2013

Simplified Approach to Budget - Direct Taxes

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Rates of Income Tax in respect of income liable to tax for the assessment year 2013-14

No Change in the Threshold Limit

The minimum threshold limit for making the income chargeable to tax continues to remain the same with no change as per Finance Act 2012. However, the finance minister has proposed to allow credit to an individual resident in India whose total income does not exceed Rs. 5 Lac. The tax credit shall be equal to the tax payable or Rs. 2000 whichever is less. The implication of this will be that an individual resident having taxable income upto Rs. 2,20,000 shall not be required to pay any tax.

Surcharge on Income Tax

The Finance Act 2013 brings major changes in the rates of surcharge. The surcharge shall be applicable on all classes of persons; the same is tabulated below:

Class	Total Income	Surcharge
Domestic Company	Exceeds 1crore but does not exceed 10 crores	5%
	Exceeds 10 crores	10%
Foreign company	Exceeds 1crore but does not exceed 10 crores	2%
	Exceeds 10 crores	5%
Non Resident(Other than foreign company)	Exceeds 1 crores	10%
Others	Exceed 1 crore	10%

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

However, Marginal relief shall be available if 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 and where the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees in case of companies, 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.

Education Cess and Secondary and Higher Education Cess

For financial year 2013-14, 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 percent 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.

Profits and Gains from Business and Profession

Insertion of new Section 32AC-Incentive for acquisition and installation of new plant or machinery by manufacturing company

The Finance Act 2013 provides incentive to the companies which are engaged in the business of manufacture of an article or thing and invests a sum of more than Rs.100 crore in new assets (plant or machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015, in which case the assessee company shall be allowed

i) A deduction of 15% of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14 for A/Y 2014-15 and

ii) A deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1st April, 2013 and ending on 31st

March, 2015, as reduced by the deduction allowed, if any, for assessment year 2014-15.

Further, the phrase "new asset" has been defined by the Finance Act as plant or machinery but doesn't 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) 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.

Also, it has been proposed that the plant and machinery shall not be transferred for a minimum period of 5 years, except in the case of amalgamation or demerger where the said benefit shall continue to be made available to the amalgamated or resulting company.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

Insertion of new Section to Chapter VII -Commodities Transaction tax and amendment in Section 36

A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered into in a recognized association. **It is proposed to define 'taxable commodities transaction' to mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognized**

associations. The tax is proposed to be levied at the rate equal to 0.01% on taxable commodities transactions undertaken by the seller on sale of commodity derivative.

The provisions with regard to collection and recovery of CTT, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution, filing of appeal, power to the Central Government, etc. have also been provided.

Further, it is proposed to amend section 36 of the Income-tax Act to provide that an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.

This amendment in section 36 of the Income-tax Act will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

Insertion of new Section 43CA for transfer of immovable property in certain cases

Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such value (stamp duty value) is taken as full value of consideration under section 50C of the Income-tax Act. These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade. Hence Finance Act 2013 has inserted Section 43CA to plug this problem.

(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or

assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years

Amendment to Section 40- Disallowance of certain fee, charge, etc. in the case of State Government Undertakings

The existing provisions of section 40 specify the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". The non-deductible expense under the said section also includes statutory dues like fringe benefit tax, income-tax, wealth-tax, etc.

Disputes have arisen in respect of income-tax assessment of some State Government undertakings as to whether any sum paid by way of privilege fee, license fee, royalty, etc. levied or charged by the State Government exclusively on its undertakings are deductible or not for the purposes of computation of income of such undertakings. In some cases, orders have been issued to the effect that surplus arising to such undertakings shall vest with the State Government. As a result it has been claimed that such income by way of surplus is not subject to tax. It is a settled law that State Government undertakings are separate legal entities than the State and are liable to income-tax.

In order to protect the tax base of State Government undertakings vis-à-vis exclusive levy of fee, charge, etc. or appropriation of amount by the State Governments from its undertakings, it is proposed to amend section 40 of the Income-tax Act to provide that any amount paid by way of fee, charge, etc., which is levied exclusively on, or any amount appropriated, directly or indirectly, from a State Government undertaking, by the State Government, shall not be allowed as deduction for the purposes of computation of income of such undertakings under the head “Profits and gains of business or profession”. It is also proposed to define the expression “State Government Undertaking” for this purpose. The amended section is stated below:

In section 40 of the Income-tax Act, in clause (a), after sub-clause (iia), the following sub-clause shall be inserted with effect from the 1st day of April, 2014, namely:—

“(iib) any amount—
(A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or
(B) which is appropriated, directly or indirectly, from, a State Government undertaking by the State Government.

Explanation.—For the purposes of this sub-clause, a State Government undertaking includes—

(i) a corporation established by or under any Act of the State Government;

(ii) a company in which more than fifty per cent. of the paid-up equity share capital is held by the State Government;

(iii) a company in which more than fifty per cent. of the paid-up equity share capital is held by the entity referred to in clause (i) or clause (ii) (whether singly or taken together);

(iv) a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(v) an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government;".

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

Capital Gain

Definition of Capital Asset amended in Income Tax Act and corresponding amendment in definition of urban land in Wealth Tax Act

Income Tax Act defines capital asset to mean property of any kind held by an assessee whether or not connected with his business or profession but does not include-

Agricultural land in India, not being land situated –

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette

Finance Act 2013 has amended the item (b) of the above said clause and defines the area in the Act itself rather than making a reference to the notification and proposed that:

In any area within the distance, measured aerially,—

(I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lacs but not exceeding ten lacs; or

(III) not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lacs shall form part of capital asset.

Explanation.—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;’

These amendments will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessment years.

Income From Other Sources

Property purchased for inadequate consideration to be taxed as Income from other sources

The existing provisions of sub clause (b) of clause (vii) of sub-section (2) of section 56 of the Income-tax Act provides that where any Immovable Property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as income from other sources.

Since the existing provision does not cover a situation where the immovable property has been received by an individual or HUF for **inadequate consideration** it is proposed to amend the provisions of clause (vii) of sub-section (2) of section 56 so as to provide that where any immovable property is received for a consideration which is **less than** the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as **exceeds** such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources and Cost of Acquisition of such property shall be computed as per the provision under Section 49(4).

Considering the fact that there may be a time gap between the date of agreement and the date of registration, it is proposed to provide that where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the **date of the agreement**, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode **other than cash** on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable property.

Deductions

Weighted deduction in respect Of Life Insurance Premium paid for person with disability

It is proposed to provide that any sum including the sum allocated by way of bonus received under an insurance policy issued on or after 01.04.2013 for the insurance on the life of any person who is

(i) a person with disability as referred to in section 80U, or

(ii) suffering from disease or ailment as specified in the rules made under section 80DDB,

shall be exempt under clause (10D) of section 10 if the premium payable for any of the years during the term of the policy does not exceed 15% of the actual capital sum assured.

It is also proposed to provide that the deduction on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of a person referred to above shall be allowed to the extent the premium paid does not exceed 15% of the actual capital sum assured.

Deduction In Respect Of Investment Made Under an Equity Saving Scheme

The existing provisions of section 80CCG, provide that a resident individual who has acquired listed equity shares in accordance with the scheme notified by the Central Government, shall be allowed a deduction of fifty per cent of the amount invested in such equity shares to the extent that the said deduction does not exceed twenty five thousand rupees. The deduction is a one-time deduction and is available only in one assessment year in respect of the amount so invested. The deduction is available to a new retail investor whose gross total income does not exceed ten lakh rupees. Rajiv Gandhi Equity Savings Scheme has been notified under section 80CCG.

With a view to liberalize the incentive available for investment in capital markets by the new retail investors, it is proposed to amend the provisions of section 80CCG so as to provide that investment in **listed units of an *equity oriented fund*** shall also be eligible for deduction in accordance with the provisions of section 80CCG. It is proposed to provide that "equity oriented fund" shall have the meaning assigned to it in clause (38) of section 10.

It is further proposed to provide that the deduction under this section shall be allowed for **three** consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units were first acquired by the new retail investor whose gross total income for the relevant assessment year does not exceed **twelve lakh** rupees.

Deduction in respect of interest on loan taken for residential house property.

Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property.

The proposed new section 80EE seeks to provide that **without prejudice** to provisions in section 24 in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property. It is further provided that the deduction under the proposed section shall not exceed **one lakh** rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

It is also provided that the deduction shall be subject to the following conditions:-

(i) the loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed twenty-five lakh rupees;

(iii) the value of the residential house property does not exceed forty lakh rupees;

(iv) the assessee does not own any residential house property on the date of sanction of the loan.

It is also provided that where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act for the same or any other assessment year.

100% deduction on amount paid to National Children's Fund

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 institutions. The deduction is allowed at the rate of fifty per cent of the amount of donations made except in the case of donations made to certain funds and institutions specified in clause (i) of sub-section (1) of section 80G, where deduction is allowed at the rate of one hundred per cent. In the case of donations made to the National Children's Fund, deduction is allowed at the rate of fifty per cent of the amount so donated. Donations to Funds which are of national importance have been generally provided a deduction of one hundred per cent of the amount donated. Since the **National Children's Fund** is also a Fund of national importance, it is proposed to allow **hundred per cent** deduction in respect of any sum paid to the Fund in computing the total income of an assessee.

No Deduction if payment made in cash to a political party or electoral trust

Under the existing provisions of section 80GGB, any sum contributed by an Indian company to any political party or an electoral trust in the previous year, is allowed as deduction in computing the total income of such Indian company. A similar deduction is available to an assessee, being any person other than local authority and artificial juridical person under section 80GGC. There is no specific mode provided for making such contribution. With a view to discourage cash payments by the contributors, it is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under section 80GGB and 80GGC in respect of any sum contributed by way of cash.

Extension of deduction u/s 80IA up to 2014

Under the existing provisions contained in the clause (iv) of subsection (4) of section 80IA, a deduction of profits and gains is allowed to an undertaking which –

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2013;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2013;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2013.

With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

Deduction with respect to additional wages paid now allowed in which year the employment is provided

The existing provisions contained in section 80JJAA of the Income-tax Act provide for a deduction of an amount equal to thirty percent of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided. No deduction under this section is allowed if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking. The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also.

It is, therefore, proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to an Indian Company deriving profits from manufacture of goods in its factory. The deduction shall be of an amount 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.It is also proposed to provide that the deduction under this section shall not 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.

Foreign Taxation

Clarificatory Amendment to Section 90 and 90A of Income Tax Act

Sub-section (4) of sections 90 and 90A of the Income-tax Act inserted by Finance Act, 2012 makes submission of Tax Residency Certificate containing prescribed particulars, as a condition for availing benefits of the double taxation avoidance agreements between India with foreign countries and specified territories.

Finance Act 2013, proposes to amend sections 90 and 90A in order to provide **that submission of a tax residency certificate is a necessary but not a sufficient condition for claiming benefits under the agreements referred to in sections 90 and 90A.** This position was earlier mentioned in the memorandum explaining the provisions in Finance Bill, 2012, in the context of insertion of sub-section (4) in sections 90 & 90A.

These amendments will take effect retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the Assessment year 2013-14 and subsequent assessment years

Taxation of Income by way of Royalty or Fees for Technical Services

Section 115A of the Income-tax Act provides for determination of tax 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 under an agreement entered after 31.03.1976 and which are not effectively connected with permanent establishment, if any, of the non-resident in India. As per the existing provisions the tax is payable on the gross amount of income at the rate of:

Rate of Tax	Date of Agreement
30%	Agreement entered on or before 31.05.1997;
20%	Agreement entered after 31.05.1997 but before 01.06.2005
10%	Agreement entered on or after 01.06.2005.

The Finance Act 2013, proposes the tax rate under Sec 115A to be increased from 10% to 25%. This rate of 25% shall be applicable to any income by way of royalty and fees for technical services received by a non-resident, under an agreement entered after 31.03.1976, which is taxable under section 115A.

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

Concessional rate of withholding tax on interest in case of certain rupee denominated long-term infrastructure bonds

Section 194LC read with Section 115A provides that where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent.

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company,—

(i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India,—

(a) under a loan agreement; or

(b) by way of issue of long-term infrastructure bonds,

as approved by the Central Government in this behalf; and

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

However the above provision is applicable only when the purchase is made in foreign currency. In order to facilitate subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), Finance Act 2013 proposes to amend section 194LC of the Income-tax Act so as to provide that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilized for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of this section, the borrowing by the company shall be deemed to be in foreign currency. The benefit of reduced rate of tax would, therefore, be available to such non-resident in respect of the interest income arising on such subscription subject to other conditions provided in the section.

The designated bank account should be solely for the purpose of deposit of money in foreign currency and such money is to be used, after conversion, for subscription to a rupee denominated long-term infrastructure bond issue of an Indian company.
This amendment will take effect from 1st June, 2013.

Income distributed by the specified company or a Mutual fund

Under the existing provisions of section 115R any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to additional income-tax. In case of any distribution made by a fund other than equity oriented fund to a person who is not an individual and HUF, the rate of tax is 30% whereas in case of distribution to an individual or an HUF it is 12.5% or 25% depending on the nature of the fund.

In order to provide uniform taxation for all types of funds, other than equity oriented fund, it is proposed to increase the rate of tax on distributed income from 12.5% to 25% in all cases where distribution is made to an individual or a HUF.

Further in case of an Infrastructure debt fund (IDF) set up as a Non-Banking Finance Company (NBFC) the interest payment made by the fund to a non-resident investor is taxable at a concessional rate of 5%. However in case of distribution of income by an IDF set up as a Mutual Fund the distribution tax is levied at the rates described above in the case of a Mutual Fund.

In order to bring parity in taxation of income from investment made by a non-resident Investor in an IDF whether set up as a IDF-NBFC or IDF-MF, it is proposed to amend section 115R to provide that tax @ 5% on income distributed shall be payable in respect of income distributed by a Mutual Fund under an IDF scheme to a non-resident Investor.

Taxation of gross dividends received by an Indian company from a specified foreign company

Section 115BBD of Income-tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15% if such dividend is included in the total income for the Financial Year 2012-13 i.e. Assessment Year 2013-14.

The above provision was introduced as an incentive for attracting repatriation of income earned by residents from investments made abroad subject to certain conditions.

In order to continue the tax incentive for one more year, it is proposed to amend section 115BBD to extend the applicability of this section in respect of income by way of dividends received from a specified foreign company in Financial Year 2013-14also, subject to the same conditions.

Section 115-O of the Income-tax Act provides for taxation of distributed profits of a domestic company. It provides that any amount declared, distributed or paid by way of dividends, whether out of current or accumulated profits, shall be liable to be taxed at the rate of 15%. The tax is known as Dividend Distribution Tax (DDT). Such distributed dividend is exempt in the hands of recipients.

Section 115BBD of Income Tax Act provides for taxation of gross dividends received by an Indian company from a specified foreign company (in which it has shareholding of 26% or more) at the rate of 15%.

Cascading effect in distribution of dividend to a foreign subsidiary of a domestic company removed

Section 115-O provides that the tax base for DDT (i.e. the dividend payable in case of a company) is to be reduced by an amount of dividend received from its subsidiary if such subsidiary has paid the DDT which is payable on such dividend . This ensured removal of cascading effect of DDT in a multi-tier structure where dividend received by a domestic company from its subsidiary (which is also a domestic company) is distributed to its shareholders. It is proposed to amend section 115-O in order to remove the cascading effect in respect of dividends received by a domestic company from a similarly placed foreign subsidiary (i.e. the foreign company in which domestic company holds more than fifty percent of equity share capital). It is proposed that where the tax on dividends received from the foreign subsidiary is payable under section 115BBD by the holding domestic company then, any dividend distributed by the holding company in the same year, to the extent of such dividends, shall not be subject to Dividend Distribution Tax under section 115-O of the Income-tax Act.

Additional Income-tax on distributed income by company for buy-back of unlisted shares

Existing provisions of Section 2(22)(e) provide the definition of dividends for the purposes of the Income-tax Act. Section 115- O provides for levy of Dividend Distribution Tax (DDT) on the company at the time when company distributes, declares or pays any dividend to its shareholders. Consequent to the levy of DDT the amount of dividend received by the shareholders is not included in the total income of the shareholder. The consideration received by a shareholder on buy-back of shares by the company is not treated as dividend but is taxable as capital gains under section 46A of the Act. A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders, or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains. Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate. In order to curb such practice it is proposed to amend the Act, by insertion of new Chapter XII-DA, to provide that the consideration paid by the company for purchase of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares (distributed income) will be charged to tax and the company would be liable to pay additional income-tax @ 20% of the distributed income paid to the shareholder. The additional income-tax payable by the company shall be the final tax on similar lines as dividend distribution tax. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay the additional income-tax on the buy-back of shares. These amendments will take effect from 1stJune, 2013.

Section 115QA

This amendment overrules all other provisions contained in the Act. Tax will be levied on consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares not being shares listed in a recognized stock exchange. This is in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year. The company shall be liable to pay additional income-tax at the rate of twenty per cent. Here “buy-back” means purchase by a company of its own shares in accordance with the provisions of section 77A of the

Companies Act, 1956. Whether or not income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under this chapter shall be payable by such company. The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within fourteen days from the date of payment of any consideration to the shareholder on buy-back of shares. The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit there for shall be claimed by the company or by any other person in respect of the amount of tax so paid.

Section 115QB

Where the principal officer of the domestic company and the company fails to pay the whole or any part of the tax on the distributed income referred to Section 115QA, within the time allowed, he or it shall be liable to pay simple interest at the rate of one percent , for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Section 115QC

If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Newly Inserted Chapter XII-EA - Special Provisions relating to taxation of securitisation trusts

Section 161 of the Income-tax Act provides that in case of a trust if its income consists of or includes profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust. The special purpose entities set up in the form of trust to undertake securitisation activities were facing problem due to lack of special dispensation in respect of taxation under the Income-tax Act. The taxation at the level of trust due to existing provisions was considered to be restrictive particularly where the investors in the trust are persons which are exempt from taxation under the provisions of the Income-tax Act like Mutual Funds. In order to facilitate the securitisation process, it is proposed to provide a special taxation regime in respect of taxation of income of securitisation entities, set up as a trust, from the activity of securitisation. It is proposed to amend section 10 and also insert a new Chapter XII-EA for providing a special tax regime. The salient features of the special regime are:-

(i) In case of securitisation vehicles which are set up as a trust and the activities of which are regulated by either SEBI or RBI, the income from the activity of securitisation of such trusts will be exempt from taxation.

(ii) The securitisation trust will be liable to pay additional income-tax on income distributed to its investors on the line of distribution tax levied in the case of mutual funds. The additional income-tax shall be levied @ 25% in case of distribution being made to investors who are individual and HUF and @ 30% in other cases. No additional income tax shall be payable if the income distributed by the securitisation trust is received by a person who is exempt from tax under the Act.

(iii) Consequent to the levy of distribution tax, the distributed income received by the investor will be exempt from tax.

(iv) The securitisation trust will be liable to pay interest at the rate of one percent for every month or part of the month on the amount of additional income-tax not paid within the specified time.

(v) The person responsible for payment of income or the securitisation trust will be deemed to be an assesee in default in respect of amount of tax payable by him or it in case the additional income-tax is not paid to the credit of Central Government.

This amendment will take effect from 1st June, 2013.

Here, "securitisation trust" means a trust, being a—

(*i*) "special purpose distinct entity" as defined in clause (*u*) of sub-regulation (*1*) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

(*ii*) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India.

Search & Seizure

Clarification on application of Seized Assets under Section 132B

As per the existing provisions of Section 132B, the assets seized under Section 132 or requisitioned under section 132A may be used towards the amount of any existing liability under this Act, the Wealth Tax Act, the Expenditure Act, the Interest- tax Act and the Gift Tax Act and the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which such person is in default or deemed to be in default.

Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search.

Accordingly, it is proposed to amend the aforesaid section so as to clarify that the existing liability does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act.

This amendment will take effect from 1st June, 2013.

Return Of Income and Assessment Procedures

The existing provisions contained in sub-section (9) of section 139 provide that where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days. If the defect is not rectified within the time allowed by the Assessing Officer, the return is treated as an invalid return. The conditions, the non-fulfillment of which renders the return defective, have been provided in the *Explanation* to the aforesaid sub-section.

Section 140A provides that where any tax is payable on the basis of any return, after taking into account the prepaid taxes, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return.

It has been noticed that a large number of assessee's are filing their returns of income without payment of self-assessment tax.

It is, therefore, proposed to amend the aforesaid *Explanation* so as to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

Scope of direction for special audit under sub-section (2A) of section 142 widened

The existing provisions contained in sub-section (2A) of section 142 of the Income-tax Act, inter alia, provide that if at any stage of the proceedings, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit. The expression “nature and complexity of the accounts” has been interpreted in a very restrictive manner by various courts. It is, therefore, proposed to amend the aforesaid sub-section so as to provide that if at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

This amendment will take effect from 1st June, 2013.

“Nature & complexity of accounts” – scope now extended widely so as to include ““the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee” hence nullifying the decision in case of Bata India Ltd.

Clarification and Amendment to Explanation 1 to Section 153 and Sec 153B

Finance Act 2013 proposes to amend clause (iii) of Explanation 1 to section 153 so as to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

It has been further seen that at times more than one reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A in one case and the replies from the foreign Competent Authorities are also received in parts. In such cases, there will always be a dispute for counting the period of exclusion i.e. whether it should be from the date of first reference for exchange of information made or from the date of last reference. Similar dispute may also arise with regard to the date on which the information so requested is received.

With a view to clarify the above situation, it is proposed to amend the aforesaid clause (viii) so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

Similar amendments are also proposed in the Explanation to section 153B of the Income-tax Act relating to time limit for completion of search assessment.

These amendments will take effect from 1st June, 2013

Clarification of the phrase "tax due" for the purposes of recovery under Section 179 and Section 167C

Section 179 of the Income-tax Act provides that where the tax due from a private company cannot be recovered from such company, then the director (who was the director of such company during the previous year to which non-recovery relates) shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part. This provision is intended to recover outstanding demand under the Act of a private company from the directors of such company in certain cases.

However, some courts have interpreted the phrase 'tax due' used in section 179 to hold that it does not include penalty, interest and other sum payable under the Act.

In view of the above, Finance Act 2013 has clarified that for the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act by inserting a corresponding explanation. Amendments on the similar lines for clarifying the expression 'tax due' is proposed to be made to the provisions of section 167C.

These amendments will take effect from 1st June, 2013.

Tax Deduction at Source

Deduction of tax on payment on transfer of certain immovable property other than agricultural land

Under the existing provisions of the Income-tax Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1% of such sum. In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakh rupees.

Penalties

Section 271FA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2014, namely:—

"271FA. If a person who is required to furnish an annual information return under sub-section (*1*) of section 285BA, fails to furnish such return within the time prescribed under sub-section (*2*) thereof, the income-tax authority prescribed under said sub-section (*1*) may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which such failure continues.

Provided that where such person fails to furnish the return within the period specified in the notice issued under sub-section (*5*) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

Section 285BA mandates furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2) thereof. Sub-section (5) of the section empowers the Assessing Officer to issue notice if the annual information return has not been furnished by the due date. The existing provisions contained in section 271FA of the Income-tax Act provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is proposed to amend the aforesaid section so as to provide that if a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under sub-section (1) of the said section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

It is further proposed to provide that where such person fails to furnish the return within the period specified in the notice under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

Wealth Tax

Electronic Filing of Annexure less wealth tax return

Provisions of wealth tax act are being amended to facilitate electronic filing of annexure less return of net wealth. The amendment proposed is on the line similar to the amendment made earlier to facilitate electronic filing in Income Tax Act under Section 139C and 139D.

This amendment is being made with effect from 1st June, 2013 and accordingly return of wealth tax for assessment year 2013-14 now can be filed electronically.