

## Budget 2014-15 Direct Taxes

CA Bhadresh Doshi

### Scope of Amendments

- Rates of Taxes
- Capital Gains
- Business Income
- TDS
- Procedural
- Miscellaneous

### Tax Rates

- Basic exemption limit increased by Rs.50,000 for all except for very senior citizens
- Other tax rates remain same
- Surcharge & cess continues as present
- Substantial increase in DDT rates

### Slab Rates

Effective rates after amendment - If income does not exceed Rs. 1 crore			
Income Slab	Super Senior Citizens (80 or more)	Senior Citizens (60 or more)	Others
Upto Rs. 2,50,000	-	-	-
Rs. 2,50,000 to Rs. 3,00,000	-	-	10.3%
Rs. 3,00,000 to Rs. 5,00,000	-	10.3%	10.3%
Rs. 5,00,000 to Rs. 10,00,000	20.6%	20.6%	20.6%
Above Rs. 10,00,000	30.9%	30.9%	30.9%

### Slab Rates

Effective rates after amendment - If income exceeds Rs. 1 crore			
Income Slab	Super Senior Citizens (80 or more)	Senior Citizens (60 or more)	Others
Upto Rs. 2,50,000	-	-	-
Rs. 2,50,000 to Rs. 3,00,000	-	-	11.33%
Rs. 3,00,000 to Rs. 5,00,000	-	11.33%	11.33%
Rs. 5,00,000 to Rs. 10,00,000	22.66%	22.66%	22.66%
Above Rs. 10,00,000	33.99%	33.99%	33.99%

### OTHER RATES

Type of Assessee / Type of Levy	Income ≤ Rs. 1 crore	Income > Rs. 1 crore but ≤ Rs. 10 crores	Income > Rs. 10 crores
Firm/LLP	30.9%	33.99%	33.99%
Domestic Co.	30.9%	32.445%	33.99%
Foreign Co.	41.2%	42.024%	43.26%
AMT u/s. 115JC	19.055%	20.9605%	20.9605%
MAT u/s. 115JB for domestic co.	19.055%	20.00775%	20.9605%
MAT u/s. 115JB for foreign co.	19.055%	19.4361%	20.00775%

### 80C Deduction

#### Existing Provisions

- Specified investment or expenditure eligible for deduction
- Maximum deduction of Rs.1 lakh

#### Amendment

- Maximum deduction increased from Rs. 1 lakh to Rs. 1.5 lakhs
- Limit for investment in PPF in a year also raised from Rs. 1 lakh to Rs. 1.5 lakhs (Budget Speech)
- Overall restriction u/s. 80CCE also increased to Rs. 1.5 lakhs

### INTEREST ON HOUSING LOAN

#### Existing Provisions

- S. 24 allows deduction of interest upto Rs. 1.5 lakh on capital borrowed if –
  - It is a self occupied property
  - Capital borrowed for acquisition or construction of property
  - Acquisition or construction completed within 3 years from the end of the FY in which capital was borrowed

#### Amendment

- Permissible deduction enhanced from Rs. 1.5 lakhs to Rs. 2 lakhs

### Cumulative Effect of Benefits

Maximum Savings on account of:	Person with Income from Rs. 2 L to Rs. 5 L	Person with Income from Rs. 5 L to Rs. 10 L	Person with Income > Rs. 10 L
Rise in Basic Exemption Limit	Rs. 5,000	Rs. 5,000	Rs. 5,000
Increase in deduction u/s. 80C	Rs. 5,000	Rs. 10,000	Rs. 15,000
Higher Claim of Interest Deduction under IFHP	Rs. 5,000	Rs. 10,000	Rs. 15,000
<b>TOTAL SAVINGS</b> [Excl. Surcharge (if applicable) and Cess]	<b>Rs. 15,000</b>	<b>Rs. 25,000</b>	<b>Rs. 35,000</b>

### Tax on Income Distribution

#### Existing Provisions

- S. 115-O & 115R → Distribution tax on domestic co. & MF
- Tax to be calculated at the given rates on income distributed

#### Amendment

- Tax would be calculated on net distributed dividends increased by the amount of such tax i.e. the net dividend paid would be grossed up for DDT calculation [w.e.f. 1st October 2014]
- $DDT = \frac{\text{Dividend Paid}}{1 - \text{Rate of DDT}} \times \text{Rate of DDT}$

### Tax on Income Distribution

	Existing	Proposed
<b>DDT u/s. 115-O</b>		
Stipulated Rate	15%	15%
Calculation of DDT - Example:		
Dividend to be Paid	Rs. 100	Rs. 100
DDT	Rs. 15 [100 x 15%]	Rs. 17.647 [100/(1-0.15) x 15%]
DDT (including Surcharge & Education Cess)	Rs. 16.995	Rs. 19.994
Total Cash Outflow for Company	116.995	Rs. 119.994
Effective DDT Rate	16.995%	19.994%

### Tax on Income Distribution

Sections	Effective Rate of DDT	
	Existing	Proposed
DDT u/s. 115-O	16.995%	19.994%
Tax on distributed income u/s. 115R (where recipient is individual/HUF)	28.325%	37.766%
Tax on distributed income u/s. 115R (where recipient is other than individual/HUF)	33.99%	48.557%
Tax on distributed income u/s. 115R (For mutual fund under an infrastructure debt scheme where recipient is non resident or foreign co.)	5.665%	5.963%

## FII's - CHARACTERISATION OF INCOME

### Existing Provisions

- Controversy on characterisation of profits from trading in securities
- Whether business income or capital gains?
- Fidelity North Star Fund 288 ITR 641 – Capital Gains
- Fidelity Advisor Series 271 ITR 1 – Business Income

## FII's - CHARACTERISATION OF INCOME

### Amendments

- Express provision u/s. 2(14) clarifying position
- Securities held by FII would be a "capital asset"
- Securities as defined in Sec. 2(h) of SCRA
- FII as notified u/s. 115AD
- Recently SEBI replaced FII regulations with FPI regulations
- Even new FPIs are notified u/s. 115AD and hence eligible

## FII's - CHARACTERISATION OF INCOME

### Effects

- Effective only from AY 2015-16 - Uncertainty for past years continues
- FPIs from Mauritius & Singapore will be fully exempt as per DTAA
- Exemption u/s. 10(38) available
- Tax rates u/s. 115AD → LTCG @10%, STCG (STT) @15%, STCG (Others) @30%
- Subject to lower rates available under DTAA
- Derivatives would also be capital asset hence same treatment as capital gains [Mumbai ITAT decision in the case of Platinum Asset Management Ltd confirmed]
- No TDS to FIIs on capital gains u/s. 196D

## SHORT TERM/LONG TERM CAPITAL ASSET

### Existing Provisions

- Sec.2(29A)/2(42A)
- Period of Holding > 36 months, then long-term
- Period of Holding > 12 months, then long-term in cases of:
  - Shares of a company
  - Other listed securities
  - Units of Mutual Fund
  - Zero Coupon Bond

### SHORT TERM/Long Term CAPITAL ASSET

#### Amendments

- Shorter period of holding of 12 months applies only to
  - Listed securities other than units
  - Units of equity oriented mutual funds
  - Zero coupon bonds

### SHORT TERM/Long Term CAPITAL ASSET

Asset	POH to qualify as long term capital asset	
	Present	Amended
Unlisted shares of any company	12 months	36 months
Listed shares of any company	12 months	12 months
Other listed securities	12 months	12 months
Units of equity oriented MF (listed or unlisted)	12 months	12 months
Units of other MF (listed or unlisted)	12 months	36 months

### Tax on LTCG (Sec. 112)

#### Existing Provisions

- Proviso to Sec. 112 applies to :
  - Listed securities
  - Units of MF
  - Zero coupon bonds
- Option to pay tax @ 20% of indexed gain or 10% of unindexed gain

### Tax on LTCG (Sec. 112)

#### Amendments

- Now applies only to :
  - Listed securities other than units
  - Zero Coupon bonds
- LTCG in respect of units of MF other than equity oriented funds shall be taxed @ 20% only on indexed gain
- LTCG in respect of units of equity oriented MF shall remain exempt u/s. 10(38)

## FORFEITURE OF ADVANCE

### Existing Provisions

- Sec.51 → Advance received on any negotiation for transfer of capital asset and retained by the assessee should be reduced from its cost of acquisition
- If it exceeds it cannot be taxed since it is a capital receipt [Travancore Rubber & Tea Co. Ltd. 243 ITR 158 (SC)]

## FORFEITURE OF ADVANCE

### Amendments

- IFOS → New provision → S. 56(2)(ix)
- Advance or other money received in the course of negotiations for transfer of a capital asset is taxable if–
  - Such sum is forfeited; and
  - The negotiations do not result in transfer of such capital asset
- Consequential provision u/s. 51 for not reducing the amount taxed u/s. 56 from the cost of acquisition

## FORFEITURE OF ADVANCE

### Issues

- Taxable in which year? Year of receipt or year in which it is forfeited?
- Forfeiture of any amount received not in relation to transfer of capital asset shall not be covered [ACIT vs. Das & Co. 44 DTR (Mumbai)(Trib) 124]

## COMPULSORY ACQUISITION

### Existing Provisions

- Sec. 45(5)(b) → Enhanced compensation is taxable as CG in the year in which it is received
- Sec. 45(5)(c) → If it is reduced thereafter then it shall be recomputed again as per Sec. 155(16)
- CIT vs. Ghanshyam (HUF) 315 ITR 1 confirming that enhanced compensation is taxable if it is received though under an interim order pending appeal

### Amendment

- Such enhanced compensation if it is received in pursuance of an interim order of a court, Tribunal or other authority then it shall be taxed as CG only in the year in which final order is made

## COMPULSORY ACQUISITION

### Issues

- Exemptions (54 etc.) provisions require the investment with reference to the date of transfer?
- What is date of transfer? → Date of compulsory acquisition (not the date of final order)
- Extension u/s. 54H → If compensation not received on the date of transfer then period for investment with reference to the date of receipt of compensation
- Suitable amendment required in S. 54H to shift it to date of the final order

## Section 54/54F

### Existing Provisions

- Exemption available if assessee purchases or constructs "a residential house"
- Controversies with regard to 'a residential house' :
  - Whether 'a residential house' would mean only single house or even multiple houses?
  - Whether exemption for purchase/construction of house only within India or outside India also eligible?

### Amendment

- Words 'a residential house' substituted with 'one residential house in India'

## Section 54/54F

### Issues

- Whether multiple adjacent flats would still be considered as 'one residential house' and eligible for exemption?
- Whether multiple sales & purchases of residential house would be eligible for exemption u/s. 54?
- For exemption u/s. 54F on the date of transfer the assessee, should not own more than one residential house (other than new house). Further, he is not allowed to purchase or construct another house (other than new house) for a period of 2/3 years from date of transfer. Such conditions are applicable only for house in India or also for house outside India?

## Section 54EC

### Existing Provisions

- Exemption available if LTCG is invested in specified bonds within 6 months from date of transfer
- Investment in one year cannot exceed Rs. 50 lakhs
- Exemption was claimed for Rs. 1 crore by splitting investments in two years but within 6 months from date of transfer

### Amendment

- Restriction of Rs.50 lakhs per FY continues
- Investment against LTCG arising in one year also cannot exceed Rs. 50 lakhs

### Section 54EC

#### Issues

- Whether investment in subsequent financial year made on account of non-availability of bonds in the year of transfer would be considered as investment made in financial year of transfer for considering limit of Rs. 50 lakhs per financial year?
- Decision of Cello Plast [76 DTR 439 (Bom)], investment made in bonds even beyond 6 months were eligible since no eligible bonds were available in the stipulated period. Whether same interpretation can be applied?

### Sec.32AC Investment Allowance

#### Existing Provisions

- 15% deduction of actual cost of new plant & machinery
- Required to achieve target of Rs. 100 crores in two FYs 2013-14 & 2014-15

#### Amendments

- New sub-section (1A)
- 15% deduction of actual cost of new plant & machinery
- Acquired & installed during the PY

### Sec.32AC Investment Allowance

#### Amendments

- Available only for 3 AYs
- Deduction only if actual cost exceeds Rs. 25 crores in PY
- Threshold is for each year and not in aggregate
- Deduction available in the PY in which target is achieved
- Deduction u/s. 32AC(1) shall continue to apply
- If eligible for deduction u/s. 32AC(1) then no deduction u/s. 32AC(1A)

### Sec.32AC Investment Allowance

#### Amendments

- Only core plant & machinery – existing exclusions shall apply
- Existing lock-in-period of 5 years shall continue to apply
- Not akin to depreciation u/s. 32
- Full deduction of 15% even if used for less than 180 days
- Not to be reduced from the WDV of the block of assets



### **Sec. 35AD Investment Linked Ded.**

#### **Existing Provisions**

- 11 "specified business" are eligible for deduction
- 100% deduction of capital expenditure excluding land, goodwill or financial instrument
- Out of 11, 5 businesses are eligible for 150% deduction

### **Sec. 35AD Investment Linked Ded.**

#### **Amendments**

- 2 more businesses added to "specified business"
  - laying and operating a slurry pipeline for the transportation of iron ore
  - setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines
- Should commence operations on or after 1.4.14
- Eligible for 100% deduction

### **Sec. 35AD Investment Linked Ded.**

#### **Existing Provisions**

- If deduction is claimed u/s. 35AD in respect of specified business then no deduction under Chapter VI-A Part C in respect of the same business for the same or any other AY
- If deduction is claimed under Chapter VI-A Part C in respect of any specified business then no deduction u/s. 35AD for the same or any other AY
- No such restriction for deduction u/s. 10AA vis-à-vis deduction u/s. 35AD

### **Sec. 35AD Investment Linked Ded.**

#### **Amendment**

- Similar restriction now applicable for deduction u/s. 10AA
- So either deduction u/s. 10AA or u/s. 35AD
- Having claimed deduction u/s. 10AA, not eligible for deduction u/s. 35AD at any time and vice versa

### **Sec. 35AD Investment Linked Ded.**

#### **Existing Provisions**

- No lock-in-period for assets on which deduction is claimed
- If such asset is demolished, destroyed, discarded or transferred then amount received is taxable u/s. 28(vii)
- No provision hitting in the case where asset on which deduction was claimed is now used for other business other than specified business

### **Sec. 35AD Investment Linked Ded.**

#### **Amendment**

- Asset is required to be used for specified business for a minimum period of 8 years starting from the PY in which it is acquired
- Section 28(viii) continues to apply
- If asset is used for other purpose within the specified period of 8 years then it will be taxed
- Taxable business income = Deduction u/s. 35AD allowed – Notional depreciation u/s. 32 on that asset

### **Sec. 35AD Investment Linked Ded.**

#### **Issues**

- Notional WDV should be allowed to be added to the block of assets for the purpose of depreciation u/s. 32 from that year onwards → No such enabling provisions
- Sec. 73A restricting set off of losses of specified business only against profits from such business should not apply thereafter

### **ALTERNATE MINIMUM TAX**

#### **Existing Provisions**

- Applicable to all non-corporate assessees
- Required to pay minimum tax of 18.5% of adjusted total income
- Adjusted total income = Total income + Deductions under Chapter VI-A Part C (other than 80P) + Deduction u/s. 10AA

#### **Amendment**

- One more addition to adjusted total income provided
- Deduction claimed u/s. 35AD – Notional depreciation u/s. 32 on that asset

## ALTERNATE MINIMUM TAX

### Existing Provisions

- AMT provisions are part of Chapter XII-BA
- Excess tax paid on account of AMT is eligible for tax credit u/s. 115JD
- Sec. 115JEE provides that Chapter shall not apply –
  - If no deduction is claimed under Chapter VI-A Part C (other than 80P) or 10AA
  - If adjusted total income  $\leq$  20 lakhs (only for individual, HUF, AOP, BOI, AJP)
- Technically, assessee is not entitled to set off of tax credit if he falls u/s. 115JEE since entire Chapter does not apply to him

## ALTERNATE MINIMUM TAX

### Amendment

- Though Chapter XII-BA is not applicable by virtue of Sec. 115JEE, tax credit shall be allowed in accordance with Sec. 115JD

## DISALLOWANCE DUE TO TDS DEFAULTS

### Existing Provisions

- Sec. 40(a)(ia) applicable to certain expenses payable to residents → Time available till due date u/s 139(1) to deposit TDS
- Sec. 40(a)(i) applicable to expenses payable outside India or to non-residents → No such extended time to deposit TDS

## DISALLOWANCE DUE TO TDS DEFAULTS

### Amendments

- Sec. 40(a)(i) is put on par with S. 40(a)(ia)
- If TDS is deposited before the due date u/s 139(1) then no disallowance u/s 40(a)(i)
- Possibility to apply the amendment retrospectively → Virgin Creations (Cal)

### Disallowance due to TDS Defaults

#### Existing Provisions

- S. 40(a)(ia) covers only:
  - Interest
  - Commission or brokerage
  - Rent
  - Royalty
  - Fees for professional services or technical services
  - Contract payments
- Default attracts 100% disallowance

### Disallowance due to TDS Defaults

#### Amendments

- It will apply to all expenses payable to a resident on which TDS is deductible
- Following shall get covered:
  - Salaries
  - Director's payments
  - Non-compete fees
  - Purchase of immovable properties as stock-in-trade
- Disallowance of only 30% instead of 100%

#### Issues

- 100% disallowance in earlier year and TDS is paid on or after 1-4-14 then deduction of only 30%?

### Deductibility of CSR Expenditure

#### Existing Provisions

- New Cos. Act, 2013 requires certain companies to spend certain % of their profit on activities relating to CSR
- No clarity in IT Act regarding deductibility of CSR expenditure

#### Amendments

- CSR expenditure shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction u/s. 37
- CSR expenditure is not deductible except when it is specifically covered in Sec. 30 to Sec. 36

### Transporter's Presumptive Income

#### Existing Provisions

- Sec.44AE → Presumptive income for assesses engaged in the business of Plying, Hiring or Leasing Goods Carriages
- Heavy Goods Vehicle (HGV) → Presumptive income of Rs. 5,000 per month
- Vehicle other than HGV → Presumptive income of Rs. 4,500 per month

#### Amendments

- No distinction between HGV and vehicle other than HGV
- Uniform amt. of presumptive income of Rs. 7,500 per month

## Losses in Speculation Business

### Existing Provisions

- Sec.73 → Loss from speculation business can be set off only against profits from speculation business
- Explanation to Sec. 73 – deeming provision
  - Applies to only company
  - If any part of business consists of purchase and sale of shares of other companies, such business is deemed to be speculation business
  - Exception 1: GTI consists mainly of income other than PGBP
  - Exception 2: Banking or granting of loans and advances is a principal business

## Losses in Speculation Business

### Amendment

- New exception added → If the principal business is the business of trading in shares
- Co. having principal business of trading in shares is out of Expl. to Sec. 73
- Delivery based transactions will not be considered as speculation business

### Issues

- Past year's deemed speculation losses shall not be allowed against non-speculation profits of current year though from the same business? [Mumbai ITAT - Gajendra Kumar T. Agarwal 63 DTR 345]
- Distinction between "part of a business" and "principal business"

## TDS

### Existing Provisions

- Sec. 133A authorizes survey by an income-tax authority
- TDS authorities were also held to be empowered to conduct survey - Reckitt & Colman of India Ltd. 251 ITR 306 & 252 ITR 550

### Amendments

- New sub-section (2A) with effect from 1.10.2014
- Survey can be conducted to verify compliance with TDS/TCS provisions
- Similar provisions as that of existing survey
- IT authority may enter any office or place of business or profession where books/ documents are kept

## TDS

### Amendments

- They may enter after sunrise and before sunset
- Powers to take copies from books/documents
- Powers to inspect books/documents and obtain necessary information
- Powers to record statement of any person
- Differences with normal survey u/s. 133A(1):
  - Lower authorities need not have prior approval of JCIT
  - No impounding of books/documents
  - Cannot make an inventory of cash, stock or other valuable article or thing

## TDS

### Existing Provisions

- No provision to file correction statements u/s. 200(3) though they were filed and processed also

### Amendment

- Proviso to S. 200(3) - Correction statement can be filed to rectify any mistake or to add, delete or update the information already filed in an earlier statement
- It shall also be processed under existing provisions of S. 200A
- Effective from 1.10.2014

## TDS

### Amendments

- Time limit is changed w.e.f. 1st October, 2014
- In respect of all cases whether statement is filed or not
- 7 years from the end of FY in which payment is made or credit is given in case where statement is not filed

### Issues

- Whether it applies to only payment or credit made on or after 1<sup>st</sup> October, 2014 or even to previous cases of default?

## TDS

### Existing Provisions:

- S. 201 deems an assessee in default if he does not deduct or after deducting fails to pay tax (wholly or partly)
- Time limit is provided u/s. 201(3) for passing of an order for non-deduction of tax from a resident -
  - 2 years from the end of FY in which TDS statement is filed
  - 6 years from the end of FY in which payment is made or credit is given in case where statement is not filed

## TDS on Receipts under LIP

- New Section 194DA effective from 1.10.2014
- TDS @2%
- On any payment under a life insurance policy
- Including bonus
- Exemption u/s. 10(10D) to be excluded
- Threshold of Rs. 1,00,000 (in aggregate for one year)

### **Powers of Inquiry**

- New Sec. 133C effective from 1.10.2014
- Only prescribed IT authority can exercise new powers
- It should be only for the purposes of verification of information in its possession relating to any person
- A notice can be issued requiring that person to furnish required information or documents which may be useful for any inquiry or proceeding

### **SEARCH ASSESSMENT OF OTHER PERSON**

#### **Existing Provisions**

- Sec. 153C requires the AO of searched person to hand over the incriminating materials found during the course of search if they are related to some other person to the AO having jurisdiction of such other person
- Thereafter such AO is mandatorily required to proceed for assessment of six AYs preceding the search

### **SEARCH ASSESSMENT OF OTHER PERSON**

#### **Amendment**

- In such case, AO shall proceed to make an assessment of six AYs preceding the search only if such incriminating materials have a bearing on the determination of the total income of such other person
- Effective from 1<sup>st</sup> October, 2014

### **SEARCH ASSESSMENT OF OTHER PERSON**

#### **Issues**

- Interpretation of "have a bearing on the determination of the total income"? Need not necessarily be an undisclosed income?
- It may have bearing on determination of the total income of few years and not all six years. Then assessment of all such six years or only of those years on which it has a bearing?
- Assessment of PY related to search as covered u/s. 153C(2) is not amended

### **Sec. 142A → Reference to DVO**

#### **Existing Provisions**

- AO can refer the valuation of assets/investment/property to the Valuation Officer in specified cases

#### **Amendments**

- All amendments are effective from 1.10.2014
- Such a reference can be made whether or not the AO is satisfied about the correctness or completeness of the accounts of the assessee
- Valuation shall be done after taking into account the evidences and after giving an opportunity of being heard to the assessee

### **Sec. 142A → Reference to DVO**

#### **Amendments**

- If assessee does not co-operate then the Valuation Officer may estimate the value to the best of his judgment
- Valuation Officer is required to send a copy of his report to the the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made
- Time from the date of reference to the Valuation Officer and upto the date on which his report is received by the AO shall be excluded from the time limit to complete the assessment as provided in Sec. 153 & 153B

### **Sec. 220 → INTEREST FOR DEFAULTS**

#### **Existing Provisions**

- Demand raised in any notice is required to be paid within the time allowed
- In case of non-payment interest is leviable u/s. 220(2) for the period of default
- In case if the demand is reduced as a consequence of an order u/s. 154, 155, 250, 254, 260, 262, 264 or 245D then interest shall be calculated on such reduced demand

### **Sec. 220 → INTEREST FOR DEFAULTS**

#### **Existing Provisions**

- If no default at the first instance then no interest → Vikrant Tyres Ltd. 247 ITR 821 (SC)
- If default then whether interest can be charged for the intervening period during which demand was not operative?
  - Yes → Ginnar Investment Ltd. 87 DTR 329 (Del)
  - No → New United Construction Co. 270 ITR 224 (P & H)



### **Sec. 220 → INTEREST FOR DEFAULTS**

#### **Amendments**

- A situation in which the amount on which the interest was payable had been reduced as a result of above referred order and subsequently it got increased as a result of another order under same sections or section 263 is sought to be covered by the amendment
- In such case, the assessee shall be liable to pay interest for the period starting from the due date as per the first notice of demand and ending with the date of payment
- Notice of demand has been given deemed validity even if any appeal is filed or other proceeding is initiated
- Provisions of section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 has been linked to such notice of demand

### **Sec. 220 → INTEREST FOR DEFAULTS**

#### **Issues**

- New enhancement by CIT (A) or CIT should be specifically excluded
- What if the entire assessment proceeding is set aside by the appellate authority asking the AO to do de novo assessment? Will new notice of demand still relate back to the earlier notice of demand?
- Vikrant Tyres Ltd. vs. ITO 247 ITR 821 (SC) still holds good? (If demand is paid fully within time allowed then no interest for the intervening period)

### **Penalty u/s. 269SS/269T**

#### **Existing Provisions**

- Loan or deposit can be accepted or repaid only by an account payee cheque or account payee bank draft
- Else subject to 100% penalty subject to certain threshold

#### **Amendments**

- Use of electronic clearing system through a bank account is also permitted i.e. by way of internet banking facilities or by use of payment gateways (RTGS/NEFT) → Applicable from AY 2015-16
- Similar exclusion is also available under Rule 6DD r.w.s. 40A(3) right from A.Y. 2008-09

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Entities claiming exemptions u/s. 11 & 10(23C) were also claiming exemptions under other provisions of Sec. 10

#### **Amendments**

- Approved or notified entities u/s. 10(23C)(iv)/(v)/(vi)/(via) shall not be entitled to claim exemption under other provisions of Section 10 except for 10(1) i.e. agricultural income
- Trust or institution registered u/s. 12AA shall not be entitled to claim exemption under other provisions of Sec. 10 except for Sec. 10(23C) & Sec. 10(1) i.e. agricultural income

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Acquisition of a capital asset by such entity [10(23C)/11] for its charitable or religious object can be claimed as an application of income and entitled for exemption
- Further, depreciation on such assets was also claimed as a deduction while computing the income required to be applied for charitable or religious purposes

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Amendments**

- Double benefits were not intended
- Income required to be applied or accumulated for future application shall be determined without deducting depreciation on the assets which have been claimed as an application of income in the same or other previous year
- Effective from AY 2015-16
- But henceforth no depreciation even on assets acquired earlier which were claimed as an application of income in such preceding years

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Sec. 10(23C)(iiiab)/(iiiac) – Educational & medical institutions are entitled for exemption if they are not for profit and wholly or substantially financed by the Government
- Interpretation of "substantially" financed by the Government was in dispute

#### **Amendments**

- It shall be considered as substantially financed by Government if Government grant to such entities exceeds prescribed percentage of the total receipts including voluntary contributions

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Sec. 12AA grants power to cancel registration if the activities of a trust or institution are not genuine or the activities are not being carried out in accordance with their objects

#### **Amendments**

- Scope of such power to cancel registration has been widened
- Registration can also be cancelled if it is noticed that the activities are carried out in contravention of Sec. 13(1) and hence resulting into denial of exemption u/s. 11

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Registration u/s. 12AA is a pre-condition for claiming exemption u/s. 11
- Exemption u/s. 11 applies from the year in which application for registration u/s. 12AA is made by the charitable/religious trusts or institution
- Exemption cannot have a retrospective effect

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Amendments**

- Exemption shall now be available to any earlier AY if assessment proceedings are pending before the AO for such years on the date of registration and their objects and activities remain the same
- AO cannot resort to Sec. 147 for any preceding AY to deny exemption u/s. 11 only for non-registration of such trust or institution
- Such benefits are not available if registration is refused or cancelled

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Existing Provisions**

- Anonymous donations are taxable u/s. 115BBC in certain cases
- Taxable @30% on the amount of aggregate anonymous donations exceeding 5% of the total donations received by the assessee or Rs. 1 lakh, whichever is higher
- Income other than anonymous donations shall be taxed at the applicable rates unless exempt
- Therefore, anonymous donations to the extent of 5% of the total donations or Rs. 1 lakh whichever is higher is not taxable at all

### **CHARITABLE/RELIGIOUS TRUSTS & INSTITUTIONS**

#### **Amendments**

- Taxability of anonymous donations @ 30% remains the same
- Anonymous donations to the extent of 5% of the total donations or Rs. 1 lakh whichever is higher shall also be taxed but not at 30% but at the slab rates u/s. 164(2)

### TRANSFER PRICING

- S. 92B(2) → Third party transaction → Deemed international transaction → Third party may or may not be a non-resident
- APA → Roll back mechanism
- Penalty u/s. 271G → Even by TPO now
- Determination of ALP → Inter-quartile range concept in addition to arithmetical mean
- Comparables → Multiple year's data

### MISCELLANEOUS

- S. 285BA → furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account
- Signing of return in manuscript or by any electronic mode
- Scheme of taxation for REIT & Invit
- S. 194LC → Extension of sunset clause to 30.6.2017 and eligibility extended to any bonds and not just infra-bonds
- Sunset date for the power sector u/s. 80-IA extended from 31.3.2014 to 31.3.2017

### MISCELLANEOUS

- S. 115BBD → Concessional rate of tax on dividend from foreign companies where equity holding of Indian company is atleast 26% continues for ever
- S. 145 → Income computation and disclosure standards
- New IT Authorities → Principal CCIT / Principal CIT
- Scope of AAR rulings to be extended to Resident Tax Payers above a defined threshold
- Enlarging the scope of Income-tax Settlement Commission
- Transfer of G Sec by 1 NR to Another NR shall be exempt



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