

PROFESSIONAL PROGRAMME

UPDATES

FOR

ADVANCE TAX LAWS AND PRACTICE

(DIRECT TAX PART – A)

(Relevant for Students appearing in June, 2017 Examination)

MODULE 3- PAPER 7

Disclaimer-

This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Students appearing in June, 2017 Examination shall note the following:

- 1. For Direct taxes, Finance Act, 2016 is applicable.*
- 2. Applicable Assessment year is 2017-18 (Previous Year 2016-17).*
- 3. Since, Wealth Tax Act, 1957 has been abolished w.e.f. 1st April, 2016. The questions from the same are not being asked in examination from December 2015 session onwards.*
- 4. For Indirect Taxes, all changes made by the Finance Act, 2016 are also applicable for June, 2017 examination.*
- 5. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBEC & Central Government, on or before six months prior to the date of the examination.*

The updates is to facilitate the students to acquaint themselves with the amendments in tax laws upto December, 2016, applicable for June, 2017 Examination. The updates cover the major Notifications and Circulars issued by CBDT from 1st July, 2016 to 31st December, 2016. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

Note: The updates for the Indirect Tax Part will be uploaded separately.

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PART A – DIRECT TAXATION

INCOME TAX ACT, 1961 & RULES 1962

NOTIFICATIONS

NOTIFICATION NO.59/2016 SECTION 35AC OF THE INCOME-TAX ACT, 1961 - ELIGIBLE PROJECTS OR SCHEMES, EXPENDITURE ON - NOTIFIED ELIGIBLE PROJECTS OR SCHEMES

In exercise of the powers conferred by sub-section (1) read with clause (b) of the Explanation to Section 35AC of the Income Tax Act, 1961 (43 of 1961), the Central Government, on the recommendation of the National Committee for Promotion of Social and Economic Welfare, hereby notifies the institutions approved by the said National Committee, mentioned below, and approves the eligible projects or schemes specified to be carried on by the said institutions and the estimated cost thereof which may be allowed as deduction under the said section 35AC for the period of approval, namely:

<i>Sl. No.</i>	<i>Name of the Institution/Organization</i>
1	Nirmal Takhat Baba Budha Shaib Charitable Trust
2	Shrimad Rajchandra Educational Trust
3	Cumulative Action for Rural Development Trust
4	Shri Sai Baba Annachhatra Mandal Pratishirdi Shri Saibaba Mandir,
5	Yeshaswini Co-operative Farmers' Health Care Trust
6	Norwegain Free Evangelical Mission, Dhanor
7	Abdul Hamid Ansari Charitable Trust
8	Teach to Lead
9	The Braj Foundation
10	Life Line Care Organization
11	Shivchatrapati Sevabhavi Sanstha
12	Nival Samuday Kalyan Sangh
13	Mission for Ananth Development & Welfare Society
14	Triveni Educational Trust Langmeidong
15	Balaji Heart Hospital and Diagnostic Centre
16	Development of Education Environment parity and awareness movement society (DEEPAM)
17	Bal Vikas Mahila Sewa Sansthan
18	Yogesh Rural Cancer Research & Relief Society, Ahmednagar
19	Shyama Memorial Welfare Society
20	BTL Educational Trust For Rural Development
21	Muskan Sansthan Choubisa Samaj Ka Nohra
22	Fazlani Aishabai & Haji Abdul Latit Charitable Trust
23	Our Sahara Foundation
24	The Konkan Muslim Education Society
25	Manav Kalyan Trust

26	Param Shakti Peeth
27	Snehalaya, Ahmednagar
28	Chil Chil Asain Mission Society (CHAMS)
29	Shrimad Rajchandra Sarvamangal Trust
30	The Muslim Ambulance Society
31	Narishakti Mahila Samiti
32	Sri Hara Kasturi Memorial Trust

NOTIFICATION NO. 57/2016 [DATED 14 JULY 2016]

In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2016-2017.

Explanation.- For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

- (i) purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and
- (ii) average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.

NOTIFICATION NO. 58/2016

S.O. It is hereby notified for general information that the organization **M/s Indian Institute of Science Education and Research, Mohali (PAN:- AAAA11781K)** has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), **from Assessment year 2016-2017 and onwards** under the category of "**University, College or other Institution**" engaged in research activities subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (iii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain **separate books of accounts** in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;
- (iv) The approved organization shall maintain a **separate statement of donations** received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

3. The Central Government shall withdraw the approval if the approved organization:-

- (a) fails to maintain **separate books of accounts** referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5E of the said Rules.

NOTIFICATION NO.59/2016

In exercise of the powers conferred by section 187 of the Finance Act, 2016 (28 of 2016), the Central Government hereby amends the notification of the Ministry of Finance (Department of Revenue), notification number S.O.1830(E) dated the 19th May, 2016, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) dated the 19th May, 2016.

In the said notification, for clause (ii), the following clause shall be substituted, namely:-
“(ii) the date on or before which the tax and surcharge is payable under section 184, and the penalty is payable under section 185 in respect of undisclosed income shall be as follows, namely:-
(a) the 30th day of November, 2016, for an amount not less than twenty-five per cent. of such tax, surcharge and penalty;
(b) the 31st day of March, 2017, for an amount not less than fifty per cent. of such tax, surcharge and penalty as reduced by the amount paid under clause (a);
(c) the 30th day of September, 2017, for the whole amount payable under section 184 and 185 as reduced by the amounts paid under clause (a) and (b);”.

NOTIFICATION NO.61/2016

The Central Govt. hereby notifies the following district of states mentioned below as backward areas under the first proviso to clause (iia) of sub-section of section 32 and sub-section (1) of section 32D of the said Act, namely:

State of Telangana				
Adilabad	Nizamabad	Karimnagar	Warangal	Medak
Mehbubnagar	Rangareddy	Nalgoda	Khammam	

State of West Bengal				
South 24 Parganas	Bankura	Birbhum	Dakshin Dinajpur	Uttar Dinajpur
Jalpaiguri	Malda	East Medinipur	West Medinipur	Murshidabad
Purulia				

State of Bihar				
Arwal	Banka	Begusarai	Bhagalpur	Buxar
Gopalganj	Khagaria	Madhepura	Munger	West Champaran
East Champaran	Saharsa	Sheikhpura	Sitamarhi	Siwan

NOTIFICATION NO. 62/2016 [F. NO. 503/09/2009-FTD-I] /SO 2488(E) : AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF SAINT KITTS AND NEVIS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas, an Agreement between the Government of the Republic of India and the Government of Saint Kitts and Nevis was signed at New York on the 11th November, 2014 (hereinafter referred to as the said Agreement);

And whereas, the date for the entry into force of the said Agreement is the 2nd day of February, 2016 being the date of the later of the notifications of the completion of the procedures as required by the respective laws for entry into force of the said Agreement, in accordance with the provisions of article 13 of the said Agreement.

And whereas, paragraph 2 of the article 13 of the said Agreement provides that the provisions of the said Agreement shall have effect forthwith from the date for the entry into force;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the Agreement between the Government of the Republic of India and the Government of Saint Kitts and Nevis for the Exchange of Information relating to taxes, as set out in the said agreement, appended as Annexure hereto, shall be given effect to in the Union of India with effect from the 2nd day of February, 2016.

NOTIFICATION NO. 63/2016 [F. NO. 196/30/2015-ITA-I] / SO 2527(E): SECTION 10(46) OF THE INCOME-TAX ACT, 1961 - EXEMPTION - STATUTORY BODY/AUTHORITY / COMMISSION - NOTIFIED BODY OR AUTHORITY

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, Kerala Headload Workers Welfare Board, a body constituted by Government of Kerala, in respect of the following specified income arising to that Board, namely:-

- a) levy collected under the Kerala Headload Workers Act, 1978 (20 of 1980) Kerala Headload Workers rules 1981 and schemes there under;
- b) registration fees collected from members registered with the board as beneficiaries;
- c) amount received in the form of grants-in-aid and loan from Government;
- d) interest income received from investment;
- e) sums received as deposit from employers as per Para 27 of Kerala Headload Workers (regulation of employment and welfare) Scheme 1983 formulated under section 13 of the Kerala Headload Workers Act, 1978 (20 of 1980);
- f) contribution from the members as defined in the Kerala Headload Workers Act, 1978 (20 of 1980) Kerala Headload Workers rules 1981 and schemes there under;
- g) interest on loans and advances given to staff of the board and workers; and
- h) sums received as wages from employers as per Para 24(a) and 24(b) of Kerala Headload Workers (regulation of employment and welfare) Scheme 1983 formulated under section 13 of the Kerala Headload Workers Act, 1978 (Kerala Act No.20 of 1980).

This notification shall be effective subject to the conditions that Kerala Headload Workers Welfare Board-

- a) shall not engage in any commercial activity;
- b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been apply for the Financial Year 2014-15 and shall apply with respect to the Financial Years 2015-16, 2016-17, 2017-18 and 2018-19.

NOTIFICATION 64/2016

S.O. It is hereby notified for general information that the organization **M/s Indian Institute of Science Education and Research, Pune (PAN:- AAAA11546E)** has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), **from Assessment year 2017-2018 and onwards** under the category of **“University, College or other Institution”** engaged in research activities subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain **separate books of accounts** in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;
- (iv) The approved organization shall maintain a **separate statement of donations** received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:-

- (a) fails to maintain **separate books of accounts** referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5E of the said Rules.

NOTIFICATION NO. 65/2016

In exercise of the powers conferred by sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Micro Units Development & Refinance Agency Limited (MUDRA) for the purposes of sub-section (3) of said section.

NOTIFICATION NO. 66/2016

In exercise of the powers conferred by sub-section (1B) of section 139 of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued vide S.O. 1281(E) dated the 27th July, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 27th July, 2007, namely:-

In the said notification, in para 5, in clause (1), for sub-clauses (c) and (d), the following sub-clauses shall be substituted, namely:-

- “(c) a firm of Chartered Accountants or Company Secretaries or Cost Accountants or Advocates, if the firm has been allotted a permanent account number; or
- (d) a Chartered Accountant or Company Secretary or Cost Accountant or Advocate or Tax Return Preparer, if he has been allotted a permanent account number; or”.

NOTIFICATION NO. 68/2016

Whereas, a Protocol amending the agreement between the Government of the Republic of India and the Government of Mauritius, signed on 24th August, 1982 for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and for the encouragement of mutual trade and investment, (hereinafter referred to as the said Protocol) as set out in the Annexure to this notification, was signed at Mauritius on the 10th day of May, 2016;

And whereas, the said Protocol entered into force on the 19th day of July, 2016, being the date of the later of the notifications of the completion of the procedures as required by the respective laws for entry into force of the said Protocol, in accordance with paragraph 1 of Article 9 of the said Protocol;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Protocol, as annexed hereto as Annexure, shall be given effect to in the Union of India, in accordance with Article 9 of the said Protocol.

NOTIFICATION NO. 70/2016: INCOME DECLARATION SCHEME (SECOND AMENDMENT) RULES, 2016

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 199 of the Finance Act, 2016 (28 of 2016), the Central Board of Direct Taxes, makes the following rules further to amend the Income Declaration Scheme Rules, 2016 (hereinafter referred to as the principal rules) namely:-

- 1) These rules may be called the Income Declaration Scheme, (Second Amendment) Rules, 2016.
- 2) These rules shall come into force from the date of their publication in the Official Gazette.

In the principal rules, in rule 4, in sub-rule (5), after the words “submission of proof of”, insert the words “full and final”.

In the principal rules, in Form-2, after the table, for the portion beginning with the words “The declarant is hereby directed” and ending with the words “shall be deemed never to have been made.” the following shall be substituted, namely:-

“The declarant is hereby directed to make the payment of sum payable as per column (5) of the above table, as specified below:-

- I. an amount not less than twenty-five per cent. of the sum payable on or before 30th day of November, 2016;
- II. an amount not less than fifty per cent. of the sum payable as reduced by the amount paid under clause (i) above on or before 31st day of March, 2017;
- III. the whole of the sum payable as reduced by the amount paid under clause (i) and (ii) above on or before 30th day of September, 2017.

In case of non-payment of the amount as specified above, the declaration under Form-1 shall be treated as void and shall be deemed never to have been made.”.

NOTIFICATION NO. 71/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, National Skill Development

Corporation, a body constituted by Central Government, in respect of the following specified income arising to that Corporation, namely:-

- a) long-term capital gain out of investment in an organisation for skill development;
- b) dividend and royalty from skill development venture supported or funded by National Skill Development Corporation;
- c) interest on loans to Institutions for skill development;
- d) interest earned on fixed deposits with banks; and
- e) amount received in the form of Government grants.

This notification shall be effective subject to the conditions that National Skill Development Corporation,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been apply with respect to the Financial Years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

NOTIFICATION NO. 72/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, Tamil Nadu Electricity Regulatory Commission, a body constituted by Government of Tamil Nadu, in respect of the following specified income arising to that Commission, namely:-

- a) amount received in the form of government grants;
- b) fees levied under clause (g) of sub-section (1) of Section 86 read with Section 181 of the Electricity Act, 2003;
- c) penalties levied u/s 146 of the Electricity Act, 2003;
- d) interest income earned on government grants; and
- e) interest income earned on fee/revenue received under the Electricity Act, 2003.

This notification shall be effective subject to the conditions that Tamil Nadu Electricity Regulatory Commission,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been apply for the period 01.06.2011 to 31.03.2012 and financial years 2012-13, 2013-14, 2014-15 and 2015-16.

NOTIFICATION NO. 73 /2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, Uttarakhand Environment Protection and Pollution Control Board, a body constituted by Government of Uttarakhand, in respect of the following specified income arising to that Board, namely:-

- (a) consent fee
- (b) no objection certificate fee
- (c) bio medical waste fee

- (d) hazardous fee
- (e) stack/analysis fee
- (f) bank guarantee forfeited
- (g) income against RTI application charges.
- (h) reimbursement of the expense received from Central Pollution Control Board towards National Air Monitoring Programmes
- (i) interest from savings accounts & FDRs
- (j) public hearing fee
- (k) interest from house loan advance to staff and
- (l) income by sale of old scrap items and tender fee etc.

This notification shall be effective subject to the conditions that Uttarakhand Environment Protection and Pollution Control Board,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been apply for the Financial Year 2014-15 and shall apply with respect to the Financial Years 2015-16, 2016-17, 2017-18 and 2018-19.

NOTIFICATION NO. 74 /2016 - INCOME DECLARATION SCHEME (THIRD AMENDMENT) RULES, 2016

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 199 of the Finance Act, 2016 (28 of 2016), the Central Board of Direct Taxes, makes the following rules further to amend the Income Declaration Scheme Rules, 2016 (hereinafter referred to as the principal rules) namely:-

1. These rules may be called the Income Declaration Scheme (Third Amendment) Rules, 2016.
2. These rules shall come into force from the date of their publication in the Official Gazette.

In the principal rules, in rule 3, in sub-rule (1), in clause (d), after sub-clause (II) following shall be inserted, namely:-

‘Provided that where the acquisition of immovable property by the declarant is evidenced by a deed registered with any authority of a State Government, the fair market value of such property shall, at the option of the declarant, may be taken on the stamp duty value as increased by the same proportion as Cost Inflation Index for the year 2016-17 bears to the Cost Inflation Index for the year in which the property was registered:

Provided further that where the immovable property was acquired before the 1st day of April, 1981, the provisions of the first proviso shall have effect as if for the words “stamp duty value”, the words “the fair market value of the property as on 1st day of April, 1981 on the basis of the valuation report obtained by the declarant from a registered valuer”, and for the words “Cost Inflation Index for the year in which the property was registered”, the words “Cost Inflation Index for the year 1981-82” had been substituted.

Explanation- For the purposes of this clause,-

- (i) “stamp duty value” means the value adopted or assessed by any authority of the State Government for the purposes of payment of stamp duty in respect of an immovable property;
- (ii) “Cost Inflation Index” means such index as notified under clause (v) of Explanation to section 48 of the Income-tax Act, 1961.’

NOTIFICATION NO. 75/2016 -INCOME-TAX (21ST AMENDMENT) RULES, 2016

In exercise of the powers conferred by sub-section (1E) of section 206C read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. These rules may be called the Income-tax (21st Amendment) Rules, 2016.
2. They shall come into force on the date of their publication in the Official Gazette.

In the Income-tax Rules, 1962 (hereafter referred to as the said rules), after rule 37CA and before 37D, the following rule shall be inserted, namely:—

“Class or classes of buyers to whom provisions of sub-section (1D) of section 206C shall not apply.

37CB. (1) The provisions of sub- section (1D) of section 206C in relation to sale of any goods (other than bullion or jewellery) or providing any service shall not apply to the following class or classes of buyers , namely:—

- (i) Government;
- (ii) embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State;
- (iii) institutions notified under United Nations (Privileges and Immunities) Act, 1947”.

NOTIFICATION NO. 76/2016: SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR EXCHANGE OF INFORMATION WITH RESPECT TO TAXES WITH MALDIVES

Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Maldives for the Exchange of Information with respect to Taxes (hereinafter referred to as the said Agreement) as set out in the Annexure to this notification, was signed at New Delhi on the 11th day of April, 2016;

And whereas, the said Agreement entered into force on the 2nd day of August, 2016 being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 12 of the said Agreement;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement, as annexed hereto as Annexure, shall be given effect to in the Union of India, in accordance with Article 12 of the said Agreement.

NOTIFICATION NO. 77/2016 : SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION OF INCOME DERIVED FROM INTERNATIONAL AIR TRANSPORT WITH FOREIGN COUNTRIES - MALDIVES

Whereas, an Agreement entered into between the Government of the Republic of India and the Government of the Republic of Maldives for Avoidance of Double Taxation of Income Derived From International Air Transport was signed at New Delhi on the 11th day of April, 2016 as set out in the Annexure to this notification (hereinafter referred to as the said Agreement);

And whereas, in accordance with paragraph 2 of Article 6 of the said Agreement, the said Agreement entered into force on the 1st day of August, 2016, being the first day of the second month following the

month in which later of the notifications of the completion of the procedures as required by the respective laws for entry into force of the said Agreement is given;

And whereas, clause (i) of paragraph 3 of Article 6 of the said Agreement provides that the provisions of the said Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which the Agreement enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement, as annexed hereto, shall be given effect to in the Union of India.

NOTIFICATION NO. 78/2016: SECTION 35(1)(II) OF THE INCOME-TAX ACT, 1961 - SCIENTIFIC RESEARCH EXPENDITURE - APPROVED SCIENTIFIC RESEARCH ASSOCIATIONS OR INSTITUTIONS - RESCISSION OF NOTIFICATION NO. SO 2428 [NO.229/2007 (F. NO. 203/29/2005/ITA-II)], DATED 21-8-2007

S.O. 2883(E).—In exercise of the powers conferred under clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962, the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue number 229/2007 dated 21st August, 2007 published in the Gazette of India, Part II, Section 3, Subsection (ii) vide S.O. 2428 dated 21st August, 2007 with effect from 1st April, 2004 and shall be deemed that the said notification has not been issued for any tax benefits under the Income-tax Act, 1961 or any other law of the time being in force.

NOTIFICATION NO. 79/2016

S.O. 2882(E).—In exercise of the powers conferred under clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962, the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue number 35/2008 dated 14th March, 2008 published in the Gazette of India, Part II, Section 3, Subsection (ii) vide S.O. 798 dated 14th March, 2008 with effect from 1st April, 2007 and shall be deemed that the said notification has not been issued for any tax benefits under the Income-tax Act, 1961 or any other law of the time being in force.

NOTIFICATION NO. 80/2016: SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR EXCHANGE OF INFORMATION WITH FOREIGN COUNTRIES - SEYCHELLES

Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Seychelles for the Exchange of Information with respect to Taxes (hereinafter referred to as the said Agreement) as set out in the Annexure to this notification, was signed at New Delhi on the 26th day of August, 2015;

And whereas, the said Agreement entered into force on the 28th day of June, 2016 being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 12 of the said Agreement;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement, as annexed hereto as Annexure, shall be given effect to in the Union of India, in accordance with Article 12 of the said Agreement.

NOTIFICATION NO. 81/2016

S.O. 2911(E).—In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Government hereby notifies that no deduction of tax shall be made from payments of the nature specified in section 193 or section 194A or section 194-I of the said Act to the Tirumala Tirupati Devasthanams, Tirupati, Andhra Pradesh.

NOTIFICATION NO. 82/2016

S.O. 2961(E). In exercise of the powers conferred under clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962, the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue number 4/2010 dated 28.01.2010 published in the Gazette of India, Part II, Section 3, Subsection (ii) dated 28th of January, 2010 vide S. O. 348 with effect from 1st April, 2007 and shall be deemed that the said notification has not been issued for any tax benefits under the Income-tax Act, 1961 or any other law of the time being in force.

NOTIFICATION NO. 83/2016

In exercise of the powers conferred by clause (47) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies M/s. India Infradebt Limited as an infrastructure debt fund for the purposes of the said clause, for the assessment year 2013-14 and subsequent assessment years.

This notification shall be subject to the following conditions, namely:-

- i. that the infrastructure debt fund shall conform to and comply with the provisions of the Income-tax Act, 1961 and Rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India in this regard;
- ii. that the infrastructure debt fund shall file its return of income as required by sub-section 4C of section 139 on or before the due date.

NOTIFICATION NO. 85 /2016

In exercise of the powers conferred by section 32 and section 32AD of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following districts of the State of Andhra Pradesh as backward areas under the first proviso to clause (iia) of sub-section (1) of section 32 and sub-section (1) of section 32AD of the said Act, namely:—

1. Anantapur
2. Chittoor
3. Cuddapah
4. Kurnool
5. Srikakulam
6. Vishakhapatnam
7. Vizianagaram

NOTIFICATION NO. 86/2016 :SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) NOTIFIED UNDER SECTION 145(2) - RESCISSION OF NOTIFICATION NO. SO 892(E), DATED 31-3-2015

In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961(43 of 1961), the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), vide notification number S.O. 892(E) dated the 31st March, 2015, except as respects things done or omitted to be done before such rescission.

NOTIFICATION NO. 87/2016 : SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - REVISED INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) NOTIFIED UNDER SECTION 145(2)

In exercise of the powers conferred by sub-section (2) of section 145 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to this notification to be followed by all assesseees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

This notification shall apply to the assessment year 2017-18 and subsequent assessment years.

Refer Annexure weblink:

<http://www.incometaxindia.gov.in/communications/notification/notification872016.pdf>

NOTIFICATION NO. 89/2016

S.O. 3145(E).— In exercise of the powers conferred by clause (iii) of Explanation to section 35ABA and section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby, makes the following rules further to amend the Income-tax Rules, 1962, namely:—

- (1) These rules may be called the Income-tax (24th Amendment) Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, after rule 6, the following rule shall be inserted, namely:—

'6A.Expenditure for obtaining right to use spectrum for telecommunication services.— (1) For the purpose of section 35ABA, the term "payment has actually been made" shall mean,—

- (a) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make full upfront payment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;
- (b) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make deferred

payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

(2) In case of deferred payment referred to in clause (b) of sub-rule (1), where there is failure by the assessee to comply with any of the conditions specified by the scheme of the Department of Telecommunications, Government of India and Department of Telecommunications terminates the allotment or assignment of spectrum, the Assessing officer shall, in exercise of power vested in him under sub-section (3) of section 35ABA shall re-compute the total income of the assessee for the previous year in which the deduction has been claimed and granted to him by deeming that,—

- (i) the total amount of spectrum fee paid up to the date of termination is the amount of “payment actually been made”;
- (ii) the spectrum was in force up to the date of its termination for the purpose of computing “relevant previous year”;

NOTIFICATION NO. 92/2016

In exercise of the powers conferred by clause (b) of section 13B, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

- 1) These rules may be called the Income-tax (27th Amendment) Rules, 2016.
- 2) They shall come into force on the date of their publication in the Official Gazette.

In the Income-tax Rules, 1962, in rule 17CA, in sub-rule (4),-

- (i) in clause (a), the word “and” occurring at the end shall be omitted;
- (ii) after clause (b), the following shall be inserted, namely:-
“(c) from a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013); and
(d) from a foreign source as defined in clause (j) of section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010).”.

NOTIFICATION NO. 93/2016

In exercise of the powers conferred by Explanation 5 to clause (19AA) of section 2 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that the reconstruction or splitting up of a company which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger if the following conditions are fulfilled, namely:

- i. that such reconstruction or splitting up has been made to transfer any assets of the demerged company to the resulting company to give effect to the conditions mentioned in the Share Holders’ Agreement and Share Purchase Agreement; and
- ii. that the resulting company is a public sector company.

NOTIFICATION NO. 94 /2016 : AMENDMENT OF INCOME TAX RULES - PRESCRIBING MANNER OF DETERMINATION OF AMOUNT RECEIVED BY THE COMPANY IN RESPECT OF SHARE - SECTION 115QA (NOTIFICATION NO. 94/2016)

In exercise of the powers conferred by section 115QA read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: -

- 1) These rules may be called the Income-tax (28th Amendment), Rules, 2016.
- 2) They shall come into force from the 1st June, 2016.

In the Income-tax Rules, 1962, after PART-VII B, the following part shall be inserted, namely: -

‘PART VII-BA

Special Provisions Relating to Tax on Distributed income of Domestic Company for Buy-Back of Shares

40BB. Amount received by the company in respect of issue of share. (1) For the purposes of clause (ii) of the Explanation to sub-section (1) of section 115QA, the amount received by a company in respect of the share issued by it, being the subject matter of buy-back referred to in the said section, shall be determined in accordance with this rule.

(2) Where the share has been issued by a company to any person by way of subscription, amount actually received by the company in respect of such share including any amount actually received by way of premium shall be the amount received by the company for issue of such share.

(3) Where the company had at any time, prior to the buy-back of the share, returned any sum out of the amount received in respect of such share the amount as reduced by the sum so returned shall be the amount received by the company for issue of said share:

Provided that if the sum or any part of it so returned was chargeable to additional income- tax under section 115-O and the company has paid such additional income tax then such sum or part thereof, as the case may be, shall not be reduced.

(4) Where the share has been issued by a company under any plan or scheme under which an employees’ stock option has been granted or as part of sweat equity shares, the fair market value of the share as computed in accordance with sub-rule (8) of rule 3, to the extent credited to the share capital and share premium account by the company shall be deemed to be the amount received by the company for issue of said share:

Explanation - For the purposes of this sub-rule the expression “sweat equity shares” shall have the meaning assigned to it in clause (b) of the Explanation to sub-clause (vi) of clause (2) of section 17.

(5) Where the share has been issued by a company being an amalgamated company, under a scheme of amalgamation, in lieu of the share or shares of an amalgamating company, then, the amount received by the amalgamating company in respect of such share or shares determined in accordance with this rule, shall be deemed to be the amount received by the amalgamated company in respect of the share so issued by it.

(6) The amount received by a company, being a resulting company in respect of shares issued by it under a scheme of demerger, shall be the amount which bears the amount received by the demerged company

in respect of the original shares determined in accordance with this rule in the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

(7) The amount received by the demerged company in respect of the original shares in the demerged company shall be deemed to have been reduced by the amount as so arrived under sub-rule (6).

(8) Where the share has been issued or allotted by the company as part of consideration for acquisition of any asset or settlement of any liability then the amount received by the company for issue of such share shall be determined in accordance with the following formula-

Amount received = A/B

Where, A= an amount being lower of the following amounts-

(a) the amount which bears to the fair market value of the asset or the liability, as determined by a merchant banker, the same proportion as the part of consideration being paid by issue of shares bears the total consideration;

(b) the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company;

B= the number of shares issued by the company as part of consideration:

Explanation - For the purposes of this sub-rule, the term “merchant banker” shall have the meaning assigned to in sub-clause (b) of clause (iv) of sub-rule (8) of rule 3.

(9) Where the shares have been issued or allotted by a company on succession or conversion, as the case may be, of a firm into the company or succession of sole proprietary concern by the company, then the amount received by the company for issue of shares shall be determined in accordance with the following formula-

Amount received = (A-B)/C

A= book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset;

Explanation -For determining book value of the assets, any change in the value of the assets consequent to their revaluation shall be ignored.

B= book value of liabilities shown in the balance-sheet, but does not include the following amounts, namely:-

- (a) capital, by whatever name called, of the proprietor or partners of the firm, as the case may be;
- (b) reserves and surpluses, by whatever name called, including balance in profit and loss account;
- (c) any amount representing provision for taxation, other than amount of tax paid, as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (d) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (e) any amount representing contingent liabilities,

C= number of shares issued on conversion or succession.

(10) Where the share has been issued or allotted, without any consideration, on the basis of existing shareholding in the company, the consideration in respect of such share shall be deemed to be “Nil”.

(11) Where the shares have been issued on conversion of preference shares or bond or debenture, debenture-stock or deposit certificate in any form or warrants or any other security issued by the company, the amount received by the company in respect of such instrument as so converted.

(12) Where the share being bought back is held in dematerialised form and the same cannot be distinctly identified, the amount received by the company in respect of such share shall be the amount received for the issue of share determined in accordance with this rule on the basis of the first-in-first-out method.

(13) In any other case, the face value of the share shall be deemed to be the amount received by the company for issue of the share.

NOTIFICATION NO. 98 /2016

In exercise of the powers conferred by sub-section (2) of section 1 of the Benami Transaction (Prohibition) Amendment Act, 2016 (43 of 2016), the Central Government hereby appoints the 1st day of November, 2016 as the date on which provisions of the said Act shall come into force.

NOTIFICATION NO. 99 /2016

In exercise of the powers conferred by section 68 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby makes the rules called the Prohibition of Benami Property Transactions Rules, 2016 which shall come into force on the 1st day of November, 2016.

Refer weblink for the detailed Rules:

http://www.incometaxindia.gov.in/communications/notification/notification99_2016.pdf

NOTIFICATION NO. 101 /2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, Bihar Electricity Regulatory Commission, a body constituted by the State Government of Bihar, in respect of the following specified income arising to that Commission, namely:-

- (a) amount received in the form of government grants;
- (b) amount received as licence fee from licensees in electricity;
- (c) amount received as application processing fee; and
- (d) interest earned on government grants and fee received.

This notification shall be effective subject to the conditions that Bihar Electricity Regulatory Commission,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- (c) shall file returns of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

This notification shall be applicable for the financial years 2016-17 to 2020-21.

NOTIFICATION NO.102/2016

Whereas the annexed Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [hereinafter referred to as said "Protocol"] shall enter into force on the 29th day of October, 2016 in accordance with paragraph 1 of Article 4 of the said Protocol;

Now, therefore, in exercise of the powers conferred by Section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of said Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income shall be given effect to in the Union of India with effect from the 29th day of October, 2016

NOTIFICATION NO. 103/2016

In exercise of the powers conferred by section 32, section 115BA and section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby, makes the following rules further to amend the Income-tax Rules, 1962, namely:-

(1) These rules may be called the Income-tax (29th Amendment) Rules, 2016.

(2) In the Income-tax Rules, 1962 (here after referred to as the principal rules),-

(a) in rule 5, after sub-rule (1), the following proviso shall be inserted with effect from 1st day of April, 2016, namely:-

"Provided that in case of a domestic company which has exercised option under sub-section (4) of section 115BA, the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets entitled to more than forty per cent. shall be restricted to forty per cent. on the written down value of such block of assets."

(b) in the New Appendix I, in the Table, in the second column, for the figures " '50', '60', '80', '100' ", wherever they occur, the figure "40" shall be substituted with effect from the 1st day of April, 2017.

NOTIFICATION NO. 105/2016

In exercise of the powers conferred by section 295 read with sub-section (2) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

(1) These rules may be called the Income-tax (31st Amendment) Rules, 2016.

(2) They shall come into force on the date of publication in the Official Gazette.

In the Income-tax Rules, 1962, after rule 12D, the following rule shall be inserted, namely:-

"12E. Prescribed authority under sub-section (2) of section 143 - The prescribed authority under sub-section (2) of section 143 shall be an income-tax authority not below the rank of an Income-tax Officer who has been authorised by the Central Board of Direct Taxes to act as income-tax authority for the purposes of sub-section (2) of section 143."

NOTIFICATION NO. 106/2016

In exercise of the powers conferred by section 295 read with section 9A of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. These rules may be called the Income-tax (32nd Amendment) Rules, 2016.
2. In the Income-tax Rules, 1962, in rule 10V,-

(i) in sub-rule (1), in clause (c), after the words “has been entered into”, the words “or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf” shall be inserted with effect from the date of their publication in the Official Gazette;

(ii) after sub-rule (10), the following sub-rules shall be inserted, and shall be deemed to have been inserted with effect from the 15th day of March, 2016, namely:-

“(11) For the purposes of clause (a) of sub-section (4) of section 9A, a fund manager shall not be considered to be a connected person of the fund merely for the reason that the fund manager is undertaking fund management activity of the said fund.

(12) For the purposes of clause (d) of sub-section (4) of section 9A, any remuneration paid to the fund manager, by the fund, which is in the nature of fixed charge and not dependent on the income or profits derived by the fund from the fund management activity undertaken by the fund manager shall not be included in the profits referred to in the said clause, if the conditions specified in clause (m) of sub-section (3) of section 9A are satisfied and such fixed charge has been agreed by the fund manager in writing at the beginning of the relevant fund management activity .”.

NOTIFICATION NO. 107/2016

In exercise of the powers conferred by section 295 read with sub-section (4) of section 115TCA of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

- (1) These rules may be called the Income-tax (33rd Amendment) Rules, 2016.
- (2) It shall be deemed to have come into force from the 1st day of June, 2016.

In the Income-tax Rules, 1962, (hereinafter the said rules), after rules 12CB, the following rule shall be substituted, namely:-

“12CC. Statement under sub-section (4) of section 115TCA. (1) The statement of income distributed by a securitisation trust to its investor shall be furnished to the Principal Commissioner or the Commissioner of Income-tax within whose jurisdiction the principal office of the securitisation trust is situated, by 30th day of November of the financial year following the previous year during which such income is distributed:

Provided that the statement of income distributed shall also be furnished to the investor by 30th day of June of the financial year following the previous year during which the income is distributed.

The statement of income distributed shall be furnished under sub-section (4) of section 115TCA by the securitisation trust to-

(i) the Principal Commissioner or the Commissioner of Income-tax referred to in sub-rule (1), in Form No. 64E, duly verified by an accountant in the manner indicated therein and shall be furnished electronically under digital signature;

(ii) the investor in Form No. 64F, duly verified by the person distributing the income on behalf of the securitisation trust in the manner indicated therein.

The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for filing of Form No. 64E and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements so furnished.

NOTIFICATION NO. 108/2016

In exercise of the powers conferred by clause (ii) of Explanation 1 to clause (42A) of section 2, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

- (1) These rules may be called the Income-tax (34th Amendment) Rules, 2016.
- (2) They shall come into force from the 1st day of June, 2016.

In the Income-tax Rules, 1962, in rule 8AA, after sub-rule (2), the following sub-rule shall be inserted, namely:-

- “(3) In the case of a capital asset, declared under the Income Declaration Scheme, 2016,-
- (i) being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government; and
 - (ii) in any other case, the period for which such asset is held shall be reckoned from the 1st day of June, 2016.”

NOTIFICATION NO. 109/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961) the Central Government hereby notifies for the purposes of the said clause, the ‘Chandigarh Building and Other Construction Workers Welfare Board’, a board constituted by the Administrator, Union Territory, Chandigarh in respect of the following specified income arising to the said board, as follows :-

- i) Proceeds of the Cess collected under the Building & Other Construction Workers Welfare Cess Act, 1996 (28 of 1996) and rules thereunder.
- ii) Interest income received from investment.

This notification shall be applicable for the above specified income of the Chandigarh Building and Other Construction Workers Welfare Board for the financial year 2015-16 to 2019-20.

The Notification shall be effective subject to the following conditions, namely:-

- (a) the ‘Chandigarh Building and Other Construction Workers Welfare Board’ does not engage in any commercial activity;
- (b) the activities and the nature of the specified income of ‘Chandigarh Building and Other Construction Workers Welfare Board’ remain unchanged throughout the financial year ; and
- (c) the ‘Chandigarh Building and Other Construction Workers Welfare Board’ files return of income in accordance with the provision of clause (g) of sub section (4C) of section 139 of the said Act.

NOTIFICATION NO. 110/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the 'Maharashtra Electricity Regulatory Commission', a Commission constituted by the State Government of Maharashtra, in respect of the following specified income arising to that Commission, namely:-

1. Fees for Annual Licence;
2. Interest on Fixed Deposit and Savings Account;
3. Fees for Application / Petition filed;
4. Grants from Government of Maharashtra;
5. Fees for Documents;
6. Penalty for delayed payment of Annual Licence Fees;
7. Fees for RTI;
8. Sale of scrap.

This notification shall be applicable for the above specified income of the Maharashtra Electricity Regulatory Commission for the financial years 2015-16 to 2019-20.

This Notification shall be effective subject to the following conditions, namely:-

- (a) the 'Maharashtra Electricity Regulatory Commission' does not engage in any commercial activity;
- (b) the activities and the nature of the specified income of 'Maharashtra Electricity Regulatory Commission' remain unchanged throughout the financial years; and
- (c) the 'Maharashtra Electricity Regulatory Commission' files returns of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Act, Income-tax Act, 1961.

NOTIFICATION NO. 111/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961) the Central Government hereby notifies for the purposes of the said clause, the Bureau of Indian Standards (BIS), set up by the Bureau of Indian Standards Act, 1986 (63 of 1986) in respect of the following specified income arising to that Bureau, namely:-

- (i) Certification fee;
- (ii) Sale of standards, provided there is no profit involved; and
- (iii) Income from interest.

This notification shall be applicable for the Assessment years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

The notification shall be effective subject to the following conditions, namely:-

- (a) the Bureau of Indian Standards (BIS) does not engage in any commercial activity;
- (b) the activities and the nature of the specified income of the Bureau of Indian Standards (BIS) remain unchanged throughout the financial year; and
- (c) the Bureau of Indian Standards (BIS) files return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

NOTIFICATION NO. 112/2016

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purpose of the said clause, "Petroleum and Natural Gas Regulatory Board", a Board constituted by the Government of India, in respect of the following specified income arising to that Board, namely :—

- (i) Grant received from Central Government
- (ii) All other grants, fees, penalty charges received
- (iii) All sums received from such other sources as may be approved by the Central Government as per section 38 and 39 of the Petroleum and Natural Gas Regulatory Board Act. 2006 and
- (iv) Interest earned on deposits

This notification shall be applicable for the assessment year 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

The notification shall be subject to the conditions that Petroleum and Natural Gas Regulatory Board:-

- (a) Shall not engage in any commercial activity;
- (b) its activities and the nature of the specified income remain unchanged throughout the financial year;
- (c) it files return of income in accordance with the provision of clause (g) of sub-section (4C) of Section 139 of the said Act.

NOTIFICATION NO. 115/2016

In exercise of the powers conferred by sub-section (2) of section 199A and sub-section (1) of section 199C of the Finance Act, 2016 (28 of 2016), the Central Government hereby appoints,—

- (i) the 17th day December, 2016, as the date on which the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 comes into force; and
- (ii) the 31st day of March, 2017 as the date on or before which a person may make a declaration under sub-section (1) of the said section 199C.

NOTIFICATION NO. 116/2016

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 199R of the Finance Act, 2016 (28 of 2016), the Central Board of Direct Taxes, subject to the control of the Central Government hereby makes the following rules, namely :—

- (1) These rules may be called the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

In these rules, unless the context otherwise requires,—

- (a) “Act” means the Finance Act, 2016 (28 of 2016);
- (b) “Form” means a form appended to these rules;
- (2) The words and expressions used and not defined in these rules but defined in the Act, or the Income-tax Act, 1961 (43 of 1961) or the rules made thereunder, shall have the meanings respectively assigned to them in those Acts and rules.

Declaration of income in the form of cash or deposit in an account.-

- (1) A declaration of income in the form of cash or deposit in an account maintained with a specified entity, under sub-section (1) of section 199C shall be made in Form-1.
- (2) The declaration shall be furnished to the Principal Commissioner or the Commissioner, as the case may be, notified under sub-section (1) of section 199G,-
 - (a) electronically under digital signature; or
 - (b) through transmission of data electronically under electronic verification code; or
 - (c) in print form.

(3) If any person, having furnished a declaration under sub-rule (2), discovers any omission or any wrong statement therein, he may furnish a revised declaration on or before the date notified for filing declaration under sub-section (1) of section 199C.

(4) The Principal Commissioner or the Commissioner, as the case may be, shall issue a certificate in Form-2 to the declarant within thirty days from the end of the month in which a valid declaration under sub-section (1) of section 199C has been furnished.

(5) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the form in the manner specified in sub-rule (2) or sub-rule (3).

Explanation.—For the purposes of this rule “electronic verification code” means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

NOTIFICATION NO. 118/2016

In exercise of the powers conferred by clause (c) of section 199B of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Act), the Central Government in consultation with the Reserve Bank of India hereby notifies the following Scheme, namely:—

- (1) This Scheme may be called the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016.
- (2) It shall come into force from the 17th day of December, 2016 and shall be valid till 31st day of March, 2017.

This Scheme shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

2. Eligibility for Deposits -The deposit under this Scheme shall be made by any person who intends to declare undisclosed income under sub-section (1) of section 199C of the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

3. Form of the deposits— (1) The deposits shall be held at the credit of the declarant in Bonds Ledger Account maintained with Reserve Bank of India.

(2) A certificate of holding the deposit shall be issued to declarant in Form I.

(3) The Reserve Bank of India shall transfer the deposit received under this Scheme into the designated Reserve Fund in the Public account of the Government of India.

4. Subscription and Mode of investment in the Bonds Ledger Account—

(1) The deposits shall be accepted at all the authorised banks notified by Government of India.

(2) The deposits shall be made in multiples of rupees one hundred.

(3) The deposit under sub-section (1) of section 199F by a declarant shall not be less than twenty-five per cent. of the undisclosed income to be declared under sub-section (1) of section 199C of the Act.

(4) The entire deposit to be made under sub-section (1) of section 199F under this Scheme shall be made, in a single payment, before filing declaration under sub-section (1) of section 199C.

(5) The deposit shall be made in the form of cash or draft or cheque or by electronic transfer and shall be drawn in favour of the authorised bank accepting such deposit.

5. Effective date of deposit— The effective date of opening of the Bonds Ledger Account shall be the date of tender of cash or the date of realisation of draft or cheque or transfer through electronic transfer.

6. Applications—

(1) An application for the deposit under this Scheme shall be made in Form II clearly indicating the amount, full name, Permanent Account Number (hereinafter referred to as “PAN”), Bank Account details (for receiving redemption proceeds), and address of the declarant:

Provided that if the declarant does not hold a PAN, he shall apply for a PAN and provide the details of such PAN application along with acknowledgement number.

(2) The application under sub-paragraph (1) shall be accompanied by an amount which shall not be less than twenty-five per cent. of the undisclosed income to be declared in the form of cash or draft or cheque or through electronic transfer as provided under sub-paragraphs (3) and (4) of paragraph 4.

7. Authorised banks—

(1) Application for the deposit in the form of Bonds Ledger Account shall be received by any banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies.

(2) The authorised bank shall electronically furnish the details of deposit made in Form V to the Department of Revenue, Ministry of Finance, Government of India not later than next working day to enable the Department to verify the information of the deposit before accepting the declaration.

(3) The authorised bank shall upload the details of deposit into Reserve Bank of India’s core banking solution ‘e-kuber’.

(4) The Reserve Bank of India and authorised bank shall maintain the confidentiality of the data received in this regard.

8. Nomination—

(1) A sole holder or a sole surviving holder of a Bonds Ledger Account, being an individual, may nominate in Form III, one or more persons who shall be entitled to the Bonds Ledger Account and the payment thereon in the event of his death.

(2) Where any amount is payable to two or more nominees and either or any of them dies before such payment becomes due, the title to the Bonds Ledger Account shall vest in the surviving nominee or nominees and the amount being due thereon shall be paid accordingly. In the event of the nominee or nominees predeceasing the holder, the holder may make a fresh nomination.

(3) A nomination made by a holder of Bonds Ledger Account may be varied by a fresh nomination, or may be cancelled by giving notice in writing to the Authorised Bank in Form IV.

(4) Every nomination and every cancellation or variation shall be registered at the Reserve Bank of India through the authorised bank and shall be effective from the date of such registration.

(5) If the nominee is a minor, the holder of Bonds Ledger Account may appoint any person to receive the Bonds Ledger Account or the amount due in the event of his death.

9. Transferability— The transferability of the Bonds Ledger Account shall be limited to nominee or to the legal heir of an individual holder, in the event of his death.

10. Interest— The deposit under sub-section (1) of section 199F shall not bear any interest.

11. Tradability against Bonds.— The Bonds Ledger Account shall not be tradable.

12. Repayment— The Bonds Ledger Account shall be repayable on the expiration of four years from the date of deposit and redemption of such Bonds Ledger Account before its maturity date shall not be allowed.

13. Interpretation— The words and expressions used but not defined in this notification but defined in the Income-tax Act, 1961 (43 of 1961), the Government Securities Act, 2006 (38 of 2006) or the Finance Act, 2016 (28 of 2016) shall have the meanings respectively assigned to them in those Acts.

CIRCULARS

CIRCULAR NO. 26/2016: APPLICABILITY OF SECTION 197A(1D) AND SECTION 10(15)(VIII) OF THE INCOME-TAX ACT, 1961 TO INTEREST PAID BY IFSC BANKING UNITS (IBUS)- CLARIFICATION REGARDING

Section 197A of the Income-tax Act, 1961 provides the circumstances in which deduction of tax at source is not required to be made under Chapter XVII of the Act. Sub-section (1D) of this section provides that deduction is not required to be made by an Offshore Banking Unit on interest paid on deposit made on or after 1.4.2005 by a non-resident or a person not ordinarily resident in India, or on borrowing on or after 1.4.2005 from such persons. Clause (viii) of sub-section (15) of section 10 provides that such interest will not be included in the total income. Offshore Banking Unit is defined in clause (u) of section 2 of the Special Economic Zones Act, 2005 as a branch of a bank located in a Special Economic Zone, which has obtained the permission under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949.

2. Representations have been received by the Central Board of Direct Taxes for clarifying the applicability of Section 197A(1D) and Section 10(15)(viii) of the Income-tax Act, 1961 in respect of interest received from IFSC Banking Units (IBUs) set up in the Special Economic Zones. The matter has been examined, and it is observed that IBUs are branches of Indian Banks or Foreign Banks having presence in India, which are established in accordance with the RBI Scheme dated 1.4.2015, in the International Finance Service Centers that are set up in within the Special Economic Zones, as per Section 18 of the Special Economic Zone Act, 2005. Thus, the IBUs fulfil the necessary criteria for being considered Offshore Banking Units as defined in clause (u) of section 2 of the Special Economic Zones Act, 2005.

3. In view of the above, the Board hereby clarifies that in accordance with the provisions of Section 197A(1D) of the Income-tax Act, 1961, tax is not required to be deducted on interest paid by such IBUs, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

CIRCULAR NO. 27/2016: CLARIFICATIONS ON THE INCOME DECLARATION SCHEME, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued three sets of FAQs vide Circular Nos. 17, 24 & 25 of 2016. In order to address further queries received from the public relating to the Scheme, following clarifications are issued –

Question No.1: *Can a declaration made under the Scheme be revised before the date of closure of the Scheme i.e. 30.09.2016?*

Answer: It is expected that the declarations made under the Scheme are filed correctly. However, a revised declaration can be filed on or before the date of closure of the Scheme provided the undisclosed income in the revised declaration is not less than the undisclosed income declared in the declaration already filed.

Question No.2: *If an undisclosed income represented in the form of an asset or otherwise pertains to a year falling beyond the time limit allowed under section 149 of the Income-tax Act, 1961 and the*

said undisclosed income is not declared under the Scheme, then as per the provisions of section 197(c) of the Finance Act, 2016, the said undisclosed income shall be treated as the income of the year in which a notice under section 148 of the Income-tax Act has been issued. The said provision is inconsistent with the existing time lines provided under the Income-tax Act for reopening a case. Please clarify?

Answer: Question No. 4 of Circular No. 24 of 2016 may be referred where the tax treatment of such income has been clarified. Since the Scheme contained in Chapter IX of the Finance Act, 2016 is a later law in time, the provisions of the Scheme shall prevail over the provisions of earlier laws.

Question No.3: The declaration made in respect of cash, investment etc. under the Scheme would result in increase in capital in the Balance Sheet in extra ordinary manner. Whether such cases of the declarants would be selected for scrutiny under the CASS for this reason?

Answer: The cases of the declarant shall not be selected for scrutiny under the CASS only on the ground that there is increase in capital in the balance sheet as a result of the declaration made under the Scheme.

Question No.4: In a case where the declarant gets the benami asset transferred in his name without payment of any monetary consideration to the benamidar, whether capital gains would be chargeable in the hands of benamidar consequent upon such transfer and whether the tax at source @ 1% would be deducted in such case?

Answer: In this case the consideration for acquisition of benami property has already been paid by the beneficial owner and the fair market value of the property has been declared by the beneficial owner under the Scheme. Since, the transfer of property from benamidar to beneficial owner is only to regularize and there will be no involvement of monetary consideration for transfer of immovable property by the benamidar in the name of the declarant, the question of capital gains in the hands of benamidar and deduction of tax at source thereon shall not arise.

Question No.5: Under what provision can a declarant be sure that the information contained in a valid declaration shall not be shared with any other law enforcement agency and also shall not be shared within the income-tax department for investigation?

Answer: Section 195 of the Act provides that provisions of section 138 of the Income-tax Act shall apply in relation to the proceedings under the Scheme. Vide notification S.O. 2322(E) dated 06.07.2016, an order has been passed by the Central Government directing that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Scheme.

Question No.6: With reference to question No. 5 issued vide Circular No. 25 of 2016, wherein it has been stated that the department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty, it may be clarified that whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31 per cent?

Answer: It is clarified that the intent of the clarification issued vide question No.5 of Circular No. 25 of 2016 was limited to conduct of enquiry by the Department. It in no way intends to modify or alter

the rate of tax, surcharge and penalty payable under the Scheme which have been clearly specified in the Scheme itself. Sections 184 & 185 of the Finance Act, 2016 unambiguously provide for payment of tax, surcharge and penalty at the rate of 45 per cent of undisclosed income. This is illustrated by the following example –

In a case a person declares Rs. 100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of Rs.45 lakh (30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of 45 lakh utilized for payment of tax, surcharge & penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect the entire undisclosed income of Rs.145 lakh, the declarant has to declare undisclosed income of Rs.145 lakh (Rs.100 lakh being the undisclosed income represented by immovable property and Rs.45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to Rs.65.25 lakh i.e., 45 per cent of Rs.145 lakh.

Question No.7: *Whether there is any time limit for the declarant under the Scheme to file Form-3?*

Answer: As per section 187(2) of the Finance Act, 2016, the time limit for filing Form-3 is same as the time limit notified for payment of tax, surcharge and penalty under the Scheme.

Question No.8: *Whether immunity from initiation of prosecution would be available to the Directors of the company or the partners of the firm in respect of the undisclosed income declared under the Scheme by the company or partnership firm, as the case may be?*

Answer: Yes, immunity to the directors or the partners, as the case may be, shall be available in respect of the undisclosed income declared under the Scheme by the company or partnership firm.

Question No.9: *Whether a person having undisclosed income in the form of an investment in immovable property in the name of his spouse can declare the fair market value of the property in his own name if the funds for acquisition of the said property were provided by such person?*

Answer: Yes.

Question No.10: *Rule 3(1)(c)(I) of the Income Declaration Scheme Rules, 2016 provides for manner of determination of fair market value of quoted shares and securities. In this context, it may be clarified that if a share is listed on more than one recognised stock exchange and the quoted price of the share as on 01.06.2016 on the recognised stock exchanges is different, then what shall be the quoted share price for determining the fair market value of such share under the Scheme?*

Answer: In such a case the quoted price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share as on 01.06.2016.

CIRCULAR NO. 28/2016: CLARIFICATION REGARDING ATTAINING PRESCRIBED AGE OF 60 YEARS/80 YEARS ON 31ST MARCH ITSELF, IN CASE OF SENIOR/VERY SENIOR CITIZENS WHOSE DATE OF BIRTH FALLS ON 1ST APRIL, FOR PURPOSES OF INCOME-TAX ACT, 1961

Higher tax exemption limits have been prescribed under the past Finance Acts for resident senior citizen taxpayers who have attained the age of sixty years. Even in such cases, the exemption limit is still higher for very senior citizens who have attained the age of eighty years. A doubt has been raised about the attainment of the aforesaid qualifying ages for availing higher exemption in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

2. The matter has been examined. Although specific provision does not exist in this regard under the Income-tax Act, 1961, the Hon'ble Supreme Court had an occasion to consider a similar issue in the case of Prabhu Dayal Sesma vs. State of Rajasthan & another 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. In this judgment, Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the preceding, the anniversary of his birthday. The observation of Hon'ble Supreme Court in para 9 of the aforesaid judgment reads as under:

"9..... At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday"

3. In view of the aforesaid judgment, the Central Board of Direct Taxes, in exercise of powers under section 119 of the Act, hereby clarifies that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of

attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria.

4. The field authorities are directed to take note of above position for ascertaining the age while computing tax liability of a taxpayer falling in 'Individual' category, being resident in India.

CIRCULAR NO. 29/2016: CLARIFICATIONS ON THE INCOME DECLARATION SCHEME, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued three sets of FAQs vide Circular Nos. 17, 24, 25 & 27 of 2016. In order to address further queries received from the public relating to the Scheme, following clarifications are issued.-

Question No.1: In certain cases, the undisclosed income might be reflected in creditors or other liability which may be fictitious. Whether in such cases, the assessee can disclose only such fictitious liability as it may not be possible to link it to any specific asset or investment?

Answer: In a situation where loans, creditors, advances received, share capital, payables etc. are disclosed in the audited balance sheet but are fictitious in nature, and such liabilities cannot be directly linked to acquisition of a particular asset in the balance sheet, then such fictitious liabilities can be disclosed under the Scheme as such without linking the same with the investment in any specific asset. However, in cases where there is a direct link between the fictitious liability and the asset acquired then the amount to be declared shall be the fair market value of the acquired asset as on 01.06.2016.

Question No.2: Whether the amount declared under the Scheme for an earlier assessment year can be taken into account to explain the transaction(s) in the assessment proceedings for subsequent assessment year(s)?

Answer: As per section 189 of the Finance Act, 2016, any declaration made under the Scheme shall not affect finality of completed assessments. However, in an assessment proceeding before the Assessing Officer for an assessment year subsequent to the year for which the income is declared under the Scheme, the income declared for an earlier assessment year can be taken into account to explain the transactions provided there is a nexus between the income declared and the transactions of the subsequent assessment year.

Question No.3: Whether the valuation report of assets declared under the Scheme shall be called for by the department for any enquiry at any time?

Answer: The valuation report from a registered valuer shall not be questioned by the department. However, the valuer is expected to furnish a true and correct valuation report in accordance with the accepted principles of valuation. In case of any misrepresentation, appropriate action as per law shall be taken against the registered valuer.

Question No.4: *Though the fair market value as on 1st June, 2016 is taxed under IDS, and such amount will be treated as cost of acquisition at the time of future sale of concerned asset, whether such treatment shall affect the character of the asset as long term or short term?*

Answer: The issue was earlier considered and it was clarified vide Circular No.17 dated 20.05.2016 that in such cases period of holding shall be deemed to begin from 01.06.2016 as the asset has been revalued on such date. However, considering the representation received from various stakeholders and the fact that this may lead to complications in calculation of capital gain at the time of sale of asset which was partly funded from undisclosed income now declared under the Scheme, the matter has been reconsidered. Accordingly, in supersession to the earlier clarification as referred above, it is clarified that the period of holding of asset declared under the Scheme shall be based on the actual date of acquisition of such asset. However, the indexation benefit in respect of the amount declared under the Scheme shall be available from 01.06.2016 only. The said situation is illustrated as below:-

Suppose Mr. 'A' purchased a house on 01.10.2011 for Rs.10 lakh and declares fair market value of the same as on 01.06.2016 under the Scheme at Rs.20 lakh. If the said house is sold on 01.10.2017 for Rs.30 lakh, the holding period for the house for purposes of computation of capital gain shall be six years i.e. from 01.10.2011 to 01.10.2017. As the holding period exceeds three years, the gains arising from such transfer shall be treated as long term capital gain. Further, the indexation benefit in this case shall be available on Rs.20 lakh from 01.06.2016 to 01.10.2017.

Question No.5: *What will be the value of immovable property to be declared under the Scheme in a case where the cost of immovable property is only partly evidenced by a registered deed and partly otherwise?*

Answer: In such a case, the option of calculating the fair market value of the immovable property based on applying the cost inflation index to stamp duty value shall be available only in respect of that part of the property the cost of which is evidenced by a registered deed. With regard to the remaining part the fair market value of the property shall be determined based on the provisions of rule 3(1)(d) of the Rules without taking into effect the proviso to the said rule. The said situation is illustrated as below:-

Suppose, Mr. 'X' purchased a piece of land in year 2004-05 for Rs.10 lakh, however the stamp duty value was Rs.15 lakh. Thereafter, in the period 2005-06 to 2007-08, Mr. 'X' constructed a two storeyed house on the said land. The amount to be declared in respect of the said property shall be (A + B) where

A= Value of land (if the assessee opts for valuation on the basis of indexation) shall be Rs.15 lakh x cost inflation index of 2016-17 / cost inflation index of 2004-05

B= Fair market value of the house (excluding value of the land) as on 01.06.2016 as determined by the registered valuer or the cost of construction whichever is higher.

Question No.6: *A declarant has already filed a declaration under the Scheme determining the value of immovable property on the basis of Income Declaration Scheme Rules, 2016 prior to their amendment vide the Income Declaration Scheme (Third Amendment) Rule notified vide CBDT Notification No. 74 dated 17.8.2016. In such a case whether the declarant can revise the declaration based on such amended rules?*

Answer: Yes, the declarant can revise the fair market value of immovable property declared in the declaration already filed on account of the amended provisions of the Income Declaration Scheme

Rules, 2016 even in a case where such revision may result in downward revision of the declared amount in respect of the immovable property.

Question No.7: *Whether the payment of amount payable under the Scheme can be made in cash to the Banks? Further, whether the amount disclosed under the Scheme can be deposited in the bank account in cash?*

Answer: Reserve Bank of India (RBI) has been requested to issue instructions to banks to allow payment of tax under the Scheme in cash. RBI has also been requested to instruct the banks to allow deposit of cash over the counter in accordance with its existing master circular No. DBOD No.Leg.BC.21/09.07.006/2014-15 dated 01.07.2014.

Question No.8: *Whether the information of cash deposits made in bank as a consequent to declaration made under the Scheme shall be picked up by FIU or reported to the income-tax department?*

Answer: It is clarified that no adverse action shall be taken against the declarant by FIU or the income-tax department solely on the basis of the information regarding cash deposit made consequent to the declaration under the Scheme.

Question No.9: *In case a trust or institution registered under section 12A of the Income-tax Act files declaration under the Scheme, whether the registration under section 12A shall be cancelled on the basis of such declaration?*

Answer: No, the registration under section 12A of the Income-tax Act shall not be cancelled solely on the basis of the information furnished in the declaration filed under the Scheme.

Question No.10: *Where a person has claimed weighted deduction, say 175%, on account of making bogus donation then what should be the amount of declaration under the Scheme?*

Answer: The declarant has to declare the amount of weighted deduction claimed in respect of bogus donation i.e. 175% of the bogus donation in this case.

Question No.11: *In a case where the return of income has not been filed for an assessment year but the time limit for filing the same has not expired under section 139 of the Income-tax Act, whether the declaration under the Scheme can be filed for such assessment year?*

Answer: The declaration for the assessment year for which the return of income has not been filed can be made under the Scheme even though the time limit for filing the return under section 139 of the Income-tax Act has not expired.

Question No.12: *In answer (b) to question No.6 of Circular No.17 of 2016 dated 20.05.2016, it has been stated that "person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted". Please clarify?*

Answer: The clause (b) of answer 6 may be read as "In case of survey operation, the person is barred from making a declaration under the Scheme in respect of the previous year in which the survey was conducted. The person is, however, eligible to make declaration in respect of an undisclosed income of any other previous year".

CIRCULAR NO. 32/2016: ENQUIRY OR INVESTIGATION IN RESPECT OF DOCUMENT/EVIDENCE RELATING TO INCOME DECLARATION SCHEME (IDS), 2016 FOUND DURING THE COURSE OF SEARCH U/S 132 OR SURVEY ACTION U/S 133A OF THE INCOME-TAX ACT, 1961

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued five sets of FAQs vide Circular Nos. 17, 24, 25, 27 & 29 of 2016. To allay apprehensions relating to the income/asset declared under the Scheme vis-à-vis search and survey action by the Income-tax Department, the following clarification is issued.

It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already filed a declaration under the Scheme, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

CIRCULAR NO. 33/2016 : CLARIFICATIONS ON THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter X of the Finance Act, 2016 (hereinafter referred to as 'the Act') provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The Direct Tax Dispute Resolution Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the stakeholders seeking further clarity on certain provisions of the Scheme. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

Question No.1: In a case an appeal was pending before CIT(Appeals) as on 29.02.2016. However, before making declaration under the Scheme the appeal is disposed of by CIT(Appeals). Is the assessee eligible to avail the Scheme?

Answer: In such a case where the appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed.

Question No.2: In a case where the appellant has filed a declaration under the Scheme or has intimated the CIT(Appeals) his intention to file declaration under the Scheme, whether the CIT(Appeals) will dispose-off the appeal?

Answer: The CIT(Appeals) have been instructed vide letter F.No.279/Misc./M-30/2016 dated 30.3.2016 that appeals where the appellants have expressed their intention to avail the Scheme should be kept pending. Further, vide letter F.No.279/Misc./M-74/2016-ITJ dated 19.07.2016, the designated authority have been instructed to obtain an endorsement from CIT(Appeals) concerned that the appeal for which declaration has been filed was pending on 29.2.2016 and has not yet been disposed. Therefore, in a case where the declaration has been made under the Scheme or an intention to avail the Scheme has been made by the appellant, the CIT(Appeals) shall not dispose the pending appeal.

Question No.3: *Appeal against quantum as well as penalty under section 271(1)(c) is pending before CIT(Appeals). If the assessee files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of penalty appeal?*

Answer: As per the Scheme, in a case where disputed tax in quantum appeal is more than Rs.10 lakh, the declarant has to pay the disputed tax, interest and 25% of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed Rs.10 lakh, the declarant is required to pay only the disputed tax & interest and there is no requirement for payment of any amount in respect of penalty leviable.

Section 205(b) of the Act provides immunity from imposition or waiver of penalty under the Income-tax Act or the Wealth-tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in section 202(I) of the Act. Hence, in both the situations (i.e. whether disputed tax in quantum appeal exceeds Rs.10 lakh or not), where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against penalty levied under section 271(1)(c) of the Income-tax Act, relating to the quantum appeal pending before the Commissioner (Appeals) shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived.

Question No.4: *Section 203(2) reads that consequent to the declaration in respect of tax arrear, the appeal pending before Commissioner (Appeals) shall be deemed to be withdrawn. From what point of time does the provision become operative?*

Answer: The appeal pending with Commissioner (Appeals) shall be deemed to be withdrawn from the date on which the certificate under section 204(1) is issued by the designated authority.

Question No.5: *The addition made in assessment has the effect of reducing the loss but penalty has been initiated under section 271(1)(c) of the Income-tax Act. Is the assessee eligible to avail the Scheme?*

Answer: The Scheme is applicable to cases where there is disputed tax. Since in the case of reduction of loss, there is no disputed tax the assessee shall not be eligible to avail the Scheme. However, if an appeal is pending before Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss, the declarant may file a declaration in respect of such penalty order.

Question No.6: *In a case the time period specified under section 249 of the Income-tax Act for filing of appeal expired on 29.2.2016. The assessee filed an appeal in this case on 5.4.2016 with a request to condone the delay in filing of appeal. The Commissioner (Appeals) condoned the delay in filing of the appeal. Is the Scheme available to the assessee in such a case?*

Answer: In condonation cases, a declarant shall be eligible for the Scheme, if:

- (i) the time limit for filing of appeal under section 249 of the Income-tax Act, 1961 has got barred by limitation on or before 29.02.2016;
- (ii) the appeal and condonation application has been filed before Commissioner (Appeals) before 01.06.2016; and
- (iii) the delay in filing of such appeal is condoned by the Commissioner (Appeals)

Hence, in the present case the Scheme is available to the assessee.

Question No.7: *In a case the Commissioner (Appeals) has given a notice of enhancement. Is such a case eligible for availing the Scheme?*

Answer: A case where notice of enhancement has been received by the declarant before the date of commencement of the Scheme i.e. 01.06.2016 shall not be eligible for the Scheme.

Question No.8: *A survey was conducted during F.Y. 2013-14. Incriminating documents relating to assessment year 2011-12 were found and assessment under section 147 of the Income-tax Act for the said year was made based on these documents and other enquiries conducted. Is the assessee's case for A.Y. 2011-12 which is pending with Commissioner (Appeals) eligible for the Scheme?*

Answer: As per section 208 of the Act, the Scheme shall not be available for assessment or reassessment on which survey conducted under section 133A of the Income-tax Act has a bearing. Hence, in the present case, A.Y. 2011-12 is not eligible for the Scheme.

Question No.9: *In a case, appeal against penalty order under section 271(1)(c) is pending before Commissioner (Appeals) and appeal against quantum addition is pending with higher appellate authority. As per the Scheme, the amount payable is 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined. What should be construed as 'total income finally determined' for computing the quantum of tax, interest and penalty payable under the Scheme? Further, what would be the effect of any variation in quantum addition as a result of appellate order(s) passed subsequent to filing of declaration?*

Answer: In case of an appeal relating to penalty under section 271(1)(c), the amount payable under the Scheme is 25% of the penalty amount and also the tax and interest payable on the total income finally determined. For this purpose the total income finally determined shall be the total income as determined after giving effect to the last appellate order passed on or before the date of filing declaration under the Scheme. Any variation to the total income as a result of any appellate order passed subsequent to the date of declaration shall be ignored for the purposes of computing the amount of penalty payable under the Scheme.

Question No.10: *Where certain income has been charged to tax in the hands of two different persons or where it has been charged to tax in the case of same person in two different assessment years, one on substantive basis and the other on the protective basis, will the declarant or the other person get advantage in respect of additions made both substantively and protectively?*

Answer: The assessee is advised to make declarations in cases or for assessment years where the additions are made on substantive basis. The protective demand is not subjected to recovery unless it is finally upheld. Once the declaration in a substantive case or year is accepted, the tax arrear in protective case/year would no longer be valid and will be rectified by suitable orders in the normal course.

Question No.11: *By filing declaration under the Scheme for one assessment year, does the taxpayer forego his right of appeal on the same issue in another assessment year?*

Answer: No. The order under the Scheme does not decide any judicial issue. It only determines the sum payable under the Scheme with reference to tax arrear or specified tax, as the case may be. It only provides for a dispute resolution mechanism in respect of cases for which declaration has been made.

Question No.12: *The declarant has not paid the tax payable under the Scheme within 30 days of the order under section 204(1) for any reason including the non-realisation of the cheque presented to the bank. Will the declarant be eligible for the relief under the Scheme?*

Answer: No. The tax payable under the Scheme should be paid to the credit of the Government on or before the due date as specified in the Scheme. The assesseees are advised to pay the tax well on time so as to avail the relief under the Scheme.

Question No.13: *There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of order under section 204(2) of the Act by the designated authority. Please clarify?*

Answer: The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which time limit for making payment under the Scheme expires. The designated authority shall issue the order under section 204(2) of the Act within one month from the end of the month in which intimation regarding payment is received in Form-4 from the declarant.

Question No.14: *Whether refund will be granted in cases where the assessee has already paid the penalty amount in full or in part while the appeal is still pending at CIT(A) stage and the assessee opts for this Scheme?*

Answer: As per section 202(I)(b) of the Scheme, in case of pending appeal related to penalty, 25% of the minimum penalty leviable along with tax and interest on the total income finally determined is required to be paid. Therefore, if an assessee who has already paid an amount over and above the amounts referred to in section 202(I)(b) opts for the Scheme, he shall be eligible for refund of the excess payment already made. However, the declarant shall not be eligible for claim of interest on such refund under section 244A of the Income-tax Act, 1961.

CIRCULAR NO. 34/2016 : ORDER UNDER SECTION 119 OF THE INCOME-TAX ACT, 1961

Circular No.17 of 2016 dated 20.05.2016 relating to the Income Declaration Scheme, 2016 (the Scheme) clarifies that a person shall be eligible to make declaration under the Scheme for assessment years other than the assessment year(s) for which a notice under section 142(1)/143(2)/148 of the Income-tax Act, 1961 (the Act) has been served on or before 31.05.2016.

In this context, concerns have been raised that if declaration under the Scheme is made for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act, then, whether such declaration shall tantamount to acceptance by the assessee of concealment of income on the said issue for the year under assessment. Doubts have also been raised that declaration under the Scheme on an identical issue in other years may lead to levy of penalty and initiation of prosecution for the year in which assessment is pending.

In this regard, attention of all concerned is invited to the provisions of section 273A of the Act which provides for power to reduce or waive penalty in certain cases. Attention is also invited to the provisions of section 279(1A) of the Act which provides that a person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable under section 271(1)(iii) or 270A has been reduced or waived by an order under section 273A.

Section 273A inter-alia provides that the Principal Commissioner or Commissioner shall reduce or waive penalty in case the assessee has co-operated in any enquiry relating to the assessment of his income for the relevant assessment year and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence to the assessment order passed under the Act in respect of the relevant assessment year. It is clarified that where a declaration is made under the Scheme for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act and the person offers to pay the tax and interest, if any, on such issue for the year pending assessment under section 143(3)/147 of the Act, the person shall be treated as having "co-operated in any enquiry" within the meaning of section 273A of the Act. Therefore, the Principal Commissioners or Commissioners are advised to take a lenient view on receipt of a valid application under section 273A of the Act in respect of an issue for the said assessment year which is identical to the issue on which a valid declaration has been made under the Scheme for other assessment year(s) subject to payment of the entire amount payable under the Scheme.

CIRCULAR NO. 35/2016 : APPLICABILITY OF TDS PROVISIONS OF SECTION 194-I OF THE INCOME-TAX ACT, 1961 ON LUMP SUM LEASE PREMIUM PAID FOR ACQUISITION OF LONG TERM LEASE

Section 194-I of the Income-tax Act, 1961 (the Act) requires that tax be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

2. The issue of whether or not TDS under section 194-I of the Act is applicable on 'lump sum lease premium' or 'one-time upfront lease charges' paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by CBDT in view of representations received in this regard.

3. The Board has taken note of the fact that in the case of The Indian Newspaper Society (ITA No. 918 & 920/2015), the Hon'ble Delhi High Court has ruled that lease premium paid by the assessee for acquiring a plot of land on an 80 years lease was in the nature of capital expense not falling within the ambit of Section 194-I of the Act. In this case, the court reasoned that since all the rights easements and appurtenances in respect of the said land were in effect transferred to the lessee for 80 years and since there was no provision in lease agreement for adjustment of premium amount paid against annual rent payable, the payment of lease premium was a capital expense not requiring deduction of tax at source under section 194-I of the Act.

4. Further, in the case Foxconn India Developer Limited (Tax Case Appeal No. 801/2013), the Hon'ble Chennai High Court held that the one-time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the hands of the lessor, obliging the lessee to deduct tax at source under section 194-I of the Act and that in such a situation the lease assumes the character of "deemed sale". The Hon'ble Chennai High Court has also in the cases of Tril Infopark Limited (Tax Case Appeal No. 882/2015) ruled that TDS was not deductible on payments of lump sum lease premium by the company for acquiring a long-term lease of 99 years.

5. In all the aforesaid cases, the Department has accepted the decisions of the High Courts and has not filed an SLP. Therefore, the issue of whether or not TDS under section 194-I of the Act is to be made on lump sum lease premium or one-time upfront lease charges paid for allotment of land or any other property on long-term lease basis is now settled in favour of the assessee.

6. In view of the above, it is clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act. Therefore, such payments are not liable for TDS under section 194-I of the Act.

CIRCULAR NO. 36/2016 : TAXABILITY OF THE COMPENSATION RECEIVED BY THE LAND OWNERS FOR THE LAND ACQUIRED UNDER THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 ('RFCTLARR ACT')

Under the existing provisions of the Income-tax Act, 1961 ('the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, *inter alia* provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

CIRCULAR NO. 37/2016 : CHAPTER VI-A DEDUCTION ON ENHANCED PROFITS

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court.¹
- Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court.²

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court.³

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

¹ NJRS-2012-LL-1210-45

² NJRS-2015-LL-0911-22

³ NJRS-2016-LL-0503-77

3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/ Tribunals may be withdrawn/ not pressed upon. The above may be brought to the notice of all concerned.

CIRCULAR NO. 38/2016 : ADMISSIBILITY OF EXPENDITURE INCURRED BY A FIRM ON KEYMAN INSURANCE POLICY IN THE CASE OF A PARTNER

The issue relating to admissibility of expenditure incurred by a firm on Keyman Insurance Policy premium in the case of a partner has been a contentious one.

2. CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure. However, in case of such expenditure incurred on a partner of a firm, the general approach of the assessing officers was to treat the expenditure as not incurred for the purpose of business and disallow the same.

3. High Courts have upheld the admissibility of the expenditure incurred by the firm in the case of the partners¹. Taking into account the Explanation to Clause (10D) of Section 10 of the Income-tax Act, 1961 and the CBDT Circular no. 762 dated 18.02.1998, Courts have held that a Keyman Insurance Policy is not confined to a policy taken for an employee but also extends to an insurance policy taken with respect to the life of another person who is connected in any manner whatsoever with the business of the subscriber (assessee).

4. The High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, vide judgement dated 2.2.2016 (NJRS citation 2016 –LL-0505-68), reiterating the above view held that, *“the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure”*.

5. The above view has been accepted by CBDT and the judgment has not been further contested.

6. In view of this, it is a settled position that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

7. Accordingly, henceforth, on this settled issue, appeals may not be filed by the department and those already filed, may be withdrawn/ not pressed upon.

CIRCULAR NO. 39/2016 : TRANSPORT, POWER AND INTEREST SUBSIDIES RECEIVED BY AN INDUSTRIAL UNDERTAKING- ELIGIBILITY FOR DEDUCTION UNDER SECTIONS 80-IB, 80-IC ETC., OF THE INCOME-TAX ACT, 1961

The issue whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/ eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as ‘Income from other sources’ by the Assessing Officers.

2. The Hon’ble Supreme Court in its judgment dated 9.3.2016 in the case of Meghalaya Steels Ltd in CA No. 7622 of 2014¹ and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/ sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/ business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head ‘Income from other sources’. Therefore, deduction is admissible under section 80-IB/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.
3. In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/ eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.
4. Accordingly, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn/not pressed upon.

CIRCULAR NO. 40/2016 : DIRECTIONS UNDER SECTION 119 OF THE INCOME-TAX ACT, 1961

Recent initiatives of the Government to curb the black economy in the country has encouraged people to shift towards digital mode of payment while making financial transactions. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of accounts. Under the circumstances, an apprehension has been raised that increased turnover in the current year may lead to reopening of earlier years' cases involving lower turnover u/s 147 of the Income-tax Act, 1961 ('Act') by the Assessing Officer causing undue harassment to tax payers.

It is hereby clarified that reopening of cases u/s 147 of the Act is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers are advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

CIRCULAR NO. 41/2016: CLARIFICATIONS ON INDIRECT TRANSFER PROVISIONS UNDER THE INCOME TAX ACT, 1961

Under the indirect transfer provisions contained in section 9(1)(i) of the Income Tax Act, 1961 (Act), 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. Explanation 5 thereof clarifies that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Explanation 6 provides that the said Explanation 5 will be applicable, if on the specified date the value of such assets exceeds the amount of Rs 10 crore and represents at least 50% of the value of all the assets owned by the company/entity. Explanation 7, however, provides a carve out from the applicability of Explanation 5 to small investors holding no right of management or control of such company / entity and holding less than 5% of the total voting power/ share capital/ interest of the company/ entity that directly or indirectly owns the assets situated in India. Section 285A of the Act casts a reporting obligation on the Indian concern whose shares are substantially held directly or indirectly by a company or entity registered or incorporated outside India.

Queries have been received by the Board about the scope of the indirect transfer provisions. In this regard, the Board constituted a Working Group on 15th June, 2016 to examine the issues raised by stakeholders. The Board has considered the comments of the Working Group on the said issues and the following clarifications are issued:

Question 1: A Fund is set-up in a popular jurisdiction and registered as FPI for undertaking portfolio investment in Indian securities. It pools monies from retail/ institutional investors and invests in shares of Indian listed companies. The value of assets in India i.e. shares of Indian companies held by the Fund constitute more than 50% of its total assets and exceed Rs.10 crores. The Fund buys and sells shares on the Indian stock market and pay taxes as per section 115 AD of the Act or applicable tax treaty rates. On the ongoing basis, the Fund, on request of its unit holders/ shareholders, redeems their units/ shares. Does Explanation 5 to section 9(1)(i) of the Act apply to above redemption made by the Fund?

Answer: Explanation 5 to section 9(1)(i) of the Act will be applicable in respect of investors in the Fund also, as their case falls within the ambit of clause (a) of Explanation 6 of the said section. However, the investors covered under Explanation 7(a)(i) of the Act are excluded.

Question 2: Fund I and Fund II are feeder funds set-up in country X and country Y respectively. Both the feeder funds pool monies from investors and feed that into a Master Fund set-up in country X. None of the investors of the feeder funds have the right of control or management in the Master Fund or hold voting power or share capital or interest, directly or indirectly, exceeding 5% in the Master Fund. The Master Fund is registered as FPI for undertaking portfolio investment in Indian securities. The value of assets in India i.e. shares of Indian companies held by the Master Fund constitute more than 50% of its total assets and exceed Rs.10 crores. Will indirect transfer provisions apply to investors in master-feeder structures, where feeder funds are merely used to pool monies from investors, where none of the ultimate investors hold or will hold right of control or management or voting power or share capital or interest, directly or indirectly, exceeding 5% in the fund and a declaration to this effect is furnished by the feeder fund to the Fund registered as FPI.?

Answer: Since conditions of Explanation 7(a)(ii) to section 9(1)(i) of the Act are, prima facie, fulfilled by the investors in the Feeder Funds I and II, income of such non-resident investors from transfer of their interests in the Feeder Funds would not be deemed to accrue or arise in India.

Question 3: ABC Co. acting as nominee/ distributor is engaged in pooling of funds for the Offshore Fund registered as FPI. None of the investors investing through nominees/ distributors have right of control or management in the Offshore Fund or hold voting power or share capital or interest, directly or indirectly, exceeding 5% in the Offshore Fund. ABC Co. is recorded as registered unit holder/ shareholder in the books of Offshore Fund. The value of assets in India i.e. share of Indian companies held by the Offshore Fund constitute more than 50% of its total assets and exceed Rs.10 crores. Will indirect transfer provisions apply to investors in nominee-distributor type structures, which are merely used to pool monies from investors where none of the ultimate investors hold or will hold right of control or management or voting power or share capital or interest, directly or indirectly, exceeding 5% in the fund and a declaration to this effect is furnished by the nominee or distributor to the Fund registered as FPI?

Answer: Since conditions of Explanation 7(a)(ii) to section 9(1)(i) of the Act are prima facie fulfilled by the investors in the nominee/ distributor company, income of such non-resident investors from transfer of their interest in the nominee/ distributor would not be deemed to accrue or arise in India.

Fund X is an offshore fund set up in country A. It pools monies from investors for undertaking portfolio investments in Asia. It invests 90% of its corpus in shares of companies of country B. Fund X has allocated 10% of its corpus for India investments. For this purpose it has set-up an India focused sub-fund domiciled in a tax efficient jurisdiction for investing exclusively in Indian securities. Will indirect transfer provisions apply to Fund X using a separate Indian focused sub-fund for India investments, where none of the ultimate investors hold or will hold right of control or management or voting power or share capital or interest exceeding 5% in the offshore fund.

Answer: Indirect transfer provisions u/s 9(1)(i) of the Act read with Explanation 5 thereto will be applicable in case of Fund X, since the value of shares / units held by it in the sub-fund derives its value substantially from assets located in India, irrespective of shareholding of the ultimate investors.

Question no.5 : An offshore listed fund is registered as an FPI for undertaking portfolio investment in Indian securities. The value of Indian assets i.e. shares of Indian companies held by the offshore listed fund constitute more than 50% of its total assets and exceed Rs.10 crores. The investors or unit holders of the offshore listed fund keep on changing on daily basis and settlement of funds for buying and selling is done through stock exchange prescribed settlement mechanism. Will indirect transfer provisions apply on transfer of shares or units of an offshore listed entity?

Answer: Explanation 5 to section 9(1)(i) of the Act will be applicable in respect of investors in the Fund also, as their case falls within the ambit of clause (a) of Explanation 6 of the said section. However, the investors covered under Explanation 7(a)(i) of the Act are excluded.

Question no.6 : Fund P and Fund Q are formed as 'Corporate' entities in Country A. The value of assets in India i.e. shares of Indian companies held by Fund P constitute more than 50% of its total assets. On account of a scheme of amalgamation, Fund P is merged into Fund Q in Country A. The merger is tax neutral in Country A. Consequent to the merger, investors of Fund P became investors in Fund Q. Will the shareholders or investors of Fund P liable to tax in India on account of indirect transfer provisions, though the amalgamation of Fund P and Fund Q is not regarded as 'transfer' under section 47(viab) of the Act?

Answer: Under section 47(viab) of the Act, any transfer in a scheme of amalgamation of a share of an offshore company deriving its value substantially from the shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company is not regarded as transfer, subject to the conditions specified therein. Under the existing provisions, this exemption does not extend to the shareholders/ investors of the amalgamating foreign company. Hence, such shareholders/ investors will be liable to tax in India under section 9(1)(i) of the Act.

Question no.7: Fund X and Fund Y are 'non-corporate' entities formed in Country A. Company Z is a SPV formed in a tax efficient jurisdiction exclusively for Indian investments. Fund X holds 100% of shareholding of Company Z. On account of a scheme of amalgamation, Fund X is merged into Fund Y in Country A. The merger is tax neutral in Country A. Consequent to the merger, investors of Fund X became investors in Fund Y. Will indirect transfer provisions apply in case of offshore amalgamation or demerger of foreign 'non-corporate' entities?

Answer: The provisions of section 47 of the Act apply only in respect of amalgamation of corporate entities. Consequently, the amalgamation of non-corporate entities will attract the provisions of section 9(1)(i) of the Act.

Question no. 8: Fund X is registered as an FPI. As on last date of the preceding accounting period, the value of assets in India i.e. shares of Indian companies held by Fund X constitute more than 50% of its total assets and exceed Rs.10 crores. However, as on the date of transfer, the value of assets in India held by Fund X is only 47% of its total assets. The book value of assets as on the date of transfer does not exceed by at least 15% of the book value of assets as on the last day of accounting period preceding the date of transfer. Will indirect provisions apply even if the offshore transfer does not fulfill the substantial value test as contemplated under clause (a) to Explanation 6 of section 9(1)(i) of the Act on the date of transfer?

Answer: Under Explanation 6 to section 9(1)(i) of the Act, the value of the asset of an offshore entity deriving its value substantially from assets located in India, will be computed as on the specified date as per clause (d) of the said Explanation. In the illustration, the specified date will be the date on which the accounting period of such entity ends preceding the date of transfer. The indirect provisions will apply since the offshore transfer fulfils the substantial value test as on the specified date.

Question no. 9: Company A is an Indian public limited company listed on a recognized stock exchange in India. Many FPIs [including offshore listed funds] invest in Company A under the FPI route. At the offshore level the shares or units of the FPI are bought and sold on daily basis and the investors in the FPI keep on changing frequently. How should Company A in such circumstances determine whether the value of assets in India held by an FPI investor exceed 50% of its total assets? Where FPI has invested in multiple Indian companies, there are practical challenges for Indian concerns to comply with this provision.

Answer: Reporting requirement under section 285A triggers when shares of the foreign company / entity derive their value substantially from assets located in India. Since section 285A and Rule 114DB are recently introduced, their practical implementation should first be seen.

Question no. 10: FPIs are mainly portfolio investors and not strategic investors. The gains earned by FPIs on sale or transfer of Indian securities is liable to tax in India in accordance with provisions of the Income-tax Act, 1961. If indirect transfer provisions are made applicable to these FPIs, then there is a possibility of double taxation of the same income i.e. tax on gains earned on direct transfer of Indian securities by the FPIs and tax on gains earned by investors of the FPIs on redemption of units in the FPIs. Hence, exemption should be provided for FPIs.

Answer: Carve-out is already available for small investors in Explanation 7 to section 9(1)(i) of the Act.

Question no. 11: The 5% threshold for exempting small shareholder should be increased. Additionally, the meaning of the term 'associated enterprise' in the context of FPIs should be defined in line with what is reckoned by the Securities and Exchange Board of India for the purpose of ascertaining common beneficial ownership of FPIs i.e. more than 50% common beneficial ownership.

Answer: The 5% threshold is reasonable for excluding small shareholders from the ambit of the indirect transfer provisions. Alignment of the definition of 'associated enterprise' with the SEBI definition is not required as the definition of associated enterprise under the Income Tax Act is well-founded and is based on the concept of management, control and capital of an enterprise.

Question no. 12: The monetary value of threshold of INR value of 10 crores of Indian investment for triggering applicability of indirect transfer provisions for FPIs should be increased to INR 100 crores.

Answer: The Rs. 10 crore threshold is reasonable.

Question no. 13: In case of an FPI which is listed on an overseas stock exchange, frequent trading of share or units takes place on the overseas exchange every day. Hence, FPIs that are regulated and listed on the recognized stock exchange should be excluded from the purview of indirect transfer provisions.

Answer: The circumstances to determine taxability under the indirect transfer provisions are provided in Explanation 6 and Explanation 7 of section 9(1)(i) of the Act. In view of the same, carve-out to specifically exclude FPIs regulated and listed on overseas stock exchanges from the ambit of the indirect transfer provisions is not feasible.

Question no. 14: The benefit of exemption provided for transactions in internal restructuring is currently restricted only to FPIs classified as 'companies'. Can this benefit be extended to non-corporate FPIs and to the shareholders or unit holders of all the FPIs?

Answer: The benefit under section 47 of the Act does not extend to shareholders/ investors of the amalgamating foreign company. Hence, such shareholders/ investors will be liable to tax in India under section 9(1)(i) of the Act. Further, the provisions of section 47 of the Act apply only in respect of amalgamation of corporate entities, subject to certain conditions mentioned therein. As such, the amalgamation of non-corporate entities will attract the provisions of section 9(1)(i) of the Act.

Question no. 15: The rules to determine the fair market value of Indian assets vis-à-vis global assets should be prescribed.

Answer: Vide notification S.O.2226(E) dated 28th June, 2016, Rule 11UB and Rule 11UC have been inserted in the IT Rules, 1961 to provide for method of determination of the fair market value of assets and apportionment of income for the purposes of section 9(1)(i) of the Act.

Question no. 16: Indirect transfer provisions are to be applied if, on a specified date, the fair market value of Indian assets exceeds a specified threshold. Specified date for this purpose generally means the date on which accounting period of the company or entity ends, preceding the date of transfer of share or an interest. The specified date should be the date of transfer.

Answer: Clause (d) of the Explanation 6 to section 9(1)(i) of the Act provides for two situations for the determination of the specified date, i.e. the date on which the accounting period of such entity ends preceding the date of transfer and, where the book value of the assets of the entity on the date of transfer exceeds the book value of the assets on the abovementioned accounting period end date by 15%, the date of transfer will be taken as the specified date. Taking the specified date alone as the date of transfer may result in abuse of the provision.

Question no. 17: The rules to determine the fair market value of Indian assets vis-à-vis global assets are to be prescribed in due course. At the time of notifying these rules, it is suggested that manner of determination of cost of acquisition in the hands of the non-resident transferor (including clarity on availment of indexation benefit and benefit of foreign exchange fluctuation) should also be specifically provided to avoid any disputes.

Answer: Vide notification S.O.2226(E) dated 28th June, 2016, Rule 11UB and Rule 11UC have been inserted in the IT Rules, 1961 to provide for the method for determination of the value of assets and apportionment of income for the purposes of section 9(1)(i) of the Act. The availment of indexation benefit / foreign exchange fluctuation will be as per the Act.

Question no. 18: The indirect transfer provisions should be made operational only after a reasonable time of prescribing necessary rules by the Government.

Answer: The indirect transfer law and rules have already been operationalised.

Question no. 19: Given the uniqueness in FPI operational structure and the challenges to comply with indirect transfer tax provisions, it is suggested that FPIs should be relieved from the withholding tax requirement. Alternatively, the threshold for enforcing such requirement on the FPIs may be increased. Further, it should be clarified that no interest or penalty for failure to deduct taxes at source will be levied and the FPI will not be treated as an 'assessee in default' or the 'representative assessee', on account of retrospective application of indirect transfer provisions.

Answer: The provisions of withholding tax, interest and penalty shall apply as per law.

CIRCULAR NO. 42/2016 : CLARIFICATIONS ON THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as '**the Scheme**') incorporated as Chapter X of the Finance Act, 2016 provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The provisions of the Scheme have been clarified vide Circular No.33 of 2016 dated 12.09.2016. Subsequently, further queries have been received from the field authorities and other stakeholders. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

***Question No.1:** There are cases where the Assessing Officer (AO) has made addition on account of provisions under section 9 of the Income-tax Act, 1961 (the Act), which was later retrospectively amended, especially with regard to royalty and fees for Technical Services. What would be the position of the case of an assessee vis-à-vis the Scheme, where an addition has been made by AO before such retrospective amendment? Whether the case would be treated as one being in consequence of retrospective amendment and accordingly whether the assessee would be eligible to avail the benefit of the Scheme?*

Answer: As per clause (g) of sub-section (1) of section 201 of the Finance Act, 2016, 'specified tax' includes a tax which is validated by an amendment made to the Income-tax Act with retrospective effect. Hence, a case where an addition has been made by AO before such retrospective amendment and the addition has got validated by such amendment, is eligible to avail the Scheme provided a dispute in respect of such addition/tax is pending as on 29.02.2016.

***Question No.2:** There are assessees who have filed writ petitions in Courts against the constitutional validity of retrospective amendment to the Income-tax Act. Can the assessees who have filed such writs in Courts still contest the constitutional validity of such amendments, even after availing the benefit under the Scheme?*

Answer: As per section 203(3)(a) of the Finance Act, 2016, where the declaration under the Scheme is in respect of specified tax and the declarant has filed any writ petition before the High Court or the Supreme Court against any order in respect of the specified tax, he shall withdraw such writ petition with the leave of the Court wherever required and furnish proof of such withdrawal along with the declaration filed under the Scheme. It is hence clear that if the assessee avails the Scheme, he cannot contest the constitutional validity of retrospective amendment in the High Court or Supreme Court.

***Question No.3:** There are cases where assessees are in different stages of appeal for different years on similar issue(s). In such a situation, if an assessee avails the benefits of the Scheme for a particular year/years, whether the revenue would withdraw its appeal against the assessee, in the year(s) in which the assessee has got the relief? If such is the case, at what stage would the revenue withdraw its appeal?*

Answer: In respect of 'tax arrear', the Scheme is available only if dispute is pending before Commissioner (Appeals). Hence the question of withdrawal of appeal by revenue does not arise in such cases.

In respect of 'specified tax', section 203(3) of the Finance Act, 2016 states that the declarant before opting for the said Scheme has to withdraw his pending appeal or writ petition. It also states that in a case where the declarant has initiated or given notice for proceeding of arbitration, conciliation or mediation, he shall withdraw such notice or claim prior to filing of the declaration under the Scheme. The Scheme nowhere speaks of withdrawal of any appeal or proceeding by the revenue. Hence, the question of withdrawal of appeal by the revenue owing to opting of the Scheme by the assessee in some other year(s) on a similar issue does not arise.

Question No.4: *Can the tax payments under the Scheme be allowed to be made in instalments, as granted under IDS, 2016?*

Answer: Since, the date of making payment under the Scheme is provided in Section 204 of the Finance Act, 2016 itself, the tax payments under the Scheme cannot be allowed to be made in instalments.

Question No.5: *Whether an assessee is eligible to make a declaration in respect of 'specified tax' where a dispute was pending as on 29.02.2016 in form of a reference made by AO before the Committee constituted by CBDT on 28.08.2014 under section 119 of the Act, but the final order determining the 'specified tax' thereon was passed after 29.02.2016, and the appeal/writ/arbitration/conciliation/ mediation etc. in respect of the same was filed before commencement of the Scheme i.e. 01.06.2016?*

Answer: As per the provisions of the Scheme, a declarant may make a declaration in respect of a 'specified tax' for which a dispute was pending as on 29.02.2016. The term 'dispute pending as on 29.02.2016' refers to the tax determined under the Income-tax Act or the Wealth-tax Act which has been disputed by the assessee. In the above referred case, the specified tax has been determined by AO after 29.02.2016; hence the question of dispute pending in respect of such tax as on 29.02.2016 does not arise. Therefore, the assessee in the present case is not eligible to avail the Scheme.

Question No.6: *Whether a penalty order under section 271C or 271CA of the Income-tax Act for which an appeal is pending with CIT(Appeals) is covered under the Scheme?*

Answer: As per the Scheme, 'tax arrear' in case of penalty is linked to the total income finally determined. Since, penalty order under section 271C or 271CA is not linked to the assessment proceedings, such orders are not covered under the Scheme.

Question No.7: *Whether the cases in which, consequent upon search, assessments have been completed under section 143(3) of the Act shall be eligible to avail the Scheme?*

Answer: As the search cases are not eligible for the Scheme, an assessment made consequent to search under section 143(3) read with section 153B of the Act is not eligible to avail the Scheme.

Question No.8: *Clause(5) of section 203 of the Finance Act, 2016, refers to deemed revival of 'consequences' under the Income-tax Act or the Wealth-tax Act, as the case may be, under which proceedings against the declarant are or were pending. There is no explicit reference to deemed revival of 'proceedings'. Please clarify?*

Answer: Clause (5) of section 203 provides that in a case where the conditions specified therein are not fulfilled, it shall be presumed as if the declaration was never made under the Scheme; therefore,

in case of rejection of declaration, the proceedings pending against the assessee before issuance of certificate under 204(1) shall stand revived.

CIRCULAR NO. 43/2016 : EXPLANATORY NOTES ON PROVISIONS OF THE TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016 AS CONTAINED IN CHAPTER IX-A OF THE FINANCE ACT, 2016

Introduction - The Taxation Laws (Second Amendment) Act, 2016 has been enacted by Parliament on 15.12.2016. The said Act has *inter alia* amended the provisions of Finance Act, 2016 and inserted a new Chapter on, 'The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter 'the Scheme') in the Finance Act, 2016.

The Scheme provides an opportunity to persons having **undisclosed income** in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax, surcharge and penalty **totaling in all to 49.9 % of such declared income**. Besides, the Scheme provides that a mandatory **deposit** of not less than **25% of such income** shall be made in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016(hereinafter 'the PMGKY Deposit Scheme') which has separately been notified by the Department of Economic Affairs. The Scheme has **commenced on 17.12.2016** and shall remain open for declarations/deposit **upto 31.03.2017**.

Scope of the Scheme - A declaration under the aforesaid Scheme may be made in respect of any income in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017. No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a valid declaration is made under the Scheme.

Tax, surcharge, penalty & deposit under the Scheme: The person making a declaration under the Scheme would be liable to pay tax at the rate of 30% of the undisclosed income as increased by surcharge to be called the Pradhan Mantri Garib Kalyan Cess calculated at the rate of 33% of such tax. In addition, penalty at the rate of 10% of the undisclosed income shall be payable. The declarant shall also be required to deposit an amount not less than 25% of the undisclosed income in the PMGKY Deposit Scheme. The deposit shall bear no interest and the amount deposited shall have a lock-in period of four years.

Time limits for declaration and making payment: A declaration under the Scheme can be made anytime on or after 17th December, 2016 but on or before 31st March, 2017. **The tax, surcharge and penalty payable under the Scheme and deposit to be made in the Deposit Scheme, shall be paid/made before filing of declaration under the Scheme.** The declaration shall be accompanied with proof of payment made in respect of tax, surcharge and penalty payable under the Scheme and proof of deposit made in the PMGKY Deposit Scheme.

Form for declaration: A **declaration** under the Scheme in **Form-1** as prescribed in the Rules may be made at any time on or before 31.03.2017. After such declaration has been furnished, the notified Principal CIT/ CIT will issue an **acknowledgment in Form-2** to the declarant within 30 days from the end of the month in which the declaration under Form-1 is made.

Filing of declaration: A declaration under the Scheme can be filed:

- (i) **Electronically** under digital signature with CIT(CPC) Bengaluru or jurisdictional Principal CIT/CIT notified under section 120 of the Income-tax Act, 1961.
- (ii) Electronically through **Electronic Verification Code (EVC)** or in **print form** with jurisdictional Principal CIT /CIT notified under section 120 of the Income-tax Act, 1961.

Declaration not eligible in certain cases: The provisions of this Scheme shall not apply –

- a) in relation to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to the conditions specified under the Scheme.
- b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money-Laundering Act, 2002;
- c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;
- d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Circumstances where declaration shall be invalid: A declaration shall be void and shall be deemed never to have been made where a declaration has been made by misrepresentation or suppression of facts or without payment of tax and surcharge or penalty or without depositing the requisite amount in the PMGKY Deposit Scheme, and in such cases all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.

Tax, etc., not refundable: Any tax, surcharge or penalty paid under the Scheme shall not be refundable under any circumstances.

Effect of valid declaration: Where a valid declaration as detailed above has been made, the following consequences will follow:

- a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- b) A declarant under this Scheme shall not be entitled, in respect of undisclosed income or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment
- c) The contents of the **declaration shall not be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts referred in Para- 8 above.**