FINANCE BILL, 2015

PROVISIONS RELATING TO DIRECT TAXES

Introduction

The provisions of the Finance Bill, 2015 relating to direct taxes seek to amend the Income-tax Act and Finance (No.2) Act, 2004, *inter alia*, in order to provide for –

A. Rates of Income-tax

B. Measures to Curb Black Money

C. Measures to Promote Domestic Manufacturing and Improving the Investment Climate (Make in India)

D. Ease of Doing Business/ Dispute Resolution

E. Benefits for Individual Taxpayers

F. Swachchh Bharat

G. Rationalisation Measures

2. The Finance Bill, 2015 seeks to prescribe the rates of income-tax on income liable to tax for the assessment year 2015-2016; the rates at which tax will be deductible at source during the financial year 2015-2016 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of "advance tax", deduction of income-tax from, or payment of tax on 'Salaries' and charging of income-tax on current incomes in certain cases for the financial year 2015-2016.

3. The substance of the main provisions of the Bill relating to direct taxes is explained in the following paragraphs:-

DIRECT TAXES

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2015-2016.

In respect of income of all categories of assessees liable to tax for the assessment year 2015-2016, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance (No.2) Act, 2014, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

(1) Surcharge on income-tax—

Surcharge shall be levied in respect of income liable to tax for the assessment year 2015-2016, in the following cases:—

(a) in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), cooperative societies, firms or local authorities, the amount of income-tax shall be increased by a surcharge for the purposes of the Union at the rate of ten percent. of such income-tax in case of a person having a total income exceeding one crore rupees.

However, marginal relief shall be allowed in all these cases to ensure that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Also, in the case of persons mentioned in (*a*) above having total income chargeable to tax under section 115JC of the Income-tax Act and where such income exceeds one crore rupees, surcharge at the rate mentioned above shall be levied and marginal relief shall also be provided.

(b) in the case of a domestic company-

(i) having total income exceeding one crore rupees but not exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of five per cent. of such income tax;

(ii) having total income exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of ten per cent. of such income-tax.

(c) in the case of a company, other than a domestic company,-

(i) having total income exceeding one crore rupees but not exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of two per cent. of such income tax;

(ii) having total income exceeding ten crore rupees, the amount of income-tax computed shall be increased by a surcharge for the purposes of the Union calculated at the rate of five per cent. of such income tax.

However, marginal relief shall be allowed in all these cases to ensure that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees, shall not exceed the total amount payable as income-tax on a total income of one crore rupees, by more than the amount of income that exceeds one crore rupees. The total amount payable as income-tax and surcharge on total income exceeding ten crore rupees, shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Also, in the case of every company having total income chargeable to tax under section 115JB of the Act and where such income exceeds one crore rupees but does not exceed ten crore rupees, or exceeds ten crore rupees, as the case may be, surcharge at the rates mentioned above shall be levied and marginal relief shall also be provided.

(d) In other cases (including sections 115-O, 115QA, 115R or 115TA), the surcharge shall be levied at the rate of ten percent.

(2) Education Cess —

For assessment year 2015-2016, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

II. Rates for deduction of income-tax at source during the financial year 2015-2016 from certain incomes other than “Salaries”.

The rates for deduction of income-tax at source during the financial year 2015-2016 from certain incomes other than “Salaries” have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance (No.2) Act, 2014, for the purposes of deduction of income-tax at source during the financial year 2014-2015, except that in case of certain payments made to a non-resident (other than a company) or a foreign company, in the nature of income by way of royalty or fees for technical services, the rate shall be ten per cent. of such income.

(1) Surcharge—

The amount of tax so deducted, in the case of a non-resident person (other than a company), shall be increased by a surcharge at the rate of twelve per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees . The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge,-

(i) at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

“Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, of income tax including surcharge wherever applicable, in the cases of persons not resident in India including company other than a domestic company.

III. Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2015-2016.

The rates for deduction of income-tax at source from “Salaries” during the financial year 2015-2016 and also for computation of “advance tax” payable during the said year in the case of all categories of assessees have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the financial year 2015-2016 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person.

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:-

(i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) are as under:—

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

(ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

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

(iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at anytime during the previous year,—

Upto Rs. 5,00,000	Nil.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs. 10,00,000	30 per cent.

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a person having a total income exceeding one crore rupees.

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

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2014-15.

The amount of income-tax shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees .

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

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for financial year 2014-15.

The amount of income-tax shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a firm having a total income exceeding one crore rupees .

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

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the financial year 2014-15.

The amount of income-tax shall be increased by a surcharge at the rate of twelve percent. of such income-tax in case of a local authority having a total income exceeding one crore rupees.

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

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the financial year 2014-15 .

Surcharge at the rate of seven per cent shall be levied in case of a domestic company if the total income of the domestic company exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of twelve percent shall be levied if the total income of the domestic company exceeds ten crore rupees. In case of companies other than domestic companies, the existing surcharge of two per cent. shall continue to be levied if the total income exceeds one crore rupees but does not exceed ten crore rupees. The surcharge at the rate of five percent shall continue to be levied if the total income of the company other than domestic company exceeds ten crore rupees.

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

In other cases (including sections 115-O, 115QA, 115R or 115TA) the surcharge shall be levied at the rate of twelve percent.

For financial year 2015-2016, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such Cess.

[Clause 2 & First Schedule]

B. MEASURES TO CURB BLACK MONEY

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

The existing provisions contained in section 269SS of the Income-tax Act provide that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more. However, certain exceptions have been provided in the section. Similarly, the existing provisions contained in section 269T of the Income-tax Act provide that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more.

In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

It is also proposed to amend section 269T of the Income-tax Act so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

It is further proposed to make consequential amendments in section 271D and section 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

These amendments will take effect from 1st day of June, 2015.

[Clauses 66, 67, 69 & 70]

C. MEASURES TO PROMOTE DOMESTIC MANUFACTURING AND IMPROVING THE INVESTMENT CLIMATE (Make in India)

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

The existing provisions of the General Anti Avoidance Rule (GAAR) introduced by the Finance Act, 2013 are contained in Chapter X-A (consisting of section 95 to 102) and section 144BA of the Act. Chapter X-A provides the substantive provision of GAAR whereas section 144BA provides the procedure to be undertaken for invoking GAAR and passing of the assessment order in consequence of GAAR provisions being invoked.

As provided in the Act, GAAR provisions are to come into effect from 1.04.2016. These provisions, therefore, shall be applicable to the income of the financial year 2015-16 (Assessment Year 2016-17) and subsequent years.

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

Accordingly, it is proposed that implementation of GAAR be deferred by two years and GAAR provisions be made applicable to the income of the financial year 2017-18 (Assessment Year 2018-19) and subsequent years by amendment of the Act. Further, investments made up to 31.03.2017 are proposed to be protected from the applicability of GAAR by amendment in the relevant rules in this regard.

This amendment will take effect from 1st April, 2015.

[Clause 25]

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

The existing provisions of section 10(23FB) of the Act provide that any income of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) from investment in a Venture Capital Undertaking (VCU) shall be exempt from taxation. Section 115U of the Act provides that income accruing or arising or received by a person out of investment made in a VCC or VCF shall be taxable in the same manner, on current year basis, as if the person had made direct investment in the VCU.

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

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

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

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

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

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

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

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

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

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

(viii) the income received by the investment fund would be exempt from TDS requirement. This would be provided by issue of appropriate notification under section 197A(1F) of the Act subsequently.

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

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

Illustration

The broad features of the above regime can be explained through the following Examples. For simplicity, it is assumed that the investment fund has ten unit holders each having one unit and the income from investment in the investment fund is the only income of the unit holder.

Example 1: *If in a previous year, the income stream of the investment fund consists of:*

Income by way of capital gains	Rs. 800
Income from other sources	Rs. 200

Then:

Total Income of the investment fund	NIL
Total income of the unit holders	Rs. 1,000
Total income of a unit holder	Rs. 100
Break up:	
Chargeable under the head “Capital gain”	Rs. 80
Chargeable under the head “Income from other sources”	Rs. 20

Example 2: *If in Example 1, the income stream of investment fund consists of:*

Business income	Rs. 100
Income by way of capital gains	Rs. 700
Income from other sources	Rs. 200

Then:

Total Income of the investment fund	Rs. 100
(Tax shall be charged at applicable rate if investment fund is a company or a firm, else at maximum marginal rate)	
Income arising to a unit holder	Rs. 100
Income of unit holder which is exempt	Rs. 10
Total income of a unit holder (chargeable to tax)	Rs. 90
Break up:	
Chargeable under the head “Capital gain”	Rs. 70
Chargeable under the head “Income from other sources”	Rs. 20

Example 3: *If the income stream of the investment fund consists of:*

Business Loss	Rs. 100
Capital gains Loss	Rs. 300
Income from other sources	Rs. 400

Then:

The business loss of Rs. 100 is set off against Income from other sources whereas Capital gain loss cannot be set off. The result is:

Total Income of the investment fund (Loss of Rs. 300 remains at investment fund level to be carried forward for set off in subsequent years)	NIL
Total income of the unit holders	Rs. 300
Total income of a unit holder	Rs. 30

(Chargeable under the head "Income from other sources")

Example 4: *If in the previous year immediately succeeding the previous year mentioned in Example 3, the income stream of the investment fund consists of:*

Business income	Rs. 100
Income by way of capital gains	Rs. 450
Income from other sources	Rs. 500

Then:

Total Income of the investment fund	Rs. 100
(Business income)	
Exempt Income –	
Capital Gain (Rs. 450 – Rs. 300)	Rs. 150
Income from other sources	Rs. 500
Income accruing or arising to the unit holders	Rs. 750
Income of a unit holder including exempt income	Rs. 75
Total Income of a unit holder	Rs. 65
<u>Break up:</u>	
Exempt Income	Rs. 10
Chargeable under the head "Capital gain"	Rs. 15
Chargeable under the head *"Income from other sources"*	Rs. 50

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.

[Clauses 3, 7, 30, 32, 34 & 46]

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

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

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

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

There are a large number of fund managers who are of Indian origin and are managing the investment of offshore funds in various countries. These persons are not locating in India due to the above tax consequence in respect of income from the investments of offshore funds made in other jurisdictions.

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

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

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

The proposed regime provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, it is proposed that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. This specific exception from the general rules for determination of business connection and 'resident status' of off-shore funds and fund management activity undertaken on its behalf is subject to the following:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is further proposed that every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfillment of the above conditions or any information or document which may be prescribed. In case of non furnishing of the prescribed information or document or statement, a penalty of Rs. 5 lakh shall be leviable on the fund.

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

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.

[Clauses 6, 71 & 75]

Incentives for the State of Andhra Pradesh and the State of Telangana

Section 94 of the Andhra Pradesh Reorganisation Act, 2014 *inter alia* provides that the Central Government shall take appropriate fiscal measures, including offer of tax incentives to the State of Andhra Pradesh and the State of Telangana, to promote industrialization and economic growth in both the States.

Manufacturing sector plays significant role in the economic growth of any region. Therefore, in order to encourage the setting up of industrial undertakings in the backward areas of the State of Andhra Pradesh and the State of Telangana, it is proposed to provide following Income-tax incentives:-

(A) Additional Investment Allowance

It is proposed to insert a new section 32AD in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if—

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

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

This deduction shall be available over and above the existing deduction available under section 32AC of the Act. Accordingly, if an undertaking is set up in the notified backward areas in the States of Andhra Pradesh or Telangana by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC of the Act as well as under the proposed section 32AD if it fulfills the conditions (such as investment above a specified threshold) specified in the said section 32AC and conditions specified under the proposed section 32AD.

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

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

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

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

(iv) any vehicle;

(v) any ship or aircraft; or

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

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

(B) Additional Depreciation at the rate of 35%

To incentivise investment in new plant or machinery, additional depreciation of 20% is allowed under the existing provisions of section 32(1)(iia) of the Act in respect of the cost of plant or machinery acquired and installed by certain assessees. This depreciation allowance is allowed over and above the deduction allowed for general depreciation under section 32(1)(ii) of the Act. In order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward area in the State of Andhra Pradesh or the State of Telangana, it is proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after the 1st day of April, 2015. This higher additional depreciation shall be available in respect of acquisition and installation of any new machinery or plant for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020. The eligible machinery or plant for this purpose shall not include the machinery or plant which are currently not eligible for additional depreciation as per the existing proviso to section 32(1)(iia) of the Act.

It is also proposed to make consequential amendments in the second proviso to section 32(1) of the Act for applying the existing restriction of the allowance to the extent of 50% for assets used for the purpose of business for less than 180 days in the year of acquisition and installation. However, the balance 50% of the allowance is also proposed to be allowed in the immediately succeeding financial year (discussed under the head “Allowance of balance 50% additional depreciation”).

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.

[Clauses 10 & 11]

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

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

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

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

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

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

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

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

(vi) The pass through is provided in respect of income by way of interest received by the business trust from SPV i.e., there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV.

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

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

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

In order to provide parity, it is proposed that,-

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

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

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

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

In order to provide pass through to the rental income arising to REIT from real estate property directly held by it, it is proposed to provide that :-

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

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

(iii) the REIT shall effect TDS on rental income allowed to be passed through. In case of resident unit holder, tax shall deducted @ 10%, and in case of distribution to non-resident unit holder, the tax shall be deducted at rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax .

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

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.

[Clauses 3, 7, 26, 31, 44 & 45]

Extension of eligible period of concessional tax rate under section 194LD

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

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

Accordingly, it is proposed to amend section 194LD to provide that the concessional rate of 5% withholding tax on interest payment under the section will now be available on interest payable upto 30th June, 2017.

This amendment will take effect from 1st June, 2015.

[Clause 47]

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

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

In order to reduce the hardship faced by small entities due to high rate of tax of 25%, it is proposed to amend the Act to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents to 10%.

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

[Clause 27]

Deduction for employment of new workmen

The existing provisions contained in section 80JJAA of the Act, *inter alia*, provide for deduction to an Indian company, deriving profits from manufacture of goods in a factory. The quantum of deduction allowed is equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

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

With a view to encourage generation of employment, it is proposed to amend the section so as **to extend the benefit to all assessees having manufacturing units** rather than restricting it to corporate assessees only. Further, in order to enable the smaller units to claim this incentive, it is proposed to extend the benefit under the section to units employing even 50 instead of 100 regular workmen.

Accordingly, it is proposed to amend sub-section (1) of the aforesaid section. It is also proposed to amend clause (*i*) of the *Explanation* so as to provide “additional wages” to mean the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.

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.

[Clause 22]

Allowance of balance 50% additional depreciation

To encourage investment in plant or machinery by the manufacturing and power sector, additional depreciation of 20% of the cost of new plant or machinery acquired and installed is allowed under the existing provisions of section 32(1)(iia) of the Act over and above the general depreciation allowance. On the lines of allowability of general depreciation allowance, the second proviso to section 32(1) *inter alia* provides that the additional depreciation would be restricted to 50% when the new plant or machinery acquired and installed by the assessee, is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in the previous year. Non-availability of full 100% of additional depreciation for acquisition and installation of new plant or machinery in the second half of the year may motivate the assessee to defer such investment to the next year for availing full 100% of additional depreciation in the next year. To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

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

[Clause 10]

D. EASE OF DOING BUSINESS/DISPUTE RESOLUTION

Clarity relating to Indirect transfer provisions

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

The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, *inter alia*, included insertion of *Explanation* 5 in section 9(1)(i) w.r.e.f. 1.04.1962 . The *Explanation* 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Considering the concerns raised by various stakeholders regarding the scope and impact of these amendments an Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was constituted by the Government to go into the various aspects relating to the amendments.

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

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

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

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

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

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

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

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

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

(vii) the exemption shall be available to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises,

   (a) neither holds the right of control or management,

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

   in the foreign company or entity directly holding the Indian assets (direct holding company).

(viii) in case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-

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

   (b) nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five percent. in the direct holding company or entity.

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

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

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

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

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

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.

[Clauses 5, 13, 14, 72, 75 & 76]

Raising the threshold for specified domestic transaction

The existing provisions of section 92BA of the Act define “specified domestic transaction” in case of an assessee to mean any of the specified transactions, not being an international transaction, where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees.

In order to address the issue of compliance cost in case of small businesses on account of low threshold of five crores rupees, it is proposed to amend section 92BA to provide that the aggregate of specified transactions entered into by the assessee in the previous year should exceed a sum of twenty crore rupees for such transaction to be treated as ‘specified domestic transaction’.

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

[Clause 24]

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

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

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

The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore, it is proposed to include 'yoga' as a specific category in the definition of charitable purpose on the lines of education.

In so far as the advancement of any other object of general public utility is concerned, there is a need is to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization as part of actual carrying out of the primary purpose of the trust or institution.

It is, therefore, proposed to amend the definition of charitable purpose to provide that the advancement of any other object of general public utility shall not be a charitable purpose**,** if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent. of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

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.

[Clause 3]

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

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

Under the existing provisions, income by way of contributions to the Investor Protection Fund set up by recognised stock exchanges in India, or by commodity exchanges in India or by a depository shall be exempt from taxation.

On similar lines, it is proposed to exempt the income of the Core SGF arising from contribution received and investment made by the fund and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository.

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

The specified person for this purpose is defined to mean any recognized clearing corporation which establishes and maintains the Core Settlement Guarantee Fund and the recognised stock exchange being the shareholder of such clearing corporation.

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

[Clause 7]

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

The existing provision contained in sub-section (3) of section 255 of the Income-tax Act provides for constitution of a single member bench and a Special Bench. It provides that single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer does not exceed five lakh rupees. The limit of five lakh rupees for a single member bench was last revised in 1998.

Accordingly, it is proposed to amend sub-section (3) of section 255 of the Income-tax Act so as to provide that a bench constituted of a single member may dispose of a case where the total income as computed by the Assessing Officer does not exceed fifteen lakh rupees.

This amendment will take effect from 1st day of June, 2015.

[Clause 64]

Tax neutrality on merger of similar schemes of Mutual Funds

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

In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, it is proposed to provide tax neutrality to unit holders upon consolidation or merger of mutual fund schemes provided that the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than equity oriented fund. It is further proposed that the cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee. It is also proposed to define consolidating scheme as the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and consolidated scheme as the scheme with which the consolidating scheme merges or which is formed as a result of such merger.

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.

[Clauses 13 & 14]

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

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

There is presently no parallel provision for revenue to not file appeal for subsequent years where the Department is in appeal on the same question of law for an earlier year. As a result, appeals are filed by the revenue year after year on the same question of law until it is finally decided by the Supreme Court thus, multiplying litigation.

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

It is further proposed to provide that the Commissioner or Principal Commissioner shall proceed under sub-section (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section (2) or section (2A) of section 253 and accordingly may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.

It is also proposed to provide that where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within sixty days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner and save as otherwise provided in the said section 158AA, all other provisions of Part B of Chapter XX shall apply accordingly.

This amendment will take effect from the 1st day of June, 2015.

[Clause 39]

Enabling the Board to notify rules for giving foreign tax credit

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

The Income-tax Act does not provide the manner for granting credit of taxes paid in any country outside India. Accordingly, it is proposed to amend section sub-section (2) of section 295 of the Income-tax Act so as to provide that CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Act.

This amendment will take effect from 1st day of June, 2015.

[Clause 78]

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

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

Currently, wealth-tax is levied on an individual or HUF or company, if the net wealth of such person exceeds Rs.30 lakh on the valuation date, i.e. last date of the previous year. For the purpose of computation of taxable net wealth, only few specified assets are taken into account.

The actual collection from the levy of wealth-tax during the financial year 2011-12 was Rs.788.67 crore and during the financial year 2012-13 was Rs.844.12 crore only. The number of wealth-tax assessee was around 1.15 lakh in 2011-12. Although only a nominal amount of revenue is collected from the levy of wealth-tax, this levy creates a significant amount of compliance burden on the assessees as well as administrative burden on the department. This is because the assessees are required to value the assets as per the provisions of Wealth-tax Rules for computation of net wealth and for certain assets like jewellery, they are required to obtain valuation report from the registered valuer. Further, the assets which are specified for levy of wealth-tax, being unproductive, such as jewellery, luxury cars, etc. are difficult to be tracked and this gives an opportunity to the assessees to under report/under value the assets which are liable for wealth-tax. Due to this, the collection of wealth-tax over the years has not shown any significant growth and has only resulted into disproportionate compliance burden on the assessees and administrative burden on the department. It is, therefore, proposed to abolish the levy of wealth tax under the Wealth-tax Act, 1957 with effect from the 1st April, 2016. It is also proposed that the objective of taxing high net worth persons shall be achieved by levying a surcharge on tax payer earning higher income as levy of surcharge is easy to collect & monitor and also does not result into any compliance burden on the assessee and administrative burden on the department. The details regarding levy of enhanced surcharge on this account are given under the heading "Rates of Income-tax". It is also proposed that information relating to assets which is currently required to be furnished in the wealth-tax return shall be captured by suitably modifying income-tax return.

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

[Clause 79]

E. BENEFITS FOR INDIVIDUAL TAXPAYERS

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

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

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

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

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

Accordingly, a new clause (11A) is proposed to be inserted in section 10 of the Act so as to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 shall not be included in the total income of the assessee. As a result, the interest accruing on deposits in, and withdrawals from any account under the scheme would be exempt.

The Scheme has been notified under clause (viii) of sub-section (2) of section 80C vide Notification number 9/2015 S.O.210 (E),F.No. 178/3/2015-ITA-I dated 21.012015.

With a view to allow the deduction under section 80C to the parent or legal guardian of the girl child, amendment of section 80C of the Act is proposed to be made so as to provide that a sum paid or deposited during the year in the Scheme in the name of any girl child of the individual or in the name of any girl child for whom such individual is the legal guardian, would be eligible for deduction under section 80C of the Act.

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

[Clauses 7 & 15]

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

The existing provisions contained in section 80D, *inter alia,* provide for deduction of

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

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

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

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

Further, very senior citizens are often unable to get health insurance coverage and are therefore unable to take tax benefit under section 80D. Accordingly, as a welfare measure towards very senior citizens ,it is also proposed to provide that any payment made on account of medical expenditure in respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person, as does not exceed thirty thousand rupees shall be allowed as deduction under section 80D. The aggregate deduction available to any individual in respect of health insurance premia and the medical expenditure incurred would however be limited to thirty thousand rupees. Similarly aggregate deduction for health insurance premia and medical expenditure incurred in respect of parents would be limited to thirty thousand rupees.

Example:

(i)	For Individual and his family	Rs.
	Health insurance premia	21,000
(ii)	For parents	
	Health insurance of Mother :	18,000
	Medical expenditure on father (very senior citizen)	15,000
	Deduction eligible u/s 80D	Rs. 21000 + Rs. 30000 = Rs. 51,000

It is also proposed to define a 'very senior citizen' to mean an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

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

*[*Clause 18*]*

Raising the limit of deduction under section 80DDB

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

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

Under the existing provisions of this section, a certificate in the prescribed form, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist working in a Government hospital is required. It has been represented that the requirement of a certificate from a doctor working in a Government hospital causes undue hardship to the persons intending to claim the aforesaid deduction .Government hospitals at many places do not have doctors specialising in the above branches of medicine. For this and other reasons, it may be difficult for the taxpayer to obtain a certificate from a Government hospital.

In view of the above, it is proposed to amend section 80DDB so as to provide that **the assessee will be required to obtain a prescription from a specialist doctor** for the purpose of availing this deduction.

Further, it is also proposed to amend section 80DDB to provide for a higher limit of deduction of upto eighty thousand rupees, for the expenditure incurred in respect of the medical treatment of a "very senior citizen". A "very senior citizen" is proposed to be defined as an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

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.

[Clause 20]

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

The existing provisions of section 80DD, *inter alia*, provide for a deduction to an individual or HUF, who is a resident in India, who has incurred—

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability as defined under the said section; or

(b) paid any amount to LIC or any other insurer in respect of a scheme for the maintenance of a disabled dependant.

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

The existing provisions of section 80U, *inter alia*, provide for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability (as defined under the said section).

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

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

In view of the rising cost of medical care and special needs of a disabled person, it is proposed to amend section 80DD and section 80U so as to raise the limit of deduction in respect of a person with disability from **fifty thousand rupees to seventy five thousand rupees**.

It is further proposed to amend the section so as to raise the limit of deduction in respect of a person with **severe disability from one lakh rupees to one hundred and twenty five thousand rupees**.

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.

[Clauses 19 & 23]

Raising the limit of deduction under 80CCC

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

In order to promote social security, it is proposed to amend sub-section (1) of the said section so as to raise the limit of deduction under section 80CCC from one lakh rupees to one hundred and fifty thousand rupees, within the overall limit provided in section 80CCE.

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

[Clause 16]

Additional deduction under 80CCD

Under the existing provisions contained in sub-section (1) of section 80CCD of the Income-tax Act, 1961 if an individual, employed by the Central Government on or after 1st January, 2004, or being an individual employed by any other employer, or any other assessee being an individual has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding ten per cent. of his salary in the case of an employee and ten per cent. of the gross total income in case of any other individual is allowed. Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under sub-section (2) of section 80CCD, to the extent it does not exceed ten per cent. of the salary of the individual in the previous year. Sub-section (1A) of section 80CCD provides that the amount of deduction under sub-section (1) shall not exceed one hundred thousand rupees. Till date, under section 80CCD, only the National Pension System (NPS) has been notified by the Ministry of Finance.

With a view to encourage people to contribute towards NPS, it is proposed to omit sub-section (1A). In addition to the enhancement of the limit under section 80CCD(1), it is further proposed to insert a new sub-section (1B) so as to provide for an additional deduction in respect of any amount paid, of upto fifty thousand rupees for contributions made by any individual assessees under the NPS.

Consequential amendments are also proposed in sub-section (3) and sub-section (4) of section 80CCD.

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.

[Clause 17]

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

The Finance (No.2) Act, 2014, inserted section 194DA in the Act with effect from 1.10.2014 to provide for deduction of tax at source at the rate of 2% from payments made under life insurance policy, which are chargeable to tax. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year is less than Rs. 1,00,000. In spite of providing high threshold for deduction of tax under this section, there may be cases where the tax payable on recipient's total income, including the payment made under life insurance, will be nil. The existing provisions of section 197A of the Act *inter alia* provide that tax shall not be deducted, if the recipient of the certain payment on which tax is deductible furnishes to the payer a self-declaration in prescribed Form No.15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. It is, therefore, proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194DA also eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

This amendment will take effect from 1st June, 2015.

[Clause 49]

Relaxing the requirement of obtaining TAN for certain deductors

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

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

This amendment will take effect from 1st June, 2015.

[Clause 52]

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

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

The National Fund for Control of Drug Abuse is a fund created by the Government of India in the year 1989, under the Narcotic Drugs and Psychotropic Substances Act, 1985. Since National Fund for Control of Drug Abuse is also a Fund of national importance, it is proposed amend section 80G so as to provide hundred percent. deduction in respect of donations made to the said National Fund for Control of Drug Abuse.

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

[Clause 21]

F. SWACHCHH BHARAT

Tax benefits for Swachh Bharat Kosh and Clean Ganga Fund

Under the existing provisions of section 80G of the Income-tax Act, a deduction is allowed in computing the total income of a person in respect of donations made to certain funds and charitable institutions. The deduction is allowed at the rate of fifty percent of the amount of donations made except in the case of donations made to certain funds and institutions formed for a social purpose of national importance, where it is allowed at the rate of one hundred percent, such as the National Defence Fund set up by the Central Government, the Prime Minister's National Relief Fund, the Prime Minister's Armenia Earthquake Relief Fund, the Africa (Public Contributions-India) Fund, the National Children's Fund, the National Foundation for Communal Harmony etc.

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

With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, it is proposed to amend section 80G of the Act so as to incentivise donations to the two funds. It is proposed to provide that donations made by any donor to the Swachh Bharat Kosh and donations made by domestic donors to Clean Ganga Fund will be eligible for a deduction of hundred per cent from the total income. However, any sum spent in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor.

The existing provisions of section 10(23C) of the Act provide for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund ; the Prime Minister's Fund (Promotion of Folk Art); the Prime Minister's Aid to Students Fund; the National Foundation for Communal Harmony. Considering the importance of Swachh Bharat Kosh and Clean Ganga Fund, it is also proposed to amend section 10(23C) of the Act so as to exempt the income of Swachh Bharat Kosh and Clean Ganga Fund from income-tax.

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

[Clauses 7 & 21]

G. RATIONALISATION MEASURES

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

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

(*a*) the Government ; or

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

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

Section 90 of the Act provides that Central Government may enter into an agreement with the Government of any country or specified territory outside India among other things for providing relief from double taxation. India has entered into Double Taxation Avoidance Agreements (DTAAs) with 92 countries. Further sub-section (2) of the said section provides that in respect of an assessee to whom such DTAA applies, the provisions of the Act shall apply to the extent they are more beneficial to him. Therefore, the taxpayer is entitled to relief from the provisions of the Act if such relief is available under the DTAA and to that extent the provisions of the Act are not applicable.

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

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

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

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

The Special Bench of the ITAT in the case of Sumitomo Mitsui Banking Corporation [136 ITD- 66 TBOM] had mentioned that there are instances of other countries providing for specific provisions in their domestic law which allows for the taxability of interest paid by a permanent establishment to its head office and other branches and had pointed out absence of such a specific provision in the Income-tax Act.

Considering that there are several disputes on the issue which are pending and likely to arise in future, it is essential that necessary clarity and certainty is provided for in the Act. Accordingly, it is proposed to amend the Act to provide that, in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India and the permanent establishment in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply . Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Further, non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

These amendments shall be effective from 1st April, 2016 and will, accordingly, apply to the assessment year 2016-17 and subsequent assessment years.

[Clause 5]

Rationalisation of provisions of section 11 relating to accumulation of Income by charitable trusts and institutions

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

In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.

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.

[Clauses 8 & 9]

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

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

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

It is proposed to amend the Act in order to provide that entities covered under clauses (iiiab) and (iiiac) of clause (23C) of section 10 shall be mandatorily required to file their return of income.

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

[Clause 34]

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

The provisions of sub-section (1) of section 6 provide the conditions under which an individual is held to be resident in India. The determination is based, *inter alia*, on the number of days during which such individual has been in India during a previous year.

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

In view of the above, it is proposed to amend the Act to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

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

[Clause 4]

Rationalising the provisions of section 115JB

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

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

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

Further, vide Finance Act (No.2), 2014 it was provided that any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be capital asset. Consequently, the income arising to a Foreign Institutional Investor from transactions in securities would always be in the nature of capital gains.

It is, therefore, proposed to amend the provisions of section 115JB so as to provide that income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor, shall be excluded from the chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit. The expenditures, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also proposed to be added back to the book profit for the purpose of computation of MAT.

In view of the above,

- a new clause (iib) is proposed to be inserted in Explanation 1 so as to provide that the amount of income, being the share of income of an assessee on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the profit and loss account, shall be reduced from the book profit for the purposes of calculation of income-tax payable under the section. Further by inserting a new clause (fa) in Explanation 1 it is proposed that the book profit shall be increased by the amount or amounts of expenditure relatable to the above income.
- A new clause (iic) is also proposed to be inserted in Explanation 1 so as to provide that the amount of income from transactions in securities, (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable), accruing or arising to an assessee being a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act,1992,if any such amount is credited to the profit and loss account, shall be reduced from the book profit for the purposes of calculation of income-tax payable under the section. Further by inserting a new clause (fb) in Explanation 1, it is proposed that the book profit shall be increased by the amount or amounts of expenditure relatable to the above income.

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.

[Clause 29]

Amendments relating to Global Depository receipts (GDRs)

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

The current taxation scheme of income arising in respect of depository receipts under the Act is aligned with the earlier scheme which was limited to issue of Depository Receipts (DRs) based on the underlying shares of the company issued for this purpose (i.e sponsored GDR) or FCCB of the issuing company and where the company was either a listed company or was to list simultaneously. Besides, the holder of such DRs was a non-resident only.

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

Since the tax benefits under the Act were intended to be provided in respect of sponsored GDRs and listed companies only, it is proposed to amend the Act in order to continue the tax benefits only in respect of such GDRs as defined in the earlier depository scheme.

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

[Clause 28]

Settlement Commission

The existing provision contained in clause (b) of section 245A of the Act defines a case for the purpose of Chapter XIX-A as any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made. The *Explanation* to the said clause provides for deemed commencement of proceedings under different situations.

Clause (i) of the *Explanation* to clause (b) of section 245A provides that the proceeding for assessment or reassessment under section 147 of the Act is deemed to commence from the date of issue of notice under section 148 of the Act. It has been observed that issue relating to escapement of income is often involved in more than one assessment year. In such case the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice under section 148 has been issued. Therefore, to take the proceeding for all other assessment years where there is escapement, the assessee becomes eligible only after notice under section 148 has been issued for all such assessment years.

In order to obviate the need for issue of notice in all such assessment years for commencement of pendency, it is proposed to amend clause (i) of the said *Explanation* to provide that where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 of the Act or in response to notice under section 142 of the Act.

The existing provision contained in clause (*iv*) of the *Explanation* provides that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

It is proposed to amend clause (*iv*) of the *Explanation* to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the date on which a return of income is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made.

The existing provision contained in sub-section (6B) of section 245D of the Income-tax Act provides that the Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4).

There is no provision for additional time where the assessee or the Commissioner files an application for rectification towards the end of the limitation period. Accordingly, it is proposed to amend sub-section (6B) of section 245D of the Income-tax Act to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4),-

(a) at any time within a period of six months from the end of month in which the order was passed;

(b) on an application made by the Principal Commissioner or Commissioner before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

The existing provision contained in sub-section (1) of section 245H of the Income-tax Act provides that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, immunity from prosecution.

As immunity is provided from prosecution by the Settlement Commission, it is proposed to amend sub-section (1) of section 245H of the Income-tax Act so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it.

The existing provision contained in sub-section (1) of section 245HA of the Income-tax Act provides for abatement of proceedings in different situations.

It is proposed to amend sub-section (1) of section 245HA of the Income-tax Act to provide that where in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order under sub-section (4) of section 245D was passed.

The existing provision contained in section 245K of the Income-tax Act, provides that where an application of a person has been allowed to be proceeded with under sub-section (1) of section 245D, then such person shall not be subsequently entitled to make an application before Settlement Commission. It further provides that in certain situations the person shall not be entitled to apply for settlement before Settlement Commission.

The restriction is presently applicable to a person. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement Commission only once for any person. Accordingly, it is proposed to amend section 245K of the Income-tax Act to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,-

(i) where such person is an individual, any company in which such person holds more than fifty percent. of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent of the profits at any time, or any Hindu undivided family in which such person is a karta;

(ii) where such person is a company, any individual who held more than fifty percent. of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;

(iii) where such person is a firm or association of person or body of individual, any individual who was entitled to more than fifty percent. of the profits in such firm, association of person or body of individual, at any time before the date of application before the Settlement Commission by such person;

(iv) where such person is an Hindu undivided family, the karta of that Hindu undivided family.

The existing provision contained in section 132B of the Income-tax Act, provides that the asset seized under section 132 or requisitioned under section 132A may be adjusted against the amount of existing liability under the Income-tax Act, the Wealth-tax Act etc. and the amount of liability determined on completion of assessment.

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

These amendments will take effect from 1st day of June, 2015.

[Clauses 35, 57, 58, 59, 60 & 61]

Orders passed by the prescribed authority under section sub-clauses (vi) and (via) of clause (23C) of section 10 made appealable before Income-tax Appellate Tribunal

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

The existing provisions contained in sub-section (1) of section 253 of the Income-tax specify orders that are appealable before ITAT. Order passed by the prescribed authority under sub-clauses (vi) and (via) of clause (23C) of section 10 is not included in this sub-section.

The decision of the prescribed authority to refuse to grant approval can have significant implications for the educational or medical institution under the Income-tax Act. Further, under a comparable provision an order for refusal to register a charitable trust is appealable before the Appellate Tribunal.

Accordingly, it is proposed to amend the said sub-section (1) of section 253 so as to provide that an assessee aggrieved by the order passed by the prescribed authority under sub-clause (vi) or (via) of section 10(23C) may appeal to the Appellate Tribunal.

This amendment will take effect from 1st day of June, 2015.

[Clause 63]

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

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

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

This amendment will take effect from the 1st day of June, 2015.

[Clause 36]

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

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

To bring simplicity, it is proposed to provide that no notice under section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

This amendment will take effect from 1st day of June, 2015.

[Clause 35]

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

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

Interest is charged under section 234B on the principle that the amount of tax determined on the total income determined under section 143(1) or on assessment or reassessment or total income declared in a settlement application was the tax payer’s true liability right from the beginning and it was with reference to that amount the advance tax should have been paid within the prescribed due date.

Accordingly, it is proposed to amend clause (3) of section 234B of the Income-tax Act to provide that the period for which the interest is to be computed will begin from the 1st day of April next following the financial year and end on the date of determination total income under section 147 or section 153A.

The existing provision contained in sub-section (4), *inter alia*, provide that where on an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced accordingly. However, in case an application is filed before the Settlement Commission under section 245C declaring an additional amount of income-tax, there is no specific provision in section 234B for charging interest on that additional amount.

Accordingly, it is proposed to insert a new subsection (2A) so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section. Further, where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.

These amendments will take effect from 1st day of June, 2015.

[Clause 56]

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

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

The interpretation of expression “erroneous in so far as it is prejudicial to the interests of the revenue” has been a contentious one.

In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which, should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

This amendment will take effect from 1st day of June, 2015.

[Clause 65]

Clarification regarding deduction of tax from payments made to transporters

Under the existing provisions of section 194C of the Act payment to contractors is subject to tax deduction at source (TDS) at the rate of 1% in case the payee is an individual or Hindu undivided family and at the rate of 2% in case of other payees if such payment exceeds Rs. 30,000 or aggregate of such payment in a financial year exceeds Rs. 75,000. Prior to 1.10.2009, section 194C of the Act provided for exemption from TDS to an individual transporter who did not own more than two goods carriage at any time during the previous year. Subsequently, Finance (No.2) Act, 2009 substituted section 194C of the Act with effect from 1.10.2009, which *inter alia* provided for non- deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if the contractor furnishes his Permanent Account Number (PAN) to the payer.

The memorandum explaining the provisions of Finance (No.2) Bill, 2009 indicates that the intention was to exempt only small transport operators (as defined in section 44AE of the Act) from the purview of TDS on furnishing of Permanent Account Number (PAN). Thus, the intention was to reduce the compliance burden on the small transporters. However, the current language of sub-section (6) of section 194C of the Act does not convey the desired intention and as a result all transporters, irrespective of their size, are claiming exemption from TDS under the existing provisions of sub-section (6) of section 194C of the Act on furnishing of PAN.

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

This amendment will take effect from 1st June, 2015.

[Clause 43]

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

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

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

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

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

Therefore, as per the provisions of section 194A(1) read with provisions of sections 194A(3)(i)(b) and 194A(3)(viia)(b), co-operative bank is required to deduct tax from interest payment on time deposits if the amount of such payment exceeds specified threshold of Rs.10,000/-. However, as the provisions of section 194A(3)(v) of the Act provide a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories. This has led to dispute as to whether the co-operative banks, for which the specific provisions of tax deduction exist in the form of section 194A (1), section 194A(3)(i)(b) and section 194A(3)(viia)(b) of the Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. The matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3)(viia)(b) of the Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence, the co-operative banks are required to deduct tax on payment of interest on time deposit and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3)(v) of the Act. This is because the specific provision of tax deduction provided under section 194A(3)(i)(b) and 194A(3)(viia)(b) of the Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3)(v) of the Act.

As there is no difference in the functioning of the co-operative banks and other commercial banks, the Finance Act, 2006 and Finance Act, 2007 amended the provisions of the Act to provide for co-operative banks a taxation regime which is similar to that for the other commercial banks. Therefore, there is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail the exemption meant for smaller credit co-operative societies formed for the benefit of small number of members. However, as mentioned earlier, a doubt has been created regarding the applicability of the specific provisions mandating deduction of tax from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption provided is also applicable for payment of interest to member depositors. In view of this, it is proposed to amend the provisions of the section 194A of the Act to expressly provide from the prospective date of 1st June, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v)) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members.

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

The existing provision of TDS on payment of interest by banking company or co-operative bank applies only to the interest payment on time deposits made on or after the 1st day of July, 1995. The definition of "time deposits" provided in the section 194A of the Act excludes recurring deposit from its scope. Therefore, payment of interest on recurring deposits by banking company or co-operative bank is currently not subject to TDS. The recurring deposit is also made for a fixed tenure and, therefore, the same is akin to time deposit. It is, therefore, proposed to amend the definition of 'time deposits' so as to include recurring deposits within its scope for the purposes of deduction of tax under section 194A of the Act. However, the existing threshold limit of Rs 10,000 for non-deduction of tax shall also be applicable in case of interest payment on recurring deposits to safeguard interests of small depositors.

Currently, provisions of proviso to section 194A(3)(i) of the Act provide that the interest income for the purpose of deduction of tax by the banking company or the co-operative bank or the public company shall be computed with reference to a branch of these entities. As currently, most of these entities are computerised and follow core banking solutions for crediting interest, there is no rationale for continuing branch wise calculation of interest by the entities who have adopted core banking solutions. It is, therefore, proposed to amend the provisions of section 194A of the Act to provide that the computation of interest income for the purposes of deduction of tax under section 194A of the Act should be made with reference to the income credited or paid by the banking company or the co-operative bank or the public company which has adopted core banking solutions.

Under section 194A(3)(ix) of the Act, tax is not required to be deducted from the interest credited or paid on the compensation amount awarded by the Motor Accident Claim Tribunal if the amount of such interest credited or paid during a financial year does not exceed Rs.50,000/-. Finance (No.2) Act, 2009 amended the provisions of section 56 of the Act as well as substituted section 145A of the Act to, *inter alia,* provide that interest income received on compensation or enhanced compensation shall be deemed to be the income of the year in which the same has been received. However, the existing provisions of section 194A of the Act provides for deduction of tax from interest paid or credited on compensation, whichever is earlier. Section 145A (b) of the Act provides an exception to method of accounting contained in section 145 of the Act and mandates for taxation of interest on compensation on receipt basis only. Therefore, deduction of tax on such interest on mercantile/accrual basis results into undue hardship and mismatch. It is, therefore, proposed to amend the provisions of section 194A of the Income-tax Act, 1961 to provide that deduction of tax under section 194A of the Act from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds Rs.50,000/-.

These amendments will take effect from 1st June, 2015.

[Clause 42]

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

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

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

Finance (No.2) Act, 2009 inserted section 200A in the Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 243E was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fee payable under section 234E of the Act at the time of processing of TDS statements. It is, therefore, proposed to amend the provisions of section 200A of the Act so as to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Currently, the provisions of sub-section (3) of section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Act allows processing of the TDS correction statement. However, currently, there does not exist any provision for allowing a collector to file correction statement in respect of TCS statement which has been furnished. It is, therefore, proposed to amend the provisions of section 206C of the Act so as to allow the collector to furnish TCS correction statement.

Currently, there does not exist any provision in the Act to enable processing of the TCS statement filed by the collector as available for processing of TDS statement. As the mechanism of TCS statement is similar to TDS statement, it is proposed to insert a provision in the Act for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A of the Act. The proposed provision shall also incorporate the mechanism for computation of fee payable under section 234E of the Act.

Under the existing provisions of the Act, after processing of TDS statement, an intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TDS statement is (i) subject to rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of demand under section 156 of the Act. As the intimation generated after the proposed processing of TCS statement shall be at par with the intimation generated after processing of TDS statement, it is, further, proposed to provide that intimation generated after processing of TCS statement shall also be—

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

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

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

Further, as the intimation generated after proposed processing of TCS statement shall be deemed as a notice of demand under section 156 of the Act, the failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions of section 220(2) of the Act. However, section 206C (7) of the Act also contains provisions for levy of interest for non-payment of tax specified in the intimation to be issued. To remove the possibility of charging interest on the same amount for the same period of default both under section 206C (7) and section 220(2) of the Act, it is proposed to provide that where interest is charged for any period under section 206C (7) of the Act on the tax amount specified in the intimation issued under proposed provision, then, no interest shall be charged under section 220(2) of the Act on the same amount for the same period.

Under the existing scheme of payment of TDS and TCS, Government deductors/collectors are allowed to make payment of tax deducted/collected by them without production of challan i.e. through book entry. For payment of tax deducted/collected through book entry, the Drawing and Disbursing Officer (DDO) intimates the TDS/TCS amount to the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer (PAO/TO/CDDO) who credits the TDS/TCS amount to the credit of Central Government through book entry. For generating credit for TDS/TCS paid through book entry by the Government deductors, a system of capturing information from PAO/TO/CDDO has been introduced by amending rule 30 and rule 37CA of the Income-tax Rules, 1962 with effect from 1.4.2010. The said rules provide that the PAO/TO/CDDO shall file the detail of payment of TDS/TCS made through book entry in the prescribed Form 24G. This system of reporting of payment of TDS/TCS made through book entry has improved the mechanism of reporting of TDS/TCS by the Government deductor to some extent. However, in the absence of any specific provisions in the Act for enforcing the same, it has been noticed that in a large number of cases, PAO/TO/CDDOs do not file Form 24G in prescribed time. Delay in furnishing of the Form 24G results into delay in furnishing of the TDS/TCS statement by the DDO. In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, it is proposed to amend the provisions of sections 200 and 206C of the Act to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars. To ensure compliance of this proposed obligation of filing statement, it is proposed to amend the provisions of section 272A of the Act so as to provide for a penalty of Rs.100/- for each day of default during which the default continues subject to the limit of the amount deductible or collectible in respect of which the statement is to be furnished.

Under section 192 of the Act, the person responsible for paying (DDO) income chargeable under the head “salaries” under the Act is authorised to allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Act for the purposes of estimating income of the assessee or computing the amount of the tax deductible under the said section. The evidence/proof/particulars for some of the deductions/exemptions/allowances/set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self occupied house property etc. is generally not available with the DDO. In these circumstances, the DDO has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc. As the existing provisions of the Act do not contain any guidance regarding nature of evidence/documents to be obtained by the DDO, there is no uniformity in the approach of the DDO in this matter. In order to bring clarity in this matter, it is proposed to amend the provisions of section 192 of the Act to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1) of the Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner.

The existing provisions of sub-section (6) of section 195 of the Act provide that the person referred to in section 195(1) of the Act shall furnish prescribed information. Section 195(1) of the Act provides that any person responsible for paying any interest(other than interest referred to in sections 194LB or 194LC or 194LD of the Act) or any sum chargeable to tax (not being salary income) to a non-resident, not being a company, or to a foreign company, shall deduct tax at the rates in force. The mechanism of obtaining of information in respect of remittances fulfils twin objectives of ensuring deduction of tax at appropriate rate from taxable remittances as well as identifying the remittances on which the tax was deductible but the payer has failed to deduct the tax. Therefore, obtaining of information only in respect of remittances which the remitter declared as taxable defeats one of the main principles of obtaining information for foreign remittances i.e. to identify the taxable remittances on which tax was deductible but was not deducted. In view of this, it is proposed to amend the provisions of section 195 of the Act to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident, not being a company, or to a foreign company, shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed. Further, currently there is no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident. For ensuring submission of accurate information in respect of remittance to non-resident, it is further proposed to insert a new provision in the Act to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act, a penalty of one lakh rupees shall be levied. It is also proposed to amend the provisions of section 273B of the Act to provide that no penalty shall be imposable under this new provision if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under sub-section (6) of section 195 of the Act.

These amendments will take effect from 1st June, 2015.

[Clauses 37, 38, 40, 48, 50, 51, 53, 54, 55, 62,73, 74 & 75]

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

Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to fulfillment of certain conditions. The provident funds established under a scheme framed under EPF & MP Act, 1952 or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act are termed as Recognised Provident fund (RPF) under the Act. The provisions relating to RPF are contained in Part A of the Fourth Schedule (Schedule IV-A) of the Act. Under the existing provisions of rule 8 of Schedule IV-A of the Act, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation. However, in order to discourage pre-mature withdrawal and to promote long term savings, it has been provided that such withdrawal shall be taxable if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, closure of business, etc.) and does not opt for transfer of accumulated balance to new employer. Rule 9 of the said Schedule further provides computation mechanism for determining tax liability of the employee in respect of such pre-mature withdrawal. For ensuring collection of tax in respect of these withdrawals, rule 10 of Schedule IV-A provides that the trustees of the RPF, at the time of payment, shall deduct tax as computed in rule 9 of Schedule IV-A.

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

It is, therefore, proposed to insert a new provision in Act for deduction of tax at the rate of 10% on pre-mature taxable withdrawal from EPFS. However, to reduce the compliance burden of the employees having taxable income below the taxable limit, it is also proposed to provide a threshold of payment of Rs.30,000/- for applicability of this proposed provision. In spite of providing this threshold for applicability of deduction of tax, there may be cases where the tax payable on the total income of the employees may be nil even after including the amount of pre-mature withdrawal. For reducing the compliance burden of these employees, it is further proposed that the facility of filing self-declaration for non-deduction of tax under section 197A of the Act shall be extended to the employees receiving pre-mature withdrawal i.e. an employee can give a declaration in Form No. 15G to the effect that his total income including taxable pre-mature withdrawal from EPFS does not exceed the maximum amount not chargeable to tax and on furnishing of such declaration, no tax will be deducted by the trustee of EPFS while making the payment to such employee. Similar facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A of the Act shall also be extended to the senior citizen employees receiving pre-mature withdrawal.

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

These amendments will take effect from 1st June, 2015.

[Clauses 41 & 49]

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

The existing provisions of section 6 of the Act provides for the conditions under which a person can be said to be resident in India for a previous year. In respect of a person being a company the conditions are contained in clause (3) of section 6 of the Act. Under the said clause, a company is said to be resident in India in any previous year, if-

(i) it is an Indian company; or

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

Due to the requirement that whole of control and management should be situated in India and that too for whole of the year, the condition has been rendered to be practically inapplicable. A company can easily avoid becoming a resident by simply holding a board meeting outside India. This facilitates creation of shell companies which are incorporated outside but controlled from India. 'Place of effective management' (POEM) is an internationally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognise the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation. Many countries prefer the POEM test to be appropriate test for determination of residence of a company. The principle of POEM is recognized and accepted by Organisation of Economic Cooperation and Development (OECD) also. The OECD commentary on model convention provides definition of place of effective management to mean the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole, are, in substance, made.

The modification in the condition of residence in respect of company by including the concept of effective management would align the provisions of the Act with the Double Taxation Avoidance Agreements (DTAAs) entered into by India with other countries and would also be in line with international standards. It would also be a measure to deal with cases of creation of shell companies outside India but being controlled and managed from India.

In view of the above, it is proposed to amend the provisions of section 6 to provide that a person being a company shall be said to be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, at any time in that year, is in India .

Further, it is proposed to define the place of effective management to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

Since POEM is an internationally well accepted concept, there are well recognised guiding principles for determination of POEM although it is a fact dependent exercise. However, it is proposed that in due course, a set of guiding principles to be followed in determination of POEM would be issued for the benefit of the taxpayers as well as, tax administration.

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.

[Clause 4]

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

Under section 35(2AB) of the Act, weighted deduction of 200% is allowed to a company engaged in the business of bio-technology or manufacturing of goods (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an approved in-house research and development facility. For availing this weighted deduction, the company is required to enter into an agreement with the Secretary, Department of Scientific and Industrial Research (DSIR) and also required to obtain his approval. The Secretary, DSIR is required to send the report regarding approval to DGIT (Exemption) in prescribed Form who generally does not have jurisdiction over the assessee company. Further, the company is required to maintain separate books of account for approved R&D facility and is also required to get the account audited. However, the copy of audit report is required to be submitted to the DSIR only. The Comptroller and Auditor General of India in its report on performance audit of pharmaceuticals sector recommended for rationalisation of the provision relating to monitoring of this weighted deduction. In order to have a better and meaningful monitoring mechanism for weighted deduction allowed under section 35 (2AB) of the Act, it is proposed to amend the provisions of section 35(2AB) of the Act to provide that deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and fulfills prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports. It is also proposed to insert reference of the Principal Chief Commissioner or Chief Commissioner in section 35(2AA) and section 35(2AB) of the Act so that the report referred to therein may be sent to the Principal Chief Commissioner or Chief Commissioner having jurisdiction over the company claiming the weighted deduction under the said section.

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.

[Clause 12]

Certain accountants not to give reports/certificates

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

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

To ensure the independence of auditor, sub-section (3) of section 141 of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor. The audit/certification function under the Income-tax Act is mainly provided for protecting the interests of revenue. An auditor who is not independent cannot meaningfully discharge his function of protecting the interests of revenue. Therefore, it is proposed to amend section 288 of the Act to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company. On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of non-company is also proposed to be provided. However, it is proposed to provide that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Act as authorised representative on behalf of that assessee. It is further proposed to provide that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction. (It is also proposed to revise the definition of 'accountant' in Explanation below section 288(2) of the Act on the lines of definition of 'chartered accountant' in the Companies Act, 2013).

These amendments will take effect from 1st June, 2015.

[Clause 77]

Amount of tax sought to be evaded for the purposes of penalty for concealment of income under clause (*iii*) of sub-section (1) of section 271

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

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

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

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

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

[Clause 68]

Cost of acquisition of a capital asset in the hands of resulting company to be the cost for which the demerged company acquired the capital asset

Under clause (vib) of section 47 of the Income-tax Act any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer if the resulting company is an Indian company. In such cases the cost of such asset in the hands of resulting company should be cost of such asset in the hands of demerged company as increased by the cost of improvement, if any, incurred by the demerged company. Further, the period of holding of such asset in the hands of resulting company should include the period for which the asset was held by the demerged company. Under the existing provisions of the Income-tax Act, there is no express provision to this effect. Accordingly, it is proposed to amend sub-clause (e) of clause (iii) of sub-section (1) of section 49 of the Income-tax Act to include transfer under clause (vib) of section 47 and to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.

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

[Clause 14]

CUSTOMS

Note: (a) “Basic Customs Duty” means the customs duty levied under the Customs Act, 1962.

(b) “CVD” means the Additional Duty of Customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

(c) “SAD” means the Special Additional Duty of Customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975.

(d) “Export duty” means duty of Customs leviable on goods specified in the Second Schedule to the Customs Tariff Act, 1975.

(e) Clause nos. in square brackets [ ] indicate the relevant clause of the Finance Bill, 2014.

Amendments carried out through the Finance Bill, 2015 come into effect on the date of its enactment unless otherwise specified.

AMENDMENTS IN THE CUSTOMS ACT, 1962:

1) Section 28 is being amended so as to:

(i) Insert a proviso in sub-section (2) thereof to provide that in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, no penalty shall be imposed if the amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified in the notice, is paid in full within 30 days from the date of receipt of the notice and the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded;

(ii) Provide that in cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable shall be 15% instead of the present 25%;

(iii) Insert Explanation 3 to provide that where a notice under clause (a) of sub-section (1) or sub-section (4) of section 28, as the case may be, has been served but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within 30 days from the date on which such assent is received. *[Clause 80]*

2) Section 112 provides for penalty for improper importation of goods, etc. Section 112 is being amended so as to substitute sub-clause (ii) of clause (b) to provide that any person who acquires possession of or is in any way concerned with or in any other manner deals with any dutiable goods, other than prohibited goods, which he knows or has reasons to believe are liable to confiscation under section 111, shall, subject to the provisions of section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded of ₹5000, whichever is greater. It is also being provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this section shall be 25% of the penalty so determined. *[Clause 81]*

3) Section 114 provides for penalty for attempt to export goods improperly, etc. Section 114 is being amended so as to substitute clause (ii) to provide that any person who, in relation to any dutiable goods, other than prohibited goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall, subject to the provisions of section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded of ₹5000, whichever is greater. It is also being provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this section shall be 25% of the penalty so determined. *[Clause 82]*

4) The proviso to clause (b) of section 127A relating to the provisions of Settlement Commission is being amended to delete the reference to “in appeal or revision, as the case may be” so as to provide that when any proceeding is referred back, whether in appeal or revision or otherwise, by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement. *[Clause 83]*

5) Sub-section (1A) to Section 127B provides that in case of applications made prior to 1st day of June 2007, and where no order under section 127C(1) has been made before said date, the applicant shall pay the amount so ordered by the Settlement Commission within thirty days from 1st day of June 2007 failing which his application shall be liable to be rejected.

The actual operation of the said section provided for the payments to be made within thirty days from 1st day of June 2007. Hence, the said section has become redundant and is being omitted. *[Clause 84]*

6) Sub-section (6) of section 127C provides that in respect of the applications filed before 31st day of May, 2007, Settlement Commission shall pass the final order of settlement under sub-section (5) of section 127C latest by 29th February 2008 and in cases filed after 31st day of May, 2007, within nine months. Since all the applications filed before 31st day of May, 2007 shall have been necessarily disposed of by 29th day of 2008, the reference to the said dates have become redundant. Therefore, the said sub-section is being amended so as to omit the phrase “in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of application made on or after the 1st day of June, 2007”. *[Clause 85]*

7) Section 127E provides that Settlement Commission can reopen the completed proceedings in certain conditions. As per the first proviso to the said section no proceedings can be reopened after five years from the date of application, and as per second proviso to the said section Settlement Commission cannot reopen any proceedings in respect of an application made after 1st day of June 2007. Thus, Settlement Commission has no powers to reopen any completed proceedings after expiry of five years from 1st day of June 2007, thus making this section redundant. Therefore, this section is being omitted. *[Clause 86]*

8) Explanation to sub-section (1) of section 127H provides that in respect of the applications filed on or before 31st day of May 2007, Settlement Commission shall decide the applications as if the amendments made in the said section were not in force. Since all the applications filed by 31st day of May, 2007 have necessary been disposed of by 29th day of February 2008, the said explanation has become redundant. Hence, the said Explanation is being omitted. *[Clause 87]*

9) Section 127L provides the situations in which the person in whose case the order has been passed by the Settlement Commission cannot again approach the Settlement Commission. When the said section was amended in 2007, the said section made distinction in respect of the orders passed prior the commencement of section 102 of the Finance Act, 2007 and after that. In respect of the cases decided after the said commencement, the applicant was barred from making subsequent applications, whereas in the cases decided prior to that he could have made the application if his case was not covered by any of the clauses mentioned in sub-section (1). However, vide the amendments made by the Finance Act, 2010, even in cases decided after commencement of section 102 of the Finance Act, 2007 the applicant was allowed to approach Settlement Commission if not hit by any of the clauses to sub-section (1). Thus, clause (i) and (ii) of sub-section (1) to section 127L are being amended so as to delete the phrase “passed under sub-section (7) of the section 127C, as it stood immediately before the commencement of section 102 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of the section 32F” as the same have become redundant. *[Clause 88]*

AMENDMENT IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975:

1) The tariff rate of basic customs duty on bituminous coal is being reduced from 55% to 10%.

2) The tariff rate of basic customs duty on goods falling under all the tariff items of Chapters 72 and 73 that is iron and steel and articles of iron or steel, is being increased from 10% to 15%. However, there is no change in the existing effective rates of basic customs duty on these goods.

3) The tariff rate of basic customs duty on goods falling under all the tariff items of heading 8702 that is motor vehicles for the transport of ten or more persons, including the driver and 8704 that is motor vehicles for the transport of goods, is being increased from 10 to 40%. The effective Basic Customs duty on such Vehicles is being increased from 10% to 20%. However, customs duty on such vehicles in Completely Knocked Down (CKD) condition and electrically operated vehicles of heading 8702 including those in CKD condition will continue to be at 10%. *[Clause 89]*

The above changes will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

A. Proposals involving changes in rates of duty:

I. CHEMICALS AND PETROCHEMICALS

1) Basic Customs Duty on ulexite ore is being reduced from 2.5% to Nil.

2) Basic Customs duty on isoprene and liquefied butane is being reduced from 5% to 2.5%.

3) Basic Customs Duty on ethylene dichloride (EDC), vinyl chloride monomer (VCM) and styrene monomer (SM) is being reduced from 2.5% to 2%.

4) Basic Customs Duty on butyl acrylate is being reduced from 7.5% to 5%.

5) Basic Customs Duty on anthraquinone is being reduced from 7.5% to 2.5%.

6) Basic Customs Duty on antimony metal and antimony waste and scrap is being reduced from 5% to 2.5%.

7) SAD on naphtha, ethylene dichloride (EDC), vinyl chloride monomer (VCM) and styrene monomer (SM) for manufacture of excisable goods is being reduced from 4% to 2%.

II. FERTILISERS

1) Basic Customs Duty on sulphuric acid for the manufacture of fertilizers is being reduced from 7.5% to 5%.

III. INFRASTRUCTURE

1) The Scheduled rates of Additional Duty of Customs levied on imported Motor Spirit [Petrol] and High Speed Diesel Oil [commonly known as Road Cess] are being increased from ₹2 per litre to ₹8 per litre. The effective rates of Additional Duty of Customs levied on imported Motor Spirit [Petrol] and High Speed Diesel Oil [commonly known as Road Cess] are being increased from ₹2 per litre to ₹6 per litre only.

IV. ORES and METALS:

1) Export duty on upgraded ilmenite is being reduced from 5% to 2.5%.

2) Basic Customs Duty on metallurgical coke is being increased from 2.5% to 5%.

3) SAD on melting scrap of iron & steel including stainless steel scrap for melting, copper scrap, brass scrap and aluminium scrap is being reduced from 4% to 2%.

4) The tariff rate of basic customs duty on goods falling under all the tariff items of Chapters 72 and 73 that is iron and steel and articles of iron or steel, is being increased from 10% to 15%. However, there is no change in the existing effective rates of basic customs duty on these goods.

V. ELECTRONICS/HARDWARE:

1. All goods except populated printed circuit boards, falling under any Chapter of Customs Tariff, for use in the manufacture of ITA Bound Items, are being fully exempted from SAD, subject to actual user condition;

2. Excise duty structure for mobile handsets including cellular phones is being changed from 1% without CENVAT credit or 6% with CENVAT credit to 1% without CENVAT credit or 12.5% with CENVAT credit. NCCD of 1% on mobile handsets including cellular phone, remains unchanged.

3. Excise duty structure of 2% without CENVAT credit or 12.5% with credit is being prescribed for tablet computers. Parts, components and accessories (falling under any Chapter) for use in the manufacture of tablet computers and their sub-parts for use in the manufacture of parts, components and accessories are being fully exempted from BCD, CVD and SAD, subject to actual user condition.

4. Basic Customs Duty on 'metal parts' for use in the manufacture of electrical insulators is being reduced from 10% to 7.5%, subject to actual user condition.

5. Basic Customs Duty on Ethylene-Propylene-non-conjugated-Diene Rubber (EPDM), Water blocking tape and Mica glass tape, for use in the manufacture of insulated wires and cables, is being reduced from 10% to 7.5%, subject to actual user condition.

6. Basic Customs Duty on magnetron of upto 1 KW for use in the manufacture of domestic microwave ovens is being reduced from 5% to Nil, subject to actual user condition.

7. Basic Customs Duty on zeolite, ceria zirconia compounds and cerium compounds for use in the manufacture of washcoats, which are used in manufacture of catalytic converters, is being reduced from 7.5% to 5%, subject to actual user condition.

8. Basic Customs Duty on specified components for use in the manufacture of specified CNC lathe machines and machining centres is being reduced from 7.5% to 2.5%, subject to actual user condition.

9. Basic Customs Duty on C- Block for Compressor, Over Load Protector (OLP) & Positive thermal co-efficient and Crank Shaft for compressor for use in the manufacture of Refrigerator compressors is being reduced from 7.5% to 5%.

10. Basic Customs Duty on specified inputs for use in the manufacture of flexible medical video endoscope is being reduced from 5% to 2.5%.

11. Basic Customs Duty on HDPE for use in the manufacture of telecommunication grade optical fibre cables is being reduced from 7.5% to Nil, subject to actual user condition.

12. Basic Customs Duty on Black Light Unit Module for use in the manufacture of LCD/LED TV panels is being reduced from 10% to Nil, subject to actual user condition.

13. Basic Customs Duty on Organic LED (OLED) TV panels is being reduced from 10% to Nil.

14. CVD and SAD are being fully exempted on specified raw materials [battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils (steel), tubing (silicone)] for use in the manufacture of pacemakers, subject to actual user condition.

15. SAD on inputs for use in the manufacture of LED drivers and MCPCB for LED lights, fixtures and lamps is being fully exempted, subject to actual user condition.

16. Basic Customs Duty on Digital Still Image Video Camera capable of recording video with minimum resolution of 800x600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence, using the maximum storage (including the expanded) capacity and parts and components for use in the manufacture of such cameras is being reduced to Nil.

VI. RENEWABLE ENERGY:

1) Basic Customs Duty is being fully exempted on Evacuated Tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system, subject to actual user condition.

2) Basic Customs Duty on Active Energy Controller (AEC) for use in the manufacture of Renewable Power System (RPS) Inverters is being reduced to 5%, subject to certification by MNRE.

VII. AUTOMOBILES:

1) The tariff rate of Basic Customs Duty on Commercial Vehicles is being increased from 10% to 40%. The effective Basic customs duty on such Vehicles is being increased from 10% to 20%. However, customs duty on such vehicles in Completely Knocked Down (CKD) condition and electrically operated vehicles of heading 8702 including those in CKD condition will continue to be at 10%.

2) Concessional customs duties of Nil Basic Customs Duty, 6% excise/CVD and Nil SAD on specified goods for use in the manufacture of Electrically operated vehicles and Hybrid motor vehicles, presently available upto 31.03.2015, are being extended upto 31.03.2016.

VIII. HEALTH:

1) Basic Customs Duty and CVD is being fully exempted on artificial heart (left ventricular assist device).

IX. MISCELLANEOUS:

1) Parts and components of cash dispenser and automatic bank note dispensers [heading 8473 40] are exempt from Basic Customs Duty. However, since the classification of parts was not mentioned in the relevant notification, there were doubts about the scope of the exemption for parts of cash dispenser and automatic bank note dispensers. As the ‘parts and components of cash dispensers and automatic bank note dispensers’ were specifically included in the description of goods even though their classification was not, it is clarified that the benefit of exemption from Basic Customs Duty was available to parts and components of cash dispenser and automatic bank note dispensers. Prospectively, the S. No. 408 of the Notification No. 12/2012- Customs dated 17-3-2012 is being amended to include the classification [8473 40] of parts and components of cash dispensers and automatic bank note dispensers.

2) S. No. 507 of Notification No. 12/2012-Customs dated 17-3-2012 prescribes Nil BCD and NIL CVD for goods imported for setting up a Mega Power Project specified in List No. 32A of the said Notification. In case of imports for a project for which the certificate regarding Mega Power Project status is provisional, the exemption is, inter alia, subject to condition that importer furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is being amended to prescribe furnishing of bank guarantee or fixed deposit receipt for a period of 66 months. This condition is also applicable to imports under S. No. 508 of Notification No. 12/2012-Customs dated 17-3-2012 .

3) Bulk drugs used in the manufacture of the specified drugs (listed in the table annexed to the exemption notification) are either exempt from BCD or attract concessional rate of 5% BCD, under Sl. No. 148(B) and 147(B) respectively of notification No 12/2012-Customs, if the procedure as laid down in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 is followed by the importers. Further, these bulk drugs used in the manufacture of the specified drugs are also exempt from excise duty, under S. No. 108 (B) of the notification 12/2012- CE, provided the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, is followed. In this context, clarification has been sought whether a separate certificate issued under the above mentioned Central Excise Rules is required when a similar certificate under the above mentioned Customs Rules issued from the same jurisdictional Central Excise officer is already produced. It is being clarified that there is no need to separately comply with *Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 for the purposes of availing of the CVD exemption* under notification No.12/2012-CE, if the *procedure as laid down in the Customs (*Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 1996 is already followed by the importer for availing exemption / concession from BCD on the same bulk drug.

4) Notification No.12/2012-Customs [S.No.148(C)] fully exempts Basic Customs Duty and CVD leviable on life saving drugs and medicines imported by an individual for personal use subject to the Condition No.10, which stipulates that importer produces a certificate (in prescribed form) issued by the Director General or Deputy Director General or Assistant Director General, Health Services, New Delhi, Director of Health Services of the State Government or the District Medical Officer/Civil Surgeon of the district, in each individual case, that the goods are life saving drugs or medicines. The prescribed Form is being amended so as to provide that such certificate shall be valid for a period of one year in case of patients who have to import such drugs and medicines on a regular basis.

5) CVD and SAD exemption on specified goods imported for use by Security Printing and Minting Corporation of India Limited (SPMCIL) are being withdrawn.

EXCISE

AMENDMENTS IN THE CENTRAL EXCISE ACT, 1944:

1) Sub section (3) of Section 3A, which empowers the Central Government to charge excise duty on the basis of capacity of production in respect of notified goods, is being amended so as to insert an Explanation to provide that factor relevant to production includes factors relevant to production, so as to enable the Central Government to specify more than one factor relevant to the production of such goods. *[Clause 90]*

2) Section 11A is being amended so as to:

   (i) Remove from the statute the category of cases where extended period of time applies but the transactions are recorded in the specified record;

   (ii) Amend the provision relating to relevant date to provide definition of relevant date in respect of cases where a return is not filed on the due date and where only interest is required to be recovered.

   (iii) Provide that the provisions of section 11A shall not apply to cases where the non-payment or short payment of duty is reflected in the periodic returns filed and that in such cases recovery of duty shall be made in such manner as may be prescribed in the rules. *[Clause 91]*

3) Section 11AC is being substituted so as to rationalize the penalty as follows:

   (iv) in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of excise duty, in the following manner,-

      a) in addition to the duty as determined under sub-section (10) of section 11A, a penalty not exceeding 10% of the duty so determined or ₹5000 whichever is higher shall be payable;

      b) if duty and interest payable thereon under section 11AA is paid either before issue of show cause notice or within 30 days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of said duty and interest shall be deemed to be concluded;

      c) if duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the penalty so imposed shall be payable, provided that such reduced penalty is also paid within 30 days of the date of communication of such order; and

      d) if the duty amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if duty, interest and reduced penalty is paid within 30 days of such appellate order.

   (v) in cases involving fraud or collusion or wilful mis-statement of suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of excise duty, in the following manner,-

      a) in addition to the duty as determined under sub-section (10) of section 11A, a penalty equal to the duty so determined shall be payable. In respect of cases where the details relating to such transactions are recorded in the specified record for the period beginning with 8th April, 2011 and upto the date of assent to the Finance Bill, 2015, the penalty payable shall be 50% of the duty so determined.

      b) if duty and interest payable thereon under section 11AA is paid within 30 days of communication of show cause notice, the amount of penalty payable shall be 15% of the duty demanded, provided that such reduced penalty is also paid 30 days of communication of show cause notice and all proceedings in respect of said duty and interest shall be deemed to be concluded;

      c) if duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the duty so determined, provided that such reduced penalty is also paid within 30 days of the date of communication of such order; and

      d) if the duty amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if duty, interest and reduced penalty is paid within 30 days of such appellate order. *[Clause 92]*

4) The proviso to sub-section (c) of section 31 relating to the provisions of Settlement Commission is being amended to delete the reference to "in appeal or revision, as the case may be" so as to provide that when any proceeding is referred back, whether in appeal or revision or otherwise, by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement. *[Clause 93]*

5) The proviso to sub-section (3) of section 32 provides that where a Member of the Central Board of Excise & Customs is appointed as the Chairman, Vice Chairman or Member of the Settlement Commission, he shall cease to be a member of the Board. As per the amended Customs and Central Excise Settlement Commission (Recruitment and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 2000, Members of the Board are not eligible to be Member of the Settlement Commission. Hence, the proviso is redundant and is being omitted. *[Clause 94]*

6) Section 32B is being amended so as to enable Vice Chairman or Member of the Settlement Commission to officiate as Chairman in the absence of the Chairman of the Settlement Commission. *[Clause 95]*

7) Sub-section (1A) to section 32E provides that in case of applications made prior to 1st day of June 2007, and where no order under section 32F (1) has been made before said date or applicant has not paid the amount so ordered by the Settlement Commission shall within thirty days from 1st day of June 2007 pay the accepted duty liability failing which his application shall be liable to be rejected. Since the actual operation of the said section provides for the payments to be made within thirty days from 1st day of June 2007, the said sub-section has become redundant and is being omitted. *[Clause 96]*

8) Sub-section (6) of section 32F provides that in respect of the applications filed before 31st day of May, 2007, Settlement Commission shall pass the final order of settlement under sub-section (5) of section 32F latest by 29th February 2008 and in cases filed after 31st day of May, 2007, within nine months. Since all the applications filed before 31st day of May, 2007 shall have been necessarily disposed of by 29th day of 2008, the reference to the said dates have become redundant. Therefore, the said sub-section has been amended so as to omit the phrase “in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of application made on or after the 1st day of June, 2007”. *[Clause 97]*

9) Section 32H provides that Settlement Commission can reopen the completed proceedings in certain conditions. As per the first proviso to the said section no proceedings can be reopened after five years from the date of application, and as per second proviso to the said section Settlement Commission cannot reopen any proceedings in respect of an application made after 1st day of June 2007. Thus, Settlement Commission has no powers to reopen any completed proceedings after expiry of five years from 1st day of June 2007, thus making this section redundant. Therefore, this section is being omitted. *[Clause 98]*

10) Explanation to sub-section (1) of section 32K provides that in respect of the applications filed on or before 31st day of May 2007, Settlement Commission shall decide the applications as if the amendments made in the said section were not in force. Since all the applications filed by 31st day of May, 2007 have necessarily been disposed of by 29th day of February 2008, the said Explanation has become redundant and hence, is being omitted. *[Clause 99]*

11) Section 32O provides the situations in which the person in whose case the order has been passed by the Settlement Commission cannot again approach the Settlement Commission. When the said section was amended in 2007, the said section made distinction in respect of the orders passed prior the commencement of section 122 of the Finance Act, 2007 and after that. In respect of the cases decided after the said commencement, the applicant was barred from making subsequent applications, whereas in the cases decided prior to that he could have made the application if his case was not covered by any of the clauses mentioned in sub-section (1). However vide the amendments made by the Finance Act, 2010, even in cases decided after commencement of section 122 of the Finance Act, 2007 the applicant was allowed to approach Settlement Commission if not hit by any of the clauses to sub-section (1). Thus, clauses (i) and (ii) of sub-section (1) of section 32O are being amended so as to omit the phrase “passed under sub-section (7) of the section 32F, as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of the section 32F” as the same have become redundant. *[Clause 100]*

12) Sub-sections (4) and (5) of section 37 are being amended so as to increase the penalty from ₹2000 to ₹5000. *[Clause 101]*

13) S.No.205A of notification No.12/2012-CE dated 17-3-2012 exempts railway or tramway track construction material of iron and steel from payment of excise duty on the value of rails, subject to condition that such rails have suffered excise duty and no credit of duty paid on them is taken under the CENVAT Credit Rules, 2004. This exemption is being made applicable retrospectively for the period from 17.03.2012 to 02.02.2014. *[Clause 102]*

14) The Third Schedule to the Central Excise Act, 1944 is being amended in the manner as specified in clause 105.

[Clause 103]

The change at Para 1) and 14) will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

Proposals involving changes in rates of duty:

AMENDMENTS IN THE FIRST SCHEDULE TO THE CENTRAL EXCISE TARIFF ACT, 1985:

1) Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being fully exempted. Simultaneously, the standard ad valorem rate of duty of excise (i.e. CENVAT) is being increased from 12% to 12.5%.

2) Duty of excise on “waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured” falling under Chapter sub-heading 2202 10 is being increased from 12% to 18%.

3) Duty of excise on cigarettes is being increased by 25% for cigarettes of length not exceeding 65 mm and by 15% for cigarettes of other lengths. Increase in duty rates is also proposed on cigars, cheroots and cigarillos.

4) Excise duty on cut tobacco is being increased from ₹60 per kg to ₹70 per kg.

5) Tariff rate of excise duty on goods falling under Chapter sub-heading 2523 29 is being increased from ₹900 per tonne to ₹1000 per tonne.

6) Tariff rate of excise duty on high speed diesel (HSD) falling under tariff item 2710 19 30 is being increased from 14% + ₹5 per litre to 14% + ₹15 per litre. However, there is no change in the aggregate of various duties of excise on high speed diesel (HSD).

7) Tariff rate of excise duty on sacks and bags (including cones) of plastics falling under tariff items 3923 21 00, 3923 29 10 and 3923 29 90 is being increased from 12% to 18%.

[Clause 104]

The changes at 1) to 7) will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

I. PETROLEUM

1. The Schedule Rates of the Additional Duty of Excise (commonly known as Road Cess) levied on Petrol and High Speed Diesel Oil is being increased from ₹2 per litre to ₹8 per litre. The effective rates of the Additional Duty of Excise (commonly known as Road Cess) levied on Petrol and High Speed Diesel Oil is being increased from ₹2 per litre to ₹6 per litre only. *[Clause 163 and 164]*

2. Education Cess and Secondary and Higher Education Cess, presently applicable to petroleum products, including petrol and High Speed Diesel, are being exempted.

3. Rates of duty of excise (CENVAT) on Petrol and High Speed Diesel Oil (both branded and unbranded) are also being revised.

4. Tables below summarizes the changes in various duties applicable to petrol and diesel:

Duty rates applicable prior upto 28.02.02105					Duty rates applicable with effect from 01.03.2015				
CENVAT Rs. / Litre	SAED Rs. / Litre	AED Rs. / Litre	Education Cesses (as % of aggregate of duties of excise)	Total Rs. / Litre	CENVAT	SAED	AED	Edu-cation Cesses	Total
Unbranded petrol									
8.95	6	2	3%	17.46	5.46	6	6	NIL	17.46
Branded petrol									
10.10	6	2	3%	18.64	6.64	6	6	NIL	18.64
Unbranded Diesel									
7.96	NIL	2	3%	10.26	4.26	NIL	6	NIL	10.26
Branded Diesel									
14% +Rs. 5 /litre or Rs. 10.25 / litre, whichever is lower	NIL	2	3%	12.62	6.62	NIL	6	NIL	12.62

Thus, the total incidence of various duties of excise on petrol and diesel remains unchanged.

II. FOOD PROCESSING SECTOR:

1) All goods falling under Chapter sub-heading 2101 20, including iced tea, are being notified under section 4A of the Central Excise Act for the purpose of assessment of Central Excise duty with reference to the Retail Sale Price with an abatement of 30%.

2) Goods, such as lemonade and other beverages, are being notified under section 4A of the Central Excise Act for the purpose of assessment of Central Excise duty with reference to the Retail Sale Price with an abatement of 35%.

3) Excise duty of 2% without CENVAT credit or 6% with CENVAT credit is being levied on condensed milk put up in unit containers. Condensed milk is also being notified under section 4A of the Central Excise Act for the purpose of valuation with reference to the Retail Sale Price with an abatement of 30%.

4) Excise duty of 2% without CENVAT credit or 6% with CENVAT credit is being levied on peanut butter.

III. AUTOMOBILES:

1) Excise duty on chassis for ambulances is being reduced from 24% to 12.5% subject to actual user condition.

2) Concessional excise duty of 6% on specified goods for use in the manufacture of electrically operated vehicles and hybrid vehicles, presently available upto 31.03.2015, is being extended upto 31.03.2016.

IV. HEALTH:

1) Excise duty on cigarettes is being increased by 25% for cigarettes of length not exceeding 65 mm and by 15% for cigarettes of other lengths. Excise duty on cigars, cheroots & cigarillos and cigarettes & cigarillos of tobacco substitutes is also being increased.

2) Maximum speed of packing machine for packing of notified goods of various retail sale prices is being specified as a factor relevant to production for determining excise duty payable under the Compounded Levy Scheme presently applicable to pan masala, gutkha and chewing tobacco. Accordingly, deemed production and duty payable per machine per month are being notified with reference to the speed range in which the maximum speed of a packing machine falls.

V. ELECTRONICS/HARDWARE:

1) Excise duty on wafers for manufacture of integrated circuit (IC) modules for smart cards is being reduced from 12% to 6%, subject to actual user condition.

2) Excise duty on inputs for use in the manufacture of LED drivers and MCPCB for LED lights, fixtures and lamps, is being reduced from 12% to 6%, subject to actual user condition.

3) Excise duty structure for mobiles phones is being changed from 1% without CENVAT credit or 6% with credit to 1% without credit or 12.5% with credit. NCCD of 1% on mobile phones remains unchanged.

4) Excise duty structure of 2% without CENVAT credit or 12.5% with credit is being extended to tablet computers. Parts, components and accessories (falling under any Chapter) for use in manufacture of tablet computers and their sub-parts for use in manufacture of parts, components and accessories are being fully exempted from excise duty, subject to actual user condition.

5) Excise duty on specified raw materials [battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils (steel), tubing (silicone)] for use in manufacture of pacemakers is being fully exempted, subject to actual user condition.

6) Suitable amendment is being carried out to expressly provide that LED lights or fixtures including LED lamps are liable to assessment of excise duty with reference to retail sale price. Similar changes are being made in the Third Schedule to the Central Excise Act, 1944.

VI. RENEWABLE ENERGY

1) Excise duty on pig iron SG grade and Ferro-silicon-magnesium for manufacture of Cast components of wind operated electricity generators is being fully exempted, subject to certification by MNRE in this regard.

2) Excise duty structure of NIL without CENVAT credit or 12.5% with credit is being prescribed for solar water heater and system.

3) Excise duty on round copper wire and tin alloys for manufacture of Solar PV ribbon for manufacture of solar PV cells is being fully exempted subject to certification by Department of Electronics and Information Technology (DeitY).

VII. CONSUMER GOODS

1) Excise duty on leather footwear (footwear with uppers made of leather of heading 4107 or 4112 to 4114), of Retail Sale Price of more than ₹ 1000 per pair is being reduced from 12% to 6%.

7) The entry "waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured" in the Seventh Schedule to the Finance Act, 2005 related to levy of additional duty of excise @ 5% is being omitted. Till the enactment of the Finance Bill, 2015, the said additional duty of excise of 5% leviable on such goods is being exempted. Simultaneously, the Basic Excise Duty rate on these goods is being increased from 12% to 18%.

VIII. SWACHH BHARAT AND ENERGY SECTOR

1) The Schedule Rate of Clean Energy Cess, levied on coal, lignite and peat, is being increased from ₹ 100 per tonne to ₹ 300 per tonne. The effective rate of Clean Energy Cess is being increased from ₹100 per tonne to ₹200 per tonne. The increase in rate of Clean Energy Cess will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931. *[Clause 188]*

2) Excise duty on sacks and bags of polymers of ethylene, other than for industrial use, is being increased to 15%.

IX. EASE OF DOING BUSINESS AND MOVEMENT TOWARDS GST

1) Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being subsumed in Basic Excise duty. Consequently, Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being fully exempted. The standard ad valorem rate of Basic Excise Duty is being increased from 12% to 12.5% and specific rates of Basic Excise Duty on petrol, diesel, cement, cigarettes & other tobacco products (other than biris) are being suitably changed. **However, the total incidence of various duties of excise on petrol and diesel remains unchanged**. Other Basic Excise Duty rates (ad valorem as well as specific) are not being changed. Education Cess and Secondary & Higher Education Cess levied on imported goods as a duty of customs, however, will continue.

X. MISCELLANEOUS:

1) Full exemption from excise duty is being extended to captively consumed intermediate compound coming into existence during the manufacture of Agarbattis. Agarbattis attract NIL excise duty.

2) S. No. 337 of Notification No. 12/2012-CE dated 17-3-2012 provided Nil excise duty on goods for setting up Ultra Mega Power Project specified in List No. 10 of the said Notification. In case of goods for a Project for which certificate regarding Ultra Mega Power Project status is provisional, the exemption is subject interalia to condition that the Chief Executive Officer of the Project furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is being amended to prescribe furnishing of bank guarantee or fixed deposit receipts for a period of 42 months.

3) S. No. 338 of Notification No. 12/2012-CE dated17-3-2012 provided Nil excise duty on goods for setting up Mega Power Project specified in List No. 11 of the said Notification. In case of goods for a Project for which certificate regarding Mega Power Project status is provisional, the exemption is subject interalia to condition that the Chief Executive Officer of the Project furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is being amended to prescribe furnishing of bank guarantee or fixed deposit receipts for a period of 66 months.

4) Goods manufactured domestically and supplied against International Competitive Bidding are eligible for full excise duty exemption provided that such goods when imported attract Nil Basic Customs Duty and Nil CVD [S.No.336 of notification No.12/2012-CE dated 17.03.2012 read with Condition No.41]. The condition is being amended so as to provide that if imported goods are eligible for Nil Basic Customs Duty and Nil CVD subject to certain conditions, then the said conditions shall also apply mutatis mutandis to such goods when manufactured domestically and supplied against International Competitive Bidding for the purposes of availing of the said excise duty exemption.

MISCELLANEOUS

1) The Second Schedule to the Finance (No.2) Act, 1998 which deals with levy of Additional Duty of Excise and Additional Duty of Customs (commonly known as Road Cess) on Motor Spirit commonly known as Petrol is being amended so as to increase the Scheduled rate from ₹2 per litre to ₹8 per litre. The effective rate of Additional Duty of Excise and Additional Duty of Customs (commonly known as Road Cess) on Motor Spirit commonly known as Petrol is being increased from ₹2 per litre to ₹6 per litre. *[Clause 163]*

2) The Second Schedule to the Finance Act, 1999 which deals with levy of Additional Duty of Excise and Additional Duty of Customs (commonly known as Road Cess) on High Speed Diesel oil is being amended so as to increase the Scheduled rate from ₹2 per litre to ₹8 per litre. The effective rate of Additional Duty of Excise and Additional Duty of Customs (commonly known as Road Cess) on High Speed Diesel oil is being increased from ₹2 per litre to ₹6 per litre.

   [Clause 164]

3) The Seventh Schedule to the Finance Act, 2005 is being amended so as to omit the entry relating to levy of Additional Duty of Excise of 5% ad valorem on waters, including mineral waters and aerated waters containing added sugar.

   [Clause 184]

4) The Tenth Schedule to the Finance Act, 2010 dealing with Clean Energy Cess is being amended so as to increase the Scheduled rate of Clean Energy Cess from ₹100 per tonne to ₹ 300 per tonne. The effective rate of Clean Energy Cess is being increased from ₹100 per tonne to ₹ 200 per tonne. *[Clause 188]*

The changes at Para 1), 2) and 4) will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

SERVICE TAX

1. Change in Service Tax rate:

- The Service Tax rate is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, effective increase in Service Tax rate will be from existing rate of 12.36% (inclusive of cesses) to 14%.

  The new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

  Till the time the revised rate comes into effect, the levy of 'Education cess' and 'Secondary and Higher Education cess' shall continued to be levied in Service Tax.

2. Swachh Bharat Cess:

- An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% of the value of such taxable services with the objective of financing and promoting Swachh Bharat initiatives.

  This Cess shall be levied from a date to be notified by the Central Government in this regard and will not have immediate effect.

3. Broadening of tax base:

(A) Review of the Negative List [Amendment in the Finance Act, 1994]

- Service Tax to be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places. The Negative List entry that covers access to amusement facility is being omitted [section 66D (j)]. Consequently, the definition of "amusement facility" [section 65B(9)] is also being omitted.

  These proposed changes shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

- Service Tax to be levied on service by way of admission to entertainment event of concerts, non-recognized sporting events, pageants, music concerts, award functions, if the amount charged is more than ₹ 500 for right to admission to such an event. For this purpose, the Negative List Entry that covers admission to entertainment events is being omitted [section 66D (j)]. Consequently, the definition of "entertainment event" [section 66B (24)] is being omitted.

  However, the existing exemption to service by way of admission to entertainment events, namely, "exhibition of cinematographic film, circus, recognized sporting events, dance, theatrical performances including drama and ballets, by way of the Negative List entry shall be continued, irrespective of the amount charged for such service, through the route of exemption. For this purpose a new entry is being inserted in Notification No. 25/2012-ST, dated 20.6.2012.

  The proposed changes shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

- The entry in the Negative List that covers service by way of any process amounting to manufacture or production of goods [section 66D (f)] is being pruned to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing /job work for production of potable liquor for a consideration. In this context, the definition of the term " process amounting to manufacture or production of goods" [section 65B (40) is being amended] with a consequential amendment in S. No. 30 of notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit.

  The proposed changes shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

- Presently, services provided by the Government or a local authority, excluding certain services specified under clause (a) of section 66D, are in the Negative List. Service tax applies on the "support service" provided by the Government or local authority to a business entity. An enabling provision is being made, by amending [section 66D (a)(iv)], to exclude all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of "support service" [section 65B(49)] is being omitted.

  These amendments shall come into effect from a date to be notified by the Central Government in this regard after the enactment of the Finance Bill, 2015.

  Accordingly, as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any other entry in the Negative List, shall be liable to Service Tax .

(B) Review of general exemptions extended under Notification No. 25/2012-ST, dated 20.6.2012:

- Exemption presently available on specified services of construction, erection, commissioning, etc. provided to the Government, a local authority or a governmental authority (vide S. No. 12 of the said notification) shall be limited only to,-

  (a) a historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;

  (b) canal, dam or other irrigation work; and

  (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

Exemption to other services presently covered under S. No. 12 of notification No. 25/12-ST is being withdrawn.

- Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn. The other exemptions covered under S. No. 14 of notification No. 25/12-ST shall continue unchanged.

- Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs 1,00,000 for a performance.

- Exemption to transportation of food stuff by rail, or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is separately exempt, and this exemption would continue.

- Exemptions are being withdrawn on the following services:

  (a) services provided by a mutual fund agent to a mutual fund or assets management company,

  (b) distributor to a mutual fund or AMC,

  (c) selling or marketing agent of lottery ticket to a distributor.

Service tax on these services shall be levied on reverse charge basis.

- Exemption is being withdrawn on the following service,-

  (a) Departmentally run public telephone;

  (b) Guaranteed public telephone operating only local calls; and

  (c) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued.

All the above changes in notification No. 25/12-ST, dated 20.6.2012 shall come into effect from the 1st day of April, 2015.

4. New Exemptions:

- Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted.

- Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.

- Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted.

- Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or association of persons consisting of such exhibitor as one of it's members is being exempted.

- Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from service tax. The scope of this exemption is being widened to include all ambulance services.

- Service provided by way of admission to a museum, zoo, national park, wild life sanctuary,and a tiger reserve is being exempted.

- Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from service tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).

[All the **above New Exemptions** shall come into effect from the 1st day of April, 2015]

5. New entries being incorporated in notification No. 25/12-ST, to continue exemption to some of the services that are presently covered by the Negative List entries which are being omitted:

- Service by way of right to admission to,-

  (i) exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.

  (ii) recognized sporting events.

  (iii) concerts, pageants, award functions, musical or sporting event not covered by the above exemption, where the consideration for such admission is upto ₹ 500 per person.

These changes shall be brought into effect from the date the amendments being made in the Negative List, concerning the service by way of admission to entertainment events, come into effect.

6. Other changes being incorporated in the Finance Act, 1994

- Services, excluding few specified services, provided by the government have been included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term “government” has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term “government” is being incorporated in the Act.
- The intention in law has been to levy Service Tax on the services provided by:

  (i) chit fund foremen by way of conducting a chit.

  (ii) distributors or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld.

An Explanation is being inserted in the definition of “service” to specifically state the intention of the legislature to levy service tax on activities undertaken by chit fund foremen in relation to chit, and distributors or selling agents of lottery in relation to lotteries.

- Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. An illustration is being incorporated in this section to exemplify the scope of this provision.
- Section 67 prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for service shall include:

  (a) all reimbursable expenditure or cost incurred and charged by the service provider. The intention has always been to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically by this provision.

  (b) amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets;

- Section 73 is being amended in the following manner:

  (i) a new sub-section (1B) is being inserted to provide that recovery of the service tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73,; and

  (ii) sub-section (4A), that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

- Section 76 is being amended to rationalize penalty, in cases **not involving** fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, in the following manner,-

  (i) penalty not to exceed ten per cent of service tax amount involved in such cases;

  (ii) no penalty is to be paid if service tax and interest is paid within 30 days of issuance of notice under section 73 (1);

  (iii) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the service tax, interest and reduced penalty is paid within 30 days of such order; and

  (iv) if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

- Section 78 is being amended to rationalize penalty, **in cases involving** fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, in the following manner,-

  (i) penalty shall be hundred per cent of service tax amount involved in such cases;

  (ii) penalty equal to 15% of the service tax amount is to be paid if service tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;

  (iii) a reduced penalty equal to 25% of the service tax amount determined by the Central Excise Officer, by an order, is to be paid if the service tax, interest and reduced penalty is paid within 30 days of such order; and

  (iv) if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

- A new section 78 B is being inserted to prescribe, by way of a transition provision, that,-

  (i) amended provisions of section 76 and 78 shall apply to cases where either no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and

  (ii) in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the service tax amount.

- Section 80, that provided for waiver of penalty in specified situations, is being omitted.

- Section 86 is being amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section 35EE of the Central Excise Act.

7. Rationalization of Abatements:

- At present, service tax is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road provided by a goods transport agency and 40% for goods transport by vessels. The conditions also vary. A uniform abatement is now being prescribed for transport by rail, road and vessel. Service Tax shall be payable on 30% of the value of such services subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.

- At present, Service Tax is payable on 40% of the value of air transport of passenger for economy as well as higher classes, e.g. business class. The abatement for classes other than economy is being reduced and service tax would be payable on 60% of the value of such higher classes.

- Abatement is being withdrawn from chit fund service. Consequently, Service Tax shall be paid by the chit fund foremen at full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit.

The proposed rationalization in abatements shall come into effect from the 1st day of April, 2015.

8. Service Tax Rules:

- In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator. In this regard appropriate amendments have been made in rule 2 of the Service Tax Rules, 1994 and notification No. 30/2012-ST dated 20.6.2012.

  This change comes into effect immediately i.e. w.e.f. 1.3.2015.

- Rule 4 is being amended to provide that the CBEC, by way of an order, specify the conditions, safeguards and procedure for registration in service tax.

- Provision for issuing digitally signed invoices are being added along with the option of presentation of records in electronic form. The conditions and procedure in this regard shall be specified by the CBEC.

- Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to amendment in section 73 for enabling such recovery.

- In respect of certain services like money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately. Amendments to this effect have been proposed in the Service Tax Rules. These amendments shall come into effect as and when the new service tax rate comes into effect.

9. Reverse charge mechanism:

- Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.

This change will come into effect from 1.4.2015.

- Services provided by mutual fund agents, mutual fund distributors and agents of lottery distributor are being brought under reverse charge consequent to withdrawal of the exemption on such services. Accordingly, Service Tax in respect of mutual fund agents and mutual fund distributors services shall be paid by assets management company or, as the case may be, by the mutual fund receiving such services. In respect of sub-agents of lottery, Service Tax shall be paid by the distributor or selling agent of lottery.

This change will come into effect from 1.4.2015.

10. Cenvat Credit Rules, 2004:

- Rule 4(7) is being amended to allow credit of service tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider.

This change will come into effect from 1.4.2015

11. Miscellaneous:

- Existing exemption, vide notification No. 42/12-ST dated 29.6.2012, to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption has become redundant in view of the amendments made in law in the previous budget**,** in the definition of "intermediary" in the Place of Provision of Services Rules, making the place of provision of a service provided by such agents as outside the taxable territory.