provision on the lines of the former section 32AB of Investment Allowance.
- The eligibility criteria is as under:
 - The Assessee is a Company.
 - Engaged in manufacture of Article or thing.
 - It acquires a new asset.
 - Which excludes office appliances or machinery installed in Office, vehicles and those items which have been fully written off in the year of purchase itself.
 - Such assets are acquired from 1/4/2013 to 31/3/2016.
 - The cost of such assets is more than Rs.100 Cr.
- The deduction is @ 15% of such cost which is allowed in the second year if the test of Rs 100 crores is met in that year.
- If the asset is sold within a period of 5 years, the deduction is withdrawn. This provision does not apply to transfer in the course of amalgamation or demerger but the successor company has to finish the balance of the 5 year tenor.

Comments

- The deduction under this section is in addition to depreciation and additional depreciation admissible u/s 32.
- It is not deductible for MAT u/s 115JB.

3. In the year of sale within 5 years, the taxability mentioned earlier will be over and above the Capital Gains tax.

Sr. No.	Subject	
13	Property : Interest on Loan	
	Amended	
Sec.	+/-	w.e.f.
80EE		AY 2014-15

Highlights

- A new deduction is proposed for a new housing loan.
- The following are the conditions:
 - Assessee is an individual.
 - Loan sanctioned between 1/4/13 and 31/3/14.
 - Loan does not exceed Rs. 25 Lacs.
 - The value of the house does not exceed Rs. 40 Lakhs.
 - The Assessee does not own any other house.
 - The loan is from a Financial Institution or a Housing Finance Company.
- It is basically a one-time deduction of amount upto Rs 1,00,000. If the interest for AY 2014-15 is less than Rs 1,00,000, the balance will be deductible in the AY 2015-16.

Comments

- This deduction is over and above the deduction of Rs 1,50,000 in respect of interest on loans for self occupied house u/s 24(b).

Sr. No.	Subject	
14	Securitization Trust	
	Amended	
Sec.	+/-	w.e.f.
10(23DA)/10(35A))/ 115TA		1/6/2013.

Highlights

- Various amendments are proposed for a Securitisation Trust(ST)



- a. Sec 10(23DA) to exempt any income of ST
- b. Sec 10(35A) to exempt income from ST
- c. Sec 115TA, to tax distribution by ST

Comments

1. There are two places where Securitisation has been approved:

- a. SEBI(Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008; and
- b. Guidelines on Securitisation of Standard Assets issued by the RBI.

2. Under the new scheme:

- a. Any income of a ST is exempt
- b. When ST distributed income, ST itself has to pay tax at 25%/30% depending whether the receiver is other than a company or a company;
- c. Such income is exempt in the hands of the receiver.

3. This scheme is similar to the present scheme of taxation in case of mutual funds.

Sr. No.	Subject	
15	SET	
	Amended	
Sec.	+/-	w.e.f.

Highlights

- 1. Rate of Service-tax: There has been no change in the rate of service tax and the effective rate of service tax remains unchanged at 12.36%.
- 2. Abatement –w.e.f 1-3-2013 : the abatement available for construction of a complex, building, civil structures etc. is being reduced from the existing 75% to 70% for construction other than residential properties having a carpet area upto 2000 sq. ft or where the amount charged is less than Rs. 1 Crore.
- 3. Amendment to Negative List: w.e. f the date of enactment of the Finance Bill.
 - a. Service by way of education, as part of an approved vocational education course, is a negative list item and hence not liable to service

tax. The definition of “approved vocational course” in section 65B(11) is being proposed to be changed to include courses run by an industrial training institute or an industrial training centre affiliated to State Council for Vocational Training and to delete courses run by an institute affiliated to the National Skill Development Corporation.

b. Any process amounting to manufacture or production of goods is a negative list item and hence not liable to service tax. The definition of “process amounting to manufacture or production” in section 65B(40) is being expanded to include processes under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

c. The negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word “seed”. This will allow the benefit to all other testing in relation to agriculture or agricultural produce.

Comments

1. The above provisions are self explanatory.

Sr. No.	Subject	
16	SET VDS	
	Amended	
Sec.	+/-	w.e.f.
VCES		Enactment of the Bill

Highlights

- 1. There is a new scheme to be called Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES)
- 2. Objectives:
 - a. to encourage voluntary compliance by the defaulters, who have failed to declare true liability or have not paid their service tax dues,
 - b. to provide one time amnesty by way of waiver of interest, penalty and immunity from prosecution.
- 3. Commencement: VCES comes into force from the date of enactment of the Finance Bill
- 4. Tax Dues covered:



a. Service tax due or payable under the Act or any other amount due or payable under section 73A for the period in October 2007 to 31st December 2012.

b. In other words, the tax payable by the declarant for the month of January, 2013 and the subsequent months are not covered by VCES

5. Eligibility:

Any person

- a. liable for registration but not registered
- b. If registered,

ba. has not filed service tax return or
bb. failed to disclose his true liability In the returns

c. However, the following persons are not eligible,

ca. Any person to whom any notice or order of determination of liability is issued under section 72 (Best Judgment assessment), section 73 (Recovery of service tax) or section 73A (amount collected as service tax but not deposited) before in March, 2013;

cb. Any person who has disclosed his true liability In the returns filed but has not paid the disclosed amount of service tax or part thereof;

cc. If a person has been Issued any notice or order of determination earlier, he is not eligible to avail the benefit of the scheme for the tax dues pertaining to any subsequent period on the same issue covered in the notice or the order.

cd. Where an inquiry or . investigation is pending as on 1st March 2013, in respect of non levy, non-payment, short payment or short levy of service tax, initiated by way of search of premises, issue of summons, requirement of production of accounts, document or other evidence or

cd. Audit initiated and pending as on i~ March 2013

6. Immunity granted:

Once a declaration is accepted and tax dues are paid along with interest, the declarant shall get immunity from:

- a. Interest
- b. penalty
- c. prosecution
- d. any other proceedings under the Act.

7. Obligations of the declarant:

a. Filing of declaration In the prescribed form to the designated authority on or before 31st December 2013.

b. Payment to be made under the scheme:

ba. Not less than 50% of the declared tax dues by 31st December, 2013

bb. The remaining amount of tax dues on or before 30th June, 2014. If such amount is not paid by 30th June, 2014, the same may be paid by 31st December 2014. In such a case interest is to be paid at applicable rate from 1st July, 2014 till the date of payment

bc. Furnishing details of payment made from time to time under this scheme along with a copy of acknowledgement of the declaration to the designated authority

8. Other Points:

a. The designated authority shall issue an acknowledgment of:

- aa. the declaration filed;
- ab. discharge of declared dues in the manner to be prescribed.

b. Where the Commissioner of Central Excise has a reason to believe that the declaration made under this scheme is substantially false, he shall, for reasons recorded in writing serve a show cause notice on the declarant in respect of the tax dues not paid or short paid.

c. No show cause notice can be Issued after the expiry of one year from the date of declaration.



d. If the declarant fails to pay any tax dues, either full or in part, as declared by him, such dues along with interest thereon shall be recovered under normal recovery proceedings under the Act.

e. Any amount paid under the declaration shall not be refunded under any circumstances.

Comments

1. This is a VDS option which may put the past issues at rest for many innocent assesseees.

Sr. No.	Subject	
17	STT and CTT	
Amended		
Sec.	+/-	w.e.f.
		1-6-2013

Highlights

1. There is a proposal to reduce the rates of STT at various levels

- From 0.1% to Nil % in respect of Delivery based purchase of units of an equity oriented fund entered into in a recognized stock exchange levied on a purchaser
- From 0.1% to Nil % in respect of Delivery based sale of units of an equity oriented fund entered into in a recognized stock exchange levied on a Seller.
- From 0.02% to 0.01% in respect of Sale of futures in securities levied on a Seller.
- From 0.25% to Nil % in respect of Sale of a unit of an equity oriented fund to the mutual fund levied on a Seller.

2. There is a new levy in the form of Commodities Transaction Tax (CTT). It is levied in respect of Sale of commodity derivative at a rate of 0.01% payable by Seller.

3. A deduction is provided u/s. 36(1)(xv) from the Profit and Gains of Business.

Comments

On one hand a new levy is introduced in the form of CTT and on other hand, there is a welcome deduction in an existing levy of STT.

Sr. No.	Subject	
18	TDS	
Amended		
Sec.	+/-	w.e.f.
194(1A)		1-6-2013

Highlights

1. There are two changes re; TDS.

- Transfer of Immovable Property.
-

2. As regards, Transfer of Immovable Property,

- Deductor: The Transferee responsible for paying the consideration.
- Exemption : Consideration <Rs. 50 Lac
- Purpose : Transfer of Immovable Property other than Agricultural Land.
- Timing : At the time of the payment.
- Rate : 1%.

Comments

Sr. No.	Subject	
19	Venture Capital	
Amended		
Sec.	+/-	w.e.f.
10(23FB)		AY 2013-14

Highlights

1. Sec. 10(23FB) Explanation – 1, is being substituted by a fresh Explanation.

2. It defines a Venture Capital Company (VCC), A Venture Capital Fund (VCF) and Venture Capital Undertaking (VCU).

3. These definitions use SEBI (Venture Capital Fund) Regulation 1996 (VCFR '96) and the SEBI (Alternative Investment Funds) Regulation 2012 (AIFR '12) which have replaced the former w.e.f. 21st May 2012.'



4. A VCC thus means a Company, and VCF means of Fund which have been granted registration as

- (a) VCF under VCFR '96 or
- (b) VCF under AIFR '12

5. However, for (b) above there are the following sub-conditions:

- (a) Not listed on a Stock Exchange.
- (b) Invested > 2/3rd.in unlisted VCU.
- (c.) Not invested where Director or a substantial

Shareholder holds Equity >15%.

Comments

1. Presently the scheme is as under

- a. Sec. 10(23FB): exempts income of VCC/VCF
- b. Sec. 115U taxes the investor directly

2. The SEBI (Alternative Investment Funds) Regulation 2012 have replaced the SEBI

(Venture Capital Fund) Regulation 1996 w.e.f. 21st May 2012.'

3. The Amendment seeks to extend the benefit to the AIFs, while continuing the original scheme for VCC/VCFs.

4. However, in the process some additional conditions have been stipulated.

Miscellaneous Amendments...

Proposed Section amended	Particulars	w.e.f.
Income tax Act, 1961		
10(23ED)	Any income by way of contributions received by an Investor Protection Fund from a Depository (NSDL/CDSL). However if any such income is shared with the Depository, the same is taxable.	AY 2014-15
10(VII)	After clause (48), the following clause shall be inserted namely:- “(49) any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before the 1 st day of April 2014”.	AY 2014-15
80CCG	The deduction has been expanded a. Eligibility: Those whose GTI <Rs 12 lakhs b. Scope: Apart from Rajiv Gandhi Equity Savings Scheme(RGESS), it also covers units of an equity oriented fund and ETFs and MFs having such eligible assets. c. deduction up to Rs 25,000 for 3 consecutive years.	AY 2014-15
80D	Now apart from the Central Government Health Scheme, contribution to such other schemes as may be notified will also be eligible for the deduction up toRs 15,000(Rs 20,000 for senior citizens)	AY 2014-15
80G	Donations to National Children’s Fund now eligible for a 100% deduction.	AY 2014-15
80GGB/GGC	Donations to Political Party of Electoral Trust now deductible only if paid by cheque.(Donations to Scientific Research continues to be available for cash donations upto Rs 10,000).	AY 2014-15
115BBD	The benefit of lower tax rate of 15% (plus SC/EC) for dividends received by an Indian Company from a foreign company extended by one year..	AY 2014-15
115O	When an Indian holding company received dividend from a foreign subsidiary and pays tax u/s 115BBD then it will not be made to pay DDT when it in turn distributes dividend.	1-6-2013
115R	Rate of tax increased from 12.5% to 25% for non-corporate assessee. The tax of 30% on corporate assessee continues. This is done to bring uniformity in MMMF and other MF. Tax At the rate of	1-6-2013

	5% shall be payable in the case of income distributed by an infrastructure debt fund scheme to a non-resident or a foreign company.	
132B	The current debate as to whether advance tax payable is an “existing liability” against which the assets seized in the course of a search can be adjusted or not is settled in favor of the latter. This may overrule the decision in the case of Jyotindra B. Mody(Appeal No. 3741 of 2010) (Bom), Pandurang Dayaram Talmale (187 CTR 625) (Bom) Vishwanath Khanna (335 ITR 548)(Del) Ram Sarda V DCIt 50 SOT 121 (Raj) Sudhakar Shetty 130 ITD 197 (Mum)	1-6-2013
139(9)	Now even non-payment of self-assessment tax will make the return defective.	1-6-2013
142(2A)	The list of reasons why the AO can direct a Special Audit is being expanded to include volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in accounts and specialized nature of business activity of the assessee. This may take care of cases like DLF Commercial Projects (Delhi)(212 Taxman.com 43)	1-6-2013
153/ 153B	Period during which assessee challenges the direction of the AO to get the accounts audited and the date the direction was set aside to be excluded from computing period of limitation. Period during which AO makes a reference for information to be excluded from computing period of limitation.	1-6-2013
153D	In case assessee has applied GAAR, then the prior approval will be required in the search cases of the CIT and not Joint CIT	AY 2016-17
167C / 179	These sections which permit recovery of tax from the partners/ directors of any tax due from an LLP/PLC. It was held in cases like Dinesh T Tailor (326 ITR 85)(Bom), Maganlal H Patel (26 Taxmann.com 226)(Guj),H.Ebrahim (332 ITR 122)(Kar), Sanjay Ghai (26 Taxmann.com 203) that this term does not cover interest and penalty. The amendment overrides such cases.	1-6-2013
194LC	Benefit of concessional rate of tax of 5% extended to rupee denominated long term infrastructure bonds (and not loans) if the non resident or foreign company has deposited money in foreign currency in a designated account and such money after conversion into rupees is utilized for subscribing to such bonds.	1-6-2013
271FA	Failure to submit AIR report after the AO issues notice- the penalty increased to Rs 500 per day from Rs 100 per day.	AY 2014-15
Sch IV	For being a Recognized Provident Fund (RPF), the establishment for which it has been set up need to be exempt u/s 17 of the Provident Fund Act. The time limit for the same is being extended from time to time. Now it has been extended to 31 st march, 2014.	AY 2013-14

Wealth tax Act, 1957		
14A/14B	Wealth tax returns also will be now filed electronically	1-6-2013

The Finance Bill, 2013 - Objectives

As per the memorandum the following are the objectives of the Bill.

Sr	Particulars
1	Additional Resource Mobilization
	Commodities Transaction Tax (CTT), Taxation of Income by way of Royalty or fees for Technical Services.
2.	Measures to Promote Socio-Economic Growth
	Incentive for acquisition and installation of new plant or machinery by manufacturing company.
3.	Relief and Welfare Measures.
	Rebate of Rs. 2000/- for individuals having total income up to Rs. 5 Lakhs, Deduction in respect of interest on loan sanctioned during Financial Year 2013-14 for acquiring residential house property, Raising the limit of percentage of eligible premium for life insurance policies of persons with disability or disease, Deduction for contribution to Health Schemes similar to CGHS, Expanding the scope of deduction and its eligibility under section 80CCG, Exemption to income of Investor Protection Fund of depositories, One hundred percent deduction for donation to National Children's Fund, Exemption to National Financial Holdings Company Limited, Lower rate of tax on dividends received from Foreign Companies, Removal of the cascading effect of Dividend Distribution Tax (DDT), Concessional rate of withholding tax on interest in case of certain rupee denominated long-term infrastructure bonds, Taxation of Securitization Trusts, Securities Transaction Tax (STT), Pass through Status to certain Alternative Investment Funds.
4.	Widening of Tax Base and Anti Tax Avoidance Measures.
	Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land), Additional income-tax on distributed income by company for buy-back of unlisted shares, Computation of income under the head "Profits and gains of business or profession for transfer of immovable property in certain cases, Taxability of immovable property received for inadequate consideration.
5.	Rationalization Measures

General Anti-avoidance rule (GAAR), rationalization of tax on distributed income by the Mutual funds, Enabling provisions for facilitating electronic filing of annexure-less return of net wealth, Dis-allowance of certain fee, charge etc. in the case of State Government Undertakings, Amendment in the definition of Capital Asset, Keyman Insurance Policy, Contribution not to be in cash for deduction under Sec. 80GGB and section 80GGC, Clarification of the phrase "tax due" for the purposes of recovery in certain cases, Deduction for additional wages in certain cases, Tax Residency Certificate, Application of seized assets under section 132B, Return of income filed without payment of self-assessment tax to be treated as defective return, Direction for special audit under sub-section (2A) of section 142, Penalty under section 271FA for non-filing of Annual Information Return, Extension of time for approval in part A of the fourth Schedule to the Income-tax Act, 1961, Clarification for amount to be eligible for deduction as bad debts in case of banks,

The Tax Rates

There are no changes in the tax slabs, rates of income tax or rates of Education Cess and Secondary and Higher Education Cess.

Surcharge has been levied/increased as mentioned below:

TOTAL INCOME	Individuals, HUFs, AoP&BoI, CHS, Firms		Domestic Companies		Foreign Companies	
	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2013-14	A.Y. 2014-15
UptoRs 1 cr.	Nil	Nil	Nil	Nil	Nil	Nil
>Rs 1 Cr <Rs 10 Cr	Nil	10%	5%	5%	2%	2%
>Rs 10 Cr	Nil	10%	5%	10%	2%	5%

It is the surcharge of 10% which is what is popularly known as Taxing the Rich. The FM has admitted that this will cover only 42800 individuals who were declared income above Rs. 1 Crore. This will have an impact on the expatriate employees also where if the Companies have agreed on a net of tax package, the burden will pass to the Company.

Surcharge at the rate of 10% will be applicable on Minimum Alternate tax payable by companies (Section 115JB), Alternate minimum tax payable by persons other than companies (Section 115JC), Dividend distribution tax (Section 115-O), tax on income distributed by Mutual fund (Section 115R), tax on income distributed by Securitization trusts (Section 115TA), and tax on buy back of unlisted shares of domestic companies (Section 115QA).

The effective marginal tax rates will be as under:



Person	Total Income		
	UptoRs. 1 Crore	Above Rs. 1Cr UptoRs. 10 Cr.	Above Rs. 10 Cr.
Individual	30.90%	33.99%	33.99%
Firm	30.90%	33.99%	33.99%
Domestic Company	30.90%	32.445%	33.99%
Foreign Company	41.20%	42.024%	43.26%