EXECUTIVE PROGRAMME

SUPPLEMENT
FOR
TAX LAWS AND PRACTICE
(Relevant for students appearing in December, 2016 examination)

MODULE 1 - PAPER 4

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 December, 2016 Examination shall note the following:

1. For Direct taxes, Finance Act, 2015 is applicable.
2. Applicable Assessment year is 2016-17 (Previous Year 2015-16).
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 December, 2016 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 supplement is to facilitate the students to acquaint themselves with the amendments in tax laws upto June, 2016, applicable for December, 2016 Examination. The students are advised to read their Study Material (2015 Edition) along with this supplement. The Study Material (2015 Edition) of Tax Laws and Practice are available at the Institute website at the following weblink: https://www.icsi.edu/Docs/Website/Tax%20Law%20Practise.pdf.

The supplement covers the major amendments in Service Tax, made by Finance Act, 2016 and major Notifications and Circulars issued by CBDT & CBEC from 1st July, 2015 to 30th June, 2016. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu
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(JULY 2015 - JUNE 2016)

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The Central Government has notified the ‘Atal Pension Yojana (APY)’ as a pension scheme for the purposes of the Section 80CCD of the Income-tax Act, 1961.

This notification shall come into force from the date of its publication in the Official Gazette.

The Central Government has notified for the purpose of clause 46 of section 10 of the Income-tax Act, 1961 the Competition Commission of India [a Commission established under sub-section (1) of section 7 of the Competition Act, 2002] in respect of the following specified income arising to the said Commission:

a) amount received in the form of Government grants;
b) fees received under the Competition Act, 2002; and
c) interest accrued on Government grants and interest accrued on fees received under the Competition Act, 2002.

This notification shall be effective subject to the following conditions:

i. the Competition Commission of India does not engage in any commercial activity;
ii. the activities and the nature of the specified income of the Competition Commission of India shall remain unchanged throughout the financial years; and
iii. the Competition Commission of India shall file return of income in accordance with clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

This notification shall be applicable for the specified income of the Competition Commission of India for the financial years 2016-2017 to 2020-2021.

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Madhya Pradesh State AIDS Control Society [a body constituted by the Government of Madhya Pradesh] in respect of the following specified income arising to that Society:

a) amount received in the form of grants-in-aid from the Government of India; and
b) interest earned on such grants-in-aid.

This notification shall be deemed to apply for the period 01.06.2011 to 31.03.2013 and shall apply with respect to the Financial Years 2013-14, 2014-15 and 2015-16.

The notification shall be effective subject to the following conditions:

i. the Madhya Pradesh State AIDS Control Society does not engage in any commercial activity;
ii. the activities and the nature of the specified income of the Madhya Pradesh State AIDS Control Society remain unchanged throughout the financial year; and
iii. the Madhya Pradesh State AIDS Control Society files return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

The grants received by the society shall be received and applied in accordance with the prevailing rules and regulations.
NOTIFICATION NO. 11/2016 DATED 1ST MARCH, 2016
The Central Board of Direct Taxes has made the Income Tax (3rd Amendment Rules) further to amend the Income-tax Rules, 1962, under which Rule 45 shall be substituted as under-

Rule 45 - Form of appeal to Commissioner (Appeals)
An appeal to the Commissioner (Appeals) shall be made in Form No. 35 and shall be furnished in the following manner:

i. in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12:
   i. by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
   ii. by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);

ii. in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule(2) or in paper form.

The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee. Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.

The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall:

i. specify the procedure for electronic filing of Form No.35 and documents;
ii. specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for the purpose of verification of the person furnishing the said form; and
iii. be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished.

NOTIFICATION NO. 15/2016 DATED 16TH MARCH, 2016
The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Karnataka Urban Water Supply and Drainage Board [a Board constituted under the Karnataka Urban Water Supply and Drainage Board Act, 1973], in respect of the following specified income arising to that Board:

a) Establishment, administrative and supervision charges collected as a percentage of project cost prescribed by the Karnataka Public Works Department Accounts Code of Government of Karnataka;

b) Water charges collection for supply of water to local bodies and directly to consumers;

c) Interest on investments and fixed deposit in banks;

d) Rent collected for letting out head office building ‘JAL BHAWAN’; and

e) Forfeiture of earnest money deposit.

This notification shall be effective subject to the conditions that the Karnataka Urban Water Supply and Drainage 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) of section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been apply for the financial year 2014-2015 and shall apply with respect to the financial years 2015-2016, 2016-2017, 2017-2018 and 2018-2019.
NOTIFICATION NO. 16/2016 DATED 16TH MARCH, 2016

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the ‘National Biodiversity Authority’ [an authority established under the Biological Diversity Act, 2002] in respect of the following specified income arising to that Authority:

a) amount received in the form of grant-in-aid from the Government of India;
b) amount received in the form of interest;
c) benefit sharing fee and royalty received; and
d) amount received in the form of penalty and application fees.

This notification shall be effective subject to the following conditions:

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

This notification shall be deemed to apply for the period 01.06.2011 to 31.03.2012 and financial years 2012-13, 2013-14, 2014-15 and shall apply with respect to the financial year 2015-2016.

NOTIFICATION NO. 18/2016 DATED 17TH MARCH, 2016

The Central Board of Direct Taxes has made the Income-tax 6th Amendment Rules further to amend the Income-tax Rules, 1962 under which after Rule 8A, Rule 8AA has been inserted as under:

Rule 8AA - Method of determination of period of holding of capital assets in certain cases:
The period for which any capital asset, other than the capital assets mentioned in clause (i) of the Explanation 1 to clause (42A) of section 2 of the Act, is held by an assessee, shall be determined in accordance with the provisions of this rule.

In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in clause (x) of section 47 of the Act, there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.

NOTIFICATION NO. 22/2016 DATED 29TH MARCH, 2016

The Central government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Andhra Pradesh Electricity Regulatory Commission [a Commission constituted under the Andhra Pradesh Electricity Reform Act, 1998] in respect of the following specified income arising to that Commission:

1. License fee received under the Electricity Act, 2003;
2. Grants-in-Aid received from government; and
3. Interest earned on investment or deposit in nationalized bank or financial institutions.

This notification shall be subject to the conditions that the Andhra Pradesh Electricity Regulatory Commission:

a) shall not engage in any commercial activity;
b) its 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) of section 139 of the Income-tax Act, 1961.

This notification shall be deemed to have been applicable for the financial year 2014-2015 and shall apply with respect to the financial years 2015-2016, 2016-2017, 2017-2018 and 2018-19.

NOTIFICATION NO. 23/2016 DATED 29TH MARCH, 2016

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Maharashtra State Board of Technical Education [a Board constituted under the Maharashtra State Board of
Technical Education Act, 1997 of the Government of Maharashtra] in respect of the following specified income arising to that Board:

(a) fees, fines and penalties;
(b) receipts from Printed Educational Material;
(c) receipts from Scrap or Waste paper;
(d) receipts from other Government Bodies;
(e) interest income from surplus funds kept in bank accounts and fixed deposits;
(f) rent received from let out of properties;
(g) royalty or License fees for providing technical knowledge and infrastructure;
(h) dividend earned from Maharashtra Knowledge Corporation Ltd;
(i) capital gains, if any, from disposal of assets as per Government financial guideline and rules of Government of Maharashtra.

This notification shall be effective subject to the following conditions:

a) the Maharashtra State Board of Technical Education shall not engage in any commercial activity;
b) the activities and the nature of the specified income of the Maharashtra State Board of Technical Education remain unchanged throughout the financial years; and
c) the Maharashtra State Board of Technical Education 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 applied for the financial year 2014-2015 and shall be applicable for the financial years 2015-2016, 2016-2017, 2017-2018 and 2018-2019.

NOTIFICATION NO. 25/2016 DATED 4TH APRIL, 2016

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the West Bengal Pollution Control Board [a body constituted by the Government of West Bengal] in respect of the following specified income arising to the Board:

a. consent fees or no objection certificate fees;
b. analysis fees on air quality and water quality or noise level survey fees;
c. authorisation fees;
d. cess re-imbursement and cess appeal fees;
e. reimbursement of the expenses received from the Central Pollution Control Board towards National Air Monitoring Program, the Monitoring of Indian National Aquatic resources and like schemes;
f. sale of books relating to environmental law, regulations, important judicial orders and environmental issues where no profit element is involved and the activity is not commercial in nature;
g. interest on deposits;
h. public hearing fees;
i. vehicle emission monitoring test fees;
j. fees received for processing by State Environmental Impact Assessment Authority;
k. fees collected for training conducted by the Environmental Training Institute of the Board where no profit element is involved and the activity is not commercial in nature;
l. fees received under the Right to Information Act, 2005 (22 of 2005) and appeal fees;
m. interest on loans and advances given to staff of the Board;
n. pollution cost or forfeiture of bank guarantee due to non-compliance; and
o. miscellaneous income including sale of old or scrap items, tender fees and other matters relating thereto, where no profit element is involved.

This notification shall be subject to the following conditions:

a) the West Bengal Pollution Control Board shall not engage in any commercial activity;
b) the activities and the nature of the specified income remain unchanged throughout the financial years; and
c) the return of income shall be filed in accordance with the provisions of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961 (43 of 1961).


NOTIFICATION NO. 26/2016 DATED 4TH APRIL, 2016

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Sikkim state regulatory commission, constituted under the Electricity Act, 2003, in respect of the following specified income arising to the commission:

a) Grant and aid received from the government;
b) Amount received in the form of petition fees;
c) Amount received in the form of licence fees; and
d) Interest earned on investment and deposits.

This notification shall be subject to the following conditions:

a) the Sikkim state regulatory commission shall not engage in any commercial activity;
b) the activities and the nature of the specified income remain unchanged throughout the financial years; and
c) the return of income shall be filed in accordance with the provisions of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961 (43 of 1961).


NOTIFICATION NO. 30/2016 DATED 29TH APRIL, 2016

The Central Board of Direct Taxes has made the Income Tax 11th Amendment Rules further to amend the Income-tax Rules, 1962 under which after Rule 26B, Rule 26C has been inserted as follows:

Rule 26C - Furnishing of evidence of claims by employee for deduction of tax under section 192

The assessee shall furnish to the person responsible for making payment under sub-section (1) of section 192, the evidence or the particulars of the claims referred to in sub-rule (2), in Form No.12BB for the purpose of estimating his income or computing the tax deduction at source.

The assessee shall furnish the evidence or the particulars specified in column (3), of the Table below, of the claim specified in the corresponding entry in column (2) of the said Table:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Nature of claims</th>
<th>Evidence or particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>House Rent Allowance</td>
<td>Name, address and permanent account number of the landlord/landlords where the aggregate rent paid during the previous year exceeds rupees one lakhs</td>
</tr>
<tr>
<td>2</td>
<td>Leave travel concession or assistance</td>
<td>Evidence of expenditure</td>
</tr>
<tr>
<td>3</td>
<td>Deduction of interest under the head “Income from house property”</td>
<td>Name, address and permanent account number of the lender</td>
</tr>
<tr>
<td>4</td>
<td>Deduction under Chapter VI-A</td>
<td>Evidence of investment or expenditure</td>
</tr>
</tbody>
</table>

In the said rules, in Rule 30:
a) in sub-rule (2A), for the words “seven days”, the words “thirty days” shall be substituted;
b) in sub-rule (4), for the portion beginning with the word “shall” and ending with the words “has been credited”, the following words, figures, letter and brackets shall be substituted, as under:

“shall submit a statement in Form No. 24G to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him.”

c) after the sub-rule (4), the following sub-rules shall be inserted:

The Statement referred to in sub-rule (4) shall be furnished—

(a) on or before the 30th day of April where the statement relates to the month of March; and
(b) in any other case, on or before 15 days from the end of relevant month.

Statement referred to in sub-rule (4) shall be furnished in the following manner:
a) electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5); or
b) electronically alongwith the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).

The persons referred to in sub-rule (4) shall intimate the number (hereinafter referred to as the Book Identification Number) generated by the agency to each of the deductors in respect of whom the sum deducted has been credited.

The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements and shall be responsible for the day-to-day administration in relation to furnishing of the information and verification of the statements.”

In the said rules, in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column (3) of the said Table:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Date of ending of quarter of financial year</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>30th June</td>
<td>31st July of the financial year</td>
</tr>
<tr>
<td>2.</td>
<td>30th September</td>
<td>31st October of the financial year</td>
</tr>
<tr>
<td>3.</td>
<td>31st December</td>
<td>31st January of the financial year</td>
</tr>
<tr>
<td>4.</td>
<td>31st March</td>
<td>31st May of the financial year immediately following the financial year in which the deduction is made</td>
</tr>
</tbody>
</table>

In the said rules, in rule 37CA

(a) in sub-rule (3), for the portion beginning with the word “shall” and ending with the words “has been credited”, the following words, figures, letter and brackets shall be substituted:

“shall submit a statement in Form No. 24G to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax collected by the collectors and reported to him.”;

(b) after sub-rule (3), the following sub-rules shall be inserted:

“(3A) Statement referred to in sub-rule (3) shall be furnished.

a) on or before the 30th day of April where the statement relates to the month of March; and
b) in any other case, on or before 15 days from the end of relevant month.

(3B) Statement referred to in sub-rule (3) shall be furnished in the following manner:
   a) electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (4); or
   b) electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (4).

The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements and shall be responsible for the day-to-day administration in relation to furnishing of the information and verification of the statements.

**NOTIFICATION NO. 34/2016 DATED 26TH MAY, 2016**

The Central Government vide this Notification has appointed the 31st day of December, 2016 as the date on or before which a person may make a declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016.

**NOTIFICATION NO. 35/2016 DATED 26TH MAY, 2016**

The Central Government vide Notification No. 35/2016 has notified the Direct Tax Dispute Resolution Scheme Rules, 2016 which has come into force on the 1st day of June, 2016.

In these rules, unless the context otherwise requires, the following definition has been provided:
(a) "Scheme" means the Direct Tax Dispute Resolution Scheme, 2016, specified under Chapter X of the Finance Act, 2016 (28 of 2016);
(b) "section" means section of the Finance Act, 2016 (28 of 2016);
(c) "Form" means the Forms appended to these rules;
(d) all other words and expressions used in these rules but not defined in these rules and defined in the Scheme under Chapter X of the Finance Act, 2016 (28 of 2016), shall have the same meanings respectively as assigned to them in that Scheme.

**Form of declaration and undertaking under section 203**

1) The declaration under sub-section (1) of section 203 shall be made in duplicate in Form-1 to the designated authority and verified in the manner specified therein.
2) The undertaking referred to in sub-section (4) of section 203 shall be furnished in Form-2 along with the declaration and verified in the manner specified therein.
3) The declaration under sub-rule (1) and the undertaking under sub-rule (2), as the case may be, shall be signed by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961.
4) The designated authority on receipt of declaration shall issue a receipt in acknowledgement thereof.

**Form of certificate under sub-section (1) of section 204**

- The designated authority shall issue a certificate referred to in sub-section (1) of section 204 in Form-3.

Intimation of payment - The detail of payments along with proof, made pursuant to the certificate issued by the designated authority shall be furnished by the declarant to the designated authority in Form-4.

**Order under sub-section (2) of section 204**

- The order by the designated authority under sub-section (2) of section 204 in respect of tax arrear shall be in Form-5 and in respect of specified tax shall be in Form-6.

**NOTIFICATION NO. 38/2016 DATED 27TH MAY, 2016 – EQUALISATION LEVY (RULES)**

The Central Government has notified the following rules for carrying out the provisions of Chapter VIII relating to Equalisation levy as under:

Every assessee, who is required to deduct and pay equilisation levy, shall pay the amount of such levy to the credit of the central government by remitting it to the RBI or any branch of SBI or any authorized bank accompanied by
an equilisation levy challan and the statement in Form No. 1 shall be furnish on or before 30th June immediately following that year in the following manner:

- Electronically under digital signature
- Electronically through electronic verification code ‘EVC’

Where an assessee fails to furnish the above said statement within the time specified, the assessing officer may issue notice to such person requiring him to furnish statement within 30 days from the date of serving the notice.

Where any levy, interest or penalty in consequence to any order passed under chapter VIII of the Act, the Assessing officer shall serve upon the assessee a notice of demand in Form No. 2.

An appeal under sub-section (1) of section 174 of the Act to the Commissioner of Income Tax (Appeals) shall be made in Form No. 3 electronically under digital signature or through electronic verification code.

Further, an appeal under sub-section (1) or sub-section (2) of section 175 of the Act to the Appellate Tribunal shall be made in Form No. 4.

**NOTIFICATION NO. 41/2016 DATED 2ND JUNE, 2016**

The Central Government has notified for the purposes of the clause (46) of section 10 of the Income-tax Act 1961, the Uttar Pradesh AIDS Control Society in respect of the following specified income arising to the society:

a) Grant received from National AIDS Control Organization and interest received on deposits with bank.

This notification shall be subject to the following conditions:

a) the Pradesh AIDS Control Society shall not engage in any commercial activity;
b) the activities and the nature of the specified income remain unchanged throughout the financial years; and
c) the return of income shall be filed in accordance with the provisions of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961 (43 of 1961).

This notification shall be deemed to have been applied for the period from 1st June, 2011 to March 31, 2013 and the FY 2013-14, 2014-15 and 2015-16.

**NOTIFICATION NO. 46/2016 DATED 17TH JUNE, 2016**

**Exemption from TDS to securitisation trust on income received from activity of securitisation**

Section 197A provides that no deduction of tax shall be made under specified sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to specified sections, a declaration in writing in duplicate in the form 15G/15H and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. Section 197A(1F) empowers the Central Government to notify specified payment to specified institution, association or body or class of institutions, associations or bodies, in respect of which no deduction of tax shall be made. Accordingly, the Central Government has notified that no deduction of tax under Chapter XVII of the Income-tax Act shall be made on the payments of the nature specified in section 10(23DA) received by any securitisation trust as defined in clause (d) of the Explanation to section 115TC. The notification shall come into force from the date of its publication in the Official Gazette.

**NOTIFICATION NO. 47/2016, DATED 17TH JUNE, 2016**

**Exemption from TDS on specified payments made to banks etc.**

The Central Government deriving power under section 197A(1F) has notified that no deduction of tax shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank, or to any payment systems company authorized by the Reserve Bank of India under Section 4(2) of the Payment and Settlement Systems Act, 2007, as under:

i. bank guarantee commission;
ii. cash management service charges;
iii. depository charges on maintenance of DEMAT accounts;
iv. charges for warehousing services for commodities;
v. underwriting service charges;
vi. clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name
called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems
Act, 2007;

vii. credit card or debit card commission for transaction between merchant establishment and acquirer bank.

The notification shall come into force from the date of its publication in the Official Gazette.

**NOTIFICATION NO 48/2016, DATED 20TH JUNE, 2016**

*Extension of timeline specified for review of pre-existing individual account -Amendment in Rule 114H of
Income tax Rules, 1962*

The Rule 114H of the Income tax Rules, 1962 has been amended vide this Notification. In order to provide
sufficient time to the reporting financial institutions for completing the due diligence procedure in respect of other
reportable account referred to in Rule 114H (3)(d)(ii), which is high value account as on 31st December, 2015, the
timeline specified for review of pre-existing individual account has been extended from 30th June, 2016 to 31st
December, 2016. The timeline in case of U.S. reportable account which is low value account as on the 30th June,
2014, shall continue to be 30th June, 2016.

Similarly, in respect of other reportable account referred to in Rule 114H(5)(e)(i), timeline specified for review of
pre-existing entity account has been extended from 30th June, 2016 to 31st December, 2016. The timeline in case of a U.S. reportable account shall continue to be 30th June, 2016. Further, Form No. 61B (Statement of Reportable
Account under section 285BA(1)) has been substituted w.e.f 1st January, 2017.

**NOTIFICATION NO. 49/2016, DATED 22ND JUNE, 2016**

*Rule 10U amended to provide for prospective application of GAAR provisions*

The Finance Act, 2012 had introduced the General Anti Avoidance Rules (GAAR) in the form of Chapter X-A by
inserting sections 95-102 in the Income-tax Act, 1961. The provisions of Chapter X-A would be applicable in
respect of assessment year 2018-19 and onwards.

Section 101 empowers the CBDT to frame guidelines and conditions for proper application of this chapter. Accordingly Rules 10U to 10UC were notified providing for application of GAAR. Rule 10U dealing with certain
cases for non-application of chapter X-A has been amended vide this Notification to provide for prospective
application of GAAR provisions w.e.f 01.04.2017. By effect, the provisions of Chapter X-A shall now apply to any
income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person
from transfer of investments made on or after 01.04.2017 (instead of 30.08.2010) by such person. Further, it is also
provided that the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has
been entered into, in respect of the tax benefit obtained from the arrangement on or after 01.04.2017 (instead of
01.04.2015). These rules are called the Income-tax (16th amendment) Rules, 2016 and shall come into force from
the date of their publication in the Official Gazette.

**NOTIFICATION NO 51/2016, DATED 22ND JUNE, 2016**

*Procedure for online submission of TDS/TCS statements*

The provisions relating to the statement of deduction of tax under section 200(3) and the statement of collection of
tax under proviso to section 206C(3) of the Income-tax Act, 1961 are prescribed under rule 31A and rule 31AA of
the Income-tax Rules, 1962 respectively. As per rule 31A(5) and rule 31AA(5), the Director General of Income-tax
(Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the
statements and shall be responsible for the day to day administration in relation to furnishing and verification of the
statements in the manner so specified.

In exercise of power conferred by rule 31A(5) and rule 31AA(5), the Principal Director General of Income-tax
(Systems) has laid down the procedures of registration in the e-filing portal, the manner of the preparation of the
statements and submission of the statement.

**NOTIFICATION NO 53/2016, DATED 24TH JUNE, 2016**

The Central Board of Direct vide Notification No. 53/2016 has inserted RULE 37BC further to amend the Income-
tax Rules, 1962 as follow:
RULE “37BC inserted - Relaxation from deduction of tax at higher rate under section 206AA
In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as ‘the deductee’) and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, as under:

i. name, e-mail id, contact number;
ii. address in the country or specified territory outside India of which the deductee is a resident;
iii. a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
iv. Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

NOTIFICATION NO 55/2016, DATED 28TH JUNE, 2016
Fair market value of assets in certain cases
The Central Board of Direct Taxes has made the Income-tax 19th Amendment Rules further to amend the Income-tax Rules, 1962, under which in Part II, after sub-part H, the following sub-part shall be inserted:

RULR - 11UB (Fair market value of assets in certain cases) - The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as “foreign company or entity”), for the purposes of clause (i) of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.

Where the asset is a share of an Indian company listed on a recognised stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

Provided that where the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following formula, namely:-

Fair market value = (A+B) /C
Where;
A= the market capitalisation of the company on the basis of observable price of its shares quoted on the recognised stock exchange;
B= the book value of liabilities of the company as on the specified date;
C= the total number of outstanding shares:

Provided further that where, on the specified date, the share is listed on more than one recognised stock exchange, the observable price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

Where the asset is a share of an Indian company not listed on a recognized stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm’s length basis as increased by the liability, if any, considered in such determination.

Where the asset is an interest in a partnership firm or an association of persons, its fair market value shall be determined in the following manner, namely:-

i. the value on the specified date of such firm or association of persons, shall be determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology as increased by the liability, if any, considered in such determination;
ii. the portion of the value computed in clause (i) as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the value shall be allocated among the partners or members in accordance with the agreement of partnership firm or association of persons for distribution of assets in the event of dissolution of the firm or association, or, in the absence of any such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the fair market value of the interest of that partner or member in the firm or the association of persons, as the case may be.

The fair market value of the asset other than those referred to in sub-rules (2), (3) and (4) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.

The fair market value of all the assets of a foreign company or an entity shall be determined in the following manner, namely:-

i. where the transfer of share of, or interest in, the foreign company or entity is between the persons who are not connected persons, the fair market value of all the assets owned by the foreign company or the entity as on the specified date, for the purpose of such transfer, shall be determined in accordance with the following formula, namely:-

Fair market value of all assets = A+B
Where;
A = Market capitalisation of the foreign company or entity computed on the basis of the full value of consideration for transfer of the share or interest;
B = book value of the liabilities of the company or the entity as on the specified date as certified by a merchant banker or an accountant;

ii. in any other case, if, -

a) the share of the foreign company or entity is listed on a stock exchange on the specified date, the fair market value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely:-

Fair market value of all the assets = A+B
Where;
A = Market capitalisation of the foreign company or entity computed on the basis of the observable price of the share on the stock exchange where the share of the foreign company or the entity is listed;
B = book value of the liabilities of the company or the entity as on the specified date:

Provided that where, as on the specified date, the share is listed on more than one stock exchange, the observable price in the aforesaid formula shall be in respect of the stock exchange which records the highest volume of trading in the share during the period considered for determining the price;

b) the share in the foreign company or entity is not listed on a stock exchange on the specified date, the value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely :-

Fair market value of all the assets = A+B
Where;
A = fair market value of the foreign company or the entity as on the specified date as determined by a merchant banker or an accountant as per the internationally accepted valuation methodology;
B = value of liabilities of the company or the entity if any, considered for the determination of fair market value in A.

Where fair market value has been determined on the basis of any interim balance sheet referred to in the first proviso to clause (ix) of the Explanation, then the fair market value shall be appropriately modified after
finalisation of the relevant financial statement in accordance with the applicable laws and all the provisions of this rule and rules 11UC and 114DB shall apply accordingly.

For determining the fair market value of any asset located in India, being a share of an Indian company or interest in a partnership firm or association of persons, all the assets and business operations of the said company or partnership firm or association of persons shall be taken into account irrespective of whether the assets or business operations are located in India or outside.

The rate of exchange for the calculation in foreign currency, of the value of assets located in India and expressed in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.

RULE 11UC - Determination of Income attributable to assets in India - The income from transfer outside India of a share of, or interest in, a company or an entity referred to in clause (i) of sub-section (1) of section 9, attributable to assets located in India, shall be determined in accordance with the following formula, namely: –

\[ A \times B \div C \]

Where;

A = Income from the transfer of the share of, or interest in, the company or the entity computed in accordance with the provisions of the Act, as if, such share or interest is located in India;

B = Fair Market Value of assets located in India as on the specified date, from which the share or interest referred to in A derives its value substantially, computed in accordance with rule 11UB;

C = Fair Market Value of all the assets of the company or the entity as on the specified date, computed in accordance with rule 11UB:

Provided that if the transferor of the share of, or interest in, the company or the entity fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets located in India shall be determined in such manner as the Assessing Officer may deem suitable.

The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report in Form No. 3CT duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.”

RULE “114DB Information or documents to be furnished under section 285A

Every Indian concern referred to in section 285A shall, for the purposes of the said section, maintain and furnish the information and documents in accordance with this rule.

The information shall be furnished in Form No. 49D electronically under digital signature to the Assessing Officer having jurisdiction over the Indian concern within a period of ninety days from the end of the financial year in which any transfer of the share of, or interest in, a company or entity incorporated outside India (hereafter referred to as “foreign company or entity”) referred to in Explanation 5 to clause (i) of sub-section (1) of section 9 has taken place:

Provided that where the transaction in respect of the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information shall be furnished in the said Form within ninety days of the transaction.

The Indian concern shall maintain the following alongwith its english translation, if the documents originally prepared are in foreign languages and produce the same when called upon to do so by any income-tax authority in the course of any proceeding to substantiate the information furnished under sub-rule (2), namely: -

i. details of the immediate holding company or entity, intermediate holding company or companies or entity or entities and ultimate holding company or entity of the Indian concern;
ii. details of other entities in India of the group of which the Indian concern is a constituent;
iii. the holding structure of the shares of, or the interest in, the foreign company or entity before and after the
transfer;
iv. any transfer contract or agreement entered into in respect of the share of, or interest in, any foreign
company or entity that holds any asset in India through, or in, the Indian concern;
v. financial and accounting statements of the foreign company or entity which directly or indirectly holds the
assets in India through, or in, the Indian concern for two years prior to the date of transfer of the share or
interest.
vi. information relating to the decision or implementation process of the overall arrangement of the transfer;
vii. information in respect of the foreign company or entity and its subsidiaries, relating to, -
(a) the business operation;
(b) personnel;
(c) finance and properties;
(d) internal and external audit or the valuation report, if any, forming basis of the consideration in respect
of share, or the interest;
viii. the asset valuation report and other supporting evidence to determine the place of location of the share or
interest being transferred;
x. the details of payment of tax outside India, which relates to the transfer of the share or interest;
x. the valuation report in respect of Indian asset and total assets duly certified by a merchant banker or
accountant with supporting evidence;
x. documents which are issued in connection with the transactions under the accounting practice followed.

Where there are more than one Indian concerns that are constituent entities of a group, the information may be
furnished by any one Indian concern, if, -

a. the group has designated such Indian concern to furnish information on behalf of all other Indian
concerns that are constituent of the group, and
b. the information regarding the designated Indian concern has been conveyed in writing on behalf of
the group to the Assessing officer: Provided that nothing contained in this sub-rule shall have effect
if the designated Indian concern fails to furnish the information in accordance with the provisions
of this rule.

The information and documents specified in sub-rule (3) shall be kept and maintained for a period of eight years
from the end of relevant assessment year.
**Conditions**

**Who can subscribe the bonds?**
The following shall be eligible to subscribe to the bonds:
- Retail Individual Investors (RIIs);
- Qualified Institutional Buyers (QIBs);
- Corporates (including statutory corporations), trusts, partnership firms, Limited Liability Partnerships, cooperative banks, regional rural banks and other legal entities, subject to compliance with their respective Acts;
- High Networth Individuals (HNIs).

Note: It shall be mandatory for the subscribers to furnish their Permanent Account Number to the issuer of the bonds.

**What shall be the tenure of the bonds?**
The tenure of the bonds shall be for ten or fifteen or twenty years.

**Issue expense and brokerage**
The issue expense would include all expenses relating to the sue like brokerage, advertisement, printing, registration etc., the total expenses shall not exceed the following limits

- In the case of private placement - 0.25 per cent of the issue size
- In the case of public issue - 0.65 per cent of the issue size

**Rate of interest**
There shall be a ceiling on the coupon rates based on the Government security (G-sec) rate; the belowmentioned ceiling rates shall apply for annual payment of interest, in case the schedule of interest payments is altered to semi-annual, the interest rates shall be reduced by fifteen basis points:

<table>
<thead>
<tr>
<th>Rating of the Issuer</th>
<th>Ceiling on the Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAA rated issuers</td>
<td>RIIIs- The G Sec reference rate less fifty five basis points</td>
</tr>
<tr>
<td></td>
<td>Other investor segments- The G-Sec reference rate less eighty basis points</td>
</tr>
<tr>
<td></td>
<td>The higher rate of interest, applicable to RIIs, shall not be available in case the bonds are transferred by RIIs to non retail investors.</td>
</tr>
<tr>
<td>AA+ rated issuers</td>
<td>10 basis points above the rate for AAA rated entities</td>
</tr>
<tr>
<td>AA or AA- rated issuers</td>
<td>20 basis points above the ceiling rate for AAA rated entities</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Entities</th>
<th>Allocated amount of bonds ((\text{\textdialed{f}}) in crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>National Highways Authority of India (NHAI)</td>
<td>24000</td>
</tr>
<tr>
<td>2</td>
<td>Indian Railways Finance Corporation (IRFC)</td>
<td>6000</td>
</tr>
<tr>
<td>3</td>
<td>Housing and Urban Development Corporation (HUDCO)</td>
<td>5000</td>
</tr>
<tr>
<td>4</td>
<td>Indian Renewable Energy Development Agency (IREDA)</td>
<td>2000</td>
</tr>
<tr>
<td>5</td>
<td>Power Finance Corporation Limited (PFC)</td>
<td>1000</td>
</tr>
<tr>
<td>6</td>
<td>Rural Electrification Corporation Limited (REC)</td>
<td>1000</td>
</tr>
<tr>
<td>7</td>
<td>NTPC Limited</td>
<td>1000</td>
</tr>
</tbody>
</table>
G-Sec Rate
The reference G-sec rate shall be the average of the base yield for equivalent maturity reported by Fixed Income Money Market and Derivative Association of India (FIMMDA) on a daily basis (working day) prevailing for two weeks ending on the Friday immediately preceding the filing of the final prospectus with the Exchange or Registrar of Companies (ROC) in public issue and the Issue opening date in case of private placement;

Public issue
- At least 70% of the aggregate amount of bonds issued by each entity shall be raised through public issue;
- 40% of such public issue shall be earmarked for RIIs.

Private placement
- Shall adopt the book building approach as per regulation 11 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations 2008, wherein bids shall be sought on the coupon rate subject to specified by the entity and the allotment shall be made at the price bid;
- the bonds shall be paid for and issued at a premium with a fixed coupon, to facilitate trading of the instrument under a single International Securities Identification Number (ISIN);
- the yield shall be computed based on the quoted price;
- the allotment shall be done for best price (lowest yield) thereof;
- the ceiling rate of the interest shall either be equal to or lower than that discussed above;
- while calling for bids, there shall be no limit on the number of arrangers who can bid for the issue.

Repayment of bonds
The issuer entity shall submit a financing plan to the Infra-Finance Section, Infrastructure Division, Department of Economic Affairs, within three months of closure of the issue, duly supported by a resolution of the respective entity's Board of Directors to demonstrate its ability to repay the borrowed funds on the repayment becoming due;

Selection of merchant bankers
(i) Merchant bankers shall be selected through competitive bidding process with transparent pre-qualification criteria and the final selection shall be based on financial bids;
(ii) the benefit under section 10 of the Income-tax Act, 1961 shall be admissible only if the holder of such bonds registers his/her or its name and the holding with the entity,
(iii) the issue of bonds shall be made in compliance with the public issue requirements specified in the Companies Act, 2013 and Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008, including inter-alia the filing of a prospectus with the Registrar of Companies, as applicable.

NOTIFICATION NO. 60/2015 DATED 24TH JULY, 2015 - COST INFLATION INDEX FOR FINANCIAL YEAR 2015-16
In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government has prescribed ‘1081’ as the Cost Inflation Index for the Financial year 2015-16

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes has made the Income-tax (Tenth Amendment) Rules, 2015 and substituted new respective forms for FORM ITR-3, FORM ITR-4, FORM ITR-5, FORM ITR-6 and FORM ITR-7

This amendment shall be deemed to have come into force with effect from the 1st day of April,

With respect to registration of persons, due diligence and maintenance of information, and the matters relating to statement of reportable accounts, CBDT has notified the Income–tax (11th Amendment) Rules, 2015 to insert 114F, 114G and 114H in the Income-tax Rules, 1962 with effect from the date of publication of the notification in the Official Gazette.
'114F Definitions.- For the purpose of this rule and rules 114G and 114H.-

(1) “financial account” means an account (other than an excluded account) maintained by a financial institution, and includes-

(i) a depository account;

(ii) a custodial account;

(iii) in the case of an investment entity, any equity or debt interest in the financial institution.

(iv) in the case of a financial institution not described in sub-clause (iii), any equity or debt interest in the financial institution, if the class of interests was established with a purpose of avoiding reporting in accordance with rule 114G and, in case of a U.S. reportable account, if the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. source withholdable payments; and

(v) any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an excluded account.

Explanation to the sub-rule (1) defines, (a) “depository account”, (b) “custodial account”, (c) “equity interest”, (d) “insurance contract”, (e) “annuity contract”, (f) “cash value insurance contract”, (g) “cash value”

(2) “financial asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract:

Provided that “financial asset” shall not include a non-debt and direct interest in an immovable property;

(3) “financial institution” means a custodial institution, a depository institution, an investment entity, or a specified insurance company.

Explanation to the Sub-rule (3) defines (a) “custodial institution”, (b) “depository institution and (c) “investment entity”

(4) “non-participating financial institution” means a financial institution defined in clause (r) of Article 1 of the agreement between the Government of the Republic of India and the Government of the United States of America to improve international tax compliance and to implement Foreign Account Tax Compliance Act of the United States of America (herein after referred to as the FATCA agreement), but does not include,-

(a) an Indian financial institution; or

(b) other jurisdiction, being a jurisdiction that has in effect an agreement with the United States of America to facilitate the implementation of Foreign Account

(5) “non-reporting financial institution” means any financial institution that is,-

(a) a Governmental entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution;

(b) a Treaty Qualified Retirement Fund; a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; or a Pension Fund of a Governmental entity, International Organization or Central Bank;

(c) a non-public fund of the armed forces, Employees’ State Insurance Fund, a gratuity fund or a provident fund;

(d) an entity that is an Indian financial institution only because it is an investment entity, provided that each direct holder of an equity interest in the entity is a financial institution referred to in sub-clauses (a) to (c), and each direct holder of a debt interest in such entity is either a depository institution (with respect to a loan made to such entity) or a financial institution referred to in sub-clauses (a) to (c);
(e) a qualified credit card issuer;
(f) an investment entity established in India that is a financial institution only because it,-
    (I) renders investment advice to, and acts on behalf of; or
    (II) manages portfolios for, and acts on behalf of; or
    (III) executes trades on behalf of,
    a customer for the purposes of investing, managing, or administering funds or securities deposited in
    the name of the customer with a financial institution other than a non-participating financial
    institution;
(g) an exempt collective investment vehicle;
(h) a trust established under any law for the time being in force to the extent that the trustee of the trust is a
    reporting financial institution and reports all information required to be reported under rule 114G with
    respect to all reportable accounts of the trust;
(i) a financial institution with a local client base;
(j) a local bank;
(k) a financial institution with only low-value accounts;
(l) sponsored investment entity and controlled foreign corporation, in case of any U.S. reportable account;
or
(m) sponsored closely held investment vehicle, in case of any U.S. reportable account.

Explanation to this Sub-rule defines (A) “Governmental entity” , (B) “International Organisation”, (C) “Central
Bank”, (D) “Treaty Qualified Retirement Fund”, (E) “Broad Participation Retirement Fund”, (F) “Narrow
Participation Retirement Fund”, (G) “Pension Fund of a Governmental entity, International Organisation or Central
means a fund established under the Payment of Gratuity Act, 1972 (K) “provident fund”, (L) “qualified credit card
issuer”, (M) “exempt collective investment vehicle”, (N) “financial institution with a local client base”, (O) “local
bank”, (P) “financial institution with only low-value accounts”, (Q) “sponsored investment entity and controlled
foreign corporation”, (R) “sponsored, closely held investment vehicle”

(6) “reportable account” means a financial account which has been identified, pursuant to the due diligence
procedures provided in rule 114H, as held by,-
    (a) a reportable person; or
    (b) an entity, not based in United States of America, with one or more controlling persons that is a specified
        U.S. person; or
    (c) a passive non-financial entity with one or more controlling persons that is a person described in sub-
        clause (b) of clause (8) of this rule.

Explanation to this Sub-rule defines (A) “active non-financial entity”, (B) “controlling person”, (C) “non-financial
entity”, (D) “passive non-financial entity”, (E) “related entity”, (F) “passive income”

(7) “reporting financial institution” means,-
    (a) a financial institution (other than a non-reporting financial institution) which is resident in India, but
        excludes any branch of such institution, that is located outside India; and
    (b) any branch, of a financial institution (other than a non-reporting financial institution) which is not
        resident in India, if that branch is located in India;

(8) “reportable person” means,-
    (a) one or more specified U.S. persons; or
    (b) one or more persons other than,-
        (i) a corporation, the stock of which is regularly traded on one or more established securities
            markets;
        (ii) any corporation that is a related entity of a corporation mentioned in item (i);
        (iii) a Governmental entity;
        (iv) an International organisation;
        (v) a Central bank; or
        (vi) a financial institution,
that is a resident of any country or territory outside India (except the United States of America) under the
tax laws of such country or territory or an estate of a decedent who was a resident of any country or
territory outside India (except the United States of America) under the tax laws of such country or territory;

(9) “specified U.S. person” means a U.S. Person, other than the persons referred to in sub-clauses (i) to (xiii) of
clause (ff) of Article 1 of the FATCA agreement;

(10) “U.S. person” means,-
(a) an individual, being a citizen or resident of the United States of America;
(b) a partnership or corporation organized in the United States of America or under the laws of the United
States of America or any State thereof;
(c) a trust if,-
(i) a court within the United States of America would have authority under applicable law to render
orders or judgments concerning substantially all issues regarding administration of the trust; and
(ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
(d) an estate of a decedent who was a citizen or resident of the United States of America;

(11) “U.S. reportable account” means a financial account maintained by a reporting financial institution and,
pursuant to the due diligence procedures provided in rule 114H, is identified to be held by one or more specified
U.S. persons or by an entity not based in the United States of America with one or more controlling persons which
is a specified U.S. Person;

(12) “U.S. source withholdable payment” means any payment of interest (including any original issue discount),
dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed
or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United
States of America:
Provided that a U.S. source withholdable payment shall not include any payment that is not treated as a
withholdable payment in relevant Treasury Regulations of the United States of America;

(13) “withholding foreign partnership” means a foreign partnership that has entered into a withholding agreement
with the United States of America in which it agrees to assume primary withholding responsibility for all payments
which are made to it for its partners, beneficiaries or owners;

(14) “withholding foreign trust” means a foreign trust that has entered into a withholding agreement with the
United States of America in which it agrees to assume primary withholding responsibility for all payments which
are made to it for its partners, beneficiaries or owners.

114G. Information to be maintained and reported.
As per Sub-rule (1) of the Rule 114G, the following information shall be maintained and reported by a reporting
financial institution in respect of each reportable account:

(a) the name, address, taxpayer identification number and date and place of birth (in the case of an individual) of
each reportable person, that is an account holder of the account;
(b) in the case of any entity which is an account holder and which, after application of due diligence procedures
prescribed in rule 114H, is identified as having one or more controlling persons that is a reportable person,-
(i) the name and address of the entity, taxpayer identification number assigned to the entity by the country
or territory of its residence; and
(ii) the name, address, date and place of birth of each such controlling person and taxpayer identification
number assigned to such controlling person by the country or territory of his residence;
(c) the account number (or functional equivalent in the absence of an account number);
(d) the account balance or value (including, in the case of a cash value insurance contract or annuity contract, the
cash value or surrender value) at the end of relevant calendar year or, if the account was closed during such year,
immediately before closure;
(e) in the case of any custodial account,-
(i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of
other income generated with respect to the assets held in the account, in each case paid or credited to the
account (or with respect to the account) during the calendar year; and
(ii) the total gross proceeds from the sale or redemption of financial assets paid or credited to the account
during the calendar year with respect to which the reporting financial institution acted as a custodian,
broker, nominee, or otherwise as an agent for the account holder;
(f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the
relevant calendar year;
(g) in the case of any account other than that referred to in clauses (e) or (f), the total gross amount paid or credited
to the account holder with respect to the account during the relevant calendar year with respect to which the
reporting financial institution is the obligor or debtor, including the aggregate amount of any redemption payments
made to the account holder during the relevant calendar year; and
(h) in the case of any account held by a non-participating financial institution, for calendar year 2015 and 2016, the
name of each non-participating financial institution to which payments have been made and the aggregate amount
of such payments:

Provided that the information to be reported,-

(i) with respect to calendar year 2014, is the information referred to in clauses (a), (b), (c) and (d), with regard to
U.S. reportable accounts;
(ii) with respect to calendar year 2015, is the information referred to in clauses (a), (b), (c), (d), (f), (g), (h) and sub-
clause (i) of clause (e), with regard to U.S. reportable accounts;
(iii) with respect to calendar year 2016, is the information referred to in clauses (a) to (h), with regard to all
reportable accounts;
(iv) with respect to calendar year 2017 and subsequent years, is the information referred to in clauses (a) to (g),
with regard to all reportable accounts:

Provided further that with respect to each U.S. reportable account which is maintained by a reporting financial
institution as on the 30th June, 2014, the taxpayer identification number of any relevant person is not required to be
reported if such taxpayer identification number is not in the records of the reporting financial institution.

Sub-rule (2) to rule 114G defines (a) “account holder” and (b) “taxpayer identification number”

(3) Where the person is a resident of more than one country or territory outside India under the tax laws of such
country or territory, the reporting financial institution shall maintain the taxpayer identification number in respect
of each such country or territory.

(4) Notwithstanding anything contained in sub-rule (1), with respect to each reportable account which is a pre-
existing account, the taxpayer identification number or date of birth is not required to be reported if such taxpayer
identification number or date of birth is not in the records of the reporting financial institution:

Provided that the reporting financial institution shall obtain the taxpayer identification number and date of birth
with respect to pre-existing accounts by the 31st December, 2016 and shall report it with respect to calendar year
2017 and subsequent years.

(5) Notwithstanding anything contained in sub-rule (1) and sub-rule (4), the taxpayer identification number is not
required to be reported if,-
(i) a taxpayer identification number (including its functional equivalent) is not issued by the relevant
country or territory outside India in which the person is resident for tax purposes or;
(ii) the domestic law of the relevant country or territory outside India does not require the collection of the
taxpayer identification number issued by such country or territory.

(6) Notwithstanding anything contained in sub-rule (1), the place of birth is not required to be reported unless it is
available in the electronically searchable data maintained by the reporting financial institution.
(7) The statement of reportable account required to be furnished under clause (k) of sub-section (1) of section 285BA shall be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in rule 114H, as a reportable account:

Provided that where pursuant to such due diligence procedures no account is identified as a reportable account, a nil statement shall be furnished by the reporting financial institution.

(8) The statement referred to in sub-rule (7) shall be furnished in Form No. 61B for every calendar year by the 31st day of May following that year:

Provided that the statement pertaining to calendar year 2014 shall be furnished by the 31st day of August, 2015.

(9) (a) The statement referred to in sub-rule (7) shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems).

(b) Principal Director General of Income Tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

(10) (a) Every reporting financial institution shall communicate to the Principal Director General of Income-tax (Systems) the name, designation and communication details of the Designated Director and the Principal Officer and obtain a registration number;

(b) The statement referred to in sub-rule (7) shall be signed, verified and furnished by the Designated Director of the reporting financial institution on the basis of information available with the institution:

Provided that where the reporting financial institution is a non-resident, the statement may be signed, verified and furnished by a person who holds a valid power of attorney from such Designated Director;

(c) It shall be the duty of every reporting financial institution, its Designated Director, Principal Officer and employees to observe the procedure and the manner of maintaining information as specified by its regulator.

(11) (a) The regulator referred to in clause (c) of sub-rule (10) shall issue instructions or guidelines to,-

(i) incorporate the requirements of reporting and due diligence procedure specified under rules 114F to 114H;

(ii) provide the procedure and manner of maintaining the information by the reporting financial institution; and

(iii) ensure the availability of the information referred to in sub-rule (1) with the reporting financial institution for meeting its reporting obligation, if such information is not maintained by it under any rule or regulation issued by the regulator.

(b) Every reporting financial institution shall maintain information in respect of financial accounts in accordance with the procedure and manner as may be specified by its regulator from time to time so as to enable reporting of information prescribed under this rule and perform due diligence procedure specified under rule 114H.

114H. Due diligence requirement.

(1) An account shall be treated as a reportable account beginning as on the date it is identified as such pursuant to the due diligence procedure specified in sub-rule (3) to sub-rule (8) and, unless otherwise provided, information with respect to a reportable account shall be reported annually in the calendar year following the calendar year to which the information relates.

Sub-rule (2) to Rule 114H defines (a) “documentary evidence”, (b) “high value account”, (c) “lower value account”, (d) “new account”, (e) “new entity account”, (f) “new individual account”, (g) “other reportable account”, (h) “pre-existing account”, (i) “pre-existing entity account”, (j) “pre-existing individual account” (k) how to determine a balance or value threshold.
Sub-rule (3) of the rule prescribes, the due diligence procedure for the purposes of identifying reportable accounts among pre-existing individual accounts

Sub-rule (4) prescribes the procedures for purposes of identifying reportable accounts among new individual accounts

Sub-rule (5) prescribes the procedures for purposes of identifying reportable accounts among pre-existing entity accounts

Sub-rule (6) prescribes the procedures for purposes of identifying reportable accounts and accounts held by non-participating financial institutions among new entity accounts

Sub-rule (7) prescribes the additional procedures in implementing the due diligence requirement specified in sub-rules (1) to (6)

Sub-rule (8) prescribes the alternative procedures for the reporting financial institution in case of a U.S. reportable account opened on or after the 1st July, 2014 but before the date of entry into force of FATCA agreement, notwithstanding the due diligence procedures specified in sub-rule (4) or sub-rule (6) of this rule for new accounts.

**NOTIFICATION 70/2015 DATED 17TH AUGUST, 2015 - INCOME-TAX (TWELFTH AMENDMENT) RULES, 2015**

The Central Board of Direct Taxes has notified the Income-tax (Twelfth Amendment) Rules, 2015 to insert rule 126, after rule 125 in Part XV of the Income-tax Rules, 1962 which shall come into force with retrospective effect from the 1st day of April, 2015.

**126. Computation of period of stay in India in certain cases.** –

(1). For the purposes of clause (1) of section 6, in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period computed in accordance with sub-rule (2).

(2). The period referred to in sub-rule (1) shall be the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

*Explanation:* For the purposes of this rule,-

(a) “Continuous Discharge Certificate” shall have the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum- Seafarer’s Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958 (44 of 1958);

(b) “eligible voyage” shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.”.

**NOTIFICATION NO. 71/2015 DATED 17TH AUGUST, 2015**

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

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NOTIFICATION NO. 72/2015 DATED 24TH AUGUST, 2015
In exercise of the powers conferred by the clause (22B) of section 10 of the Income tax Act, 1961 (43 of 1961), the Central Government has specified the Press Trust of India Limited, New Delhi as a news agency set up in India solely for collection and distribution of news, for the purpose of the said clause for three assessment years 2016-17 to 2018-19.

NOTIFICATION NO. 75/2015 DATED 23RD SEPTEMBER, 2015- INCOME-TAX (THIRTEENTH AMENDMENT) RULES TO AMEND THE INCOME-TAX RULES, 1962
In exercise of the powers conferred by section 295, read with clause (14) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes has notified the Income-tax (Thirteenth Amendment) Rules to insert the words “or deaf and dumb” after the words “who is blind” under column (2) relating to “name of allowance” against serial number 11 in the Table in rule 2BB (2).

The amendment shall come into force on the date of publication in the Official Gazette.

NOTIFICATION NO. 76/2015 DATED 29TH SEPTEMBER, 2015- INCOME-TAX (14TH AMENDMENT) RULES, 2015
The Central Board of Direct Taxes has notified the Income-tax (14th Amendment) Rules, 2015 to further to substitute following under rule 29C of the Income-tax Rules, 1962 which shall come into force on the 1st day of October, 2015.

29C. Declaration by person claiming receipt of certain incomes without deduction of tax.—
It prescribes that a declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No. 15G and declaration under sub-section (1C) of section 197A shall be in Form No. 15H either in paper form or electronically after duly verifying through an electronic process

The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall

- allot a unique identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the prescribed procedures
- furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in the statement of deduction of tax of the said quarter in accordance with the prescribed provisions
- furnish the statement of deduction of tax referred to in rule 31A containing the particulars of declaration received by him during each quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in accordance with the prescribed provisions irrespective of the fact that no tax has been deducted in the said quarter.

Subject to the above provisions, an income-tax authority may, before the end of seven years from the end of the financial year in which the declaration has been received, require the person referred above to furnish or make available the declaration for the purposes of verification or any proceeding under the Act in accordance with the procedures, formats and standards specified by Principal Director General of Income tax (Systems)
The Principal Director General of Income-tax (Systems) shall

- specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration, allotment of unique identification number and furnishing or making available the declaration to the income tax authority
- be responsible for the day-to-day administration in relation to the furnishing of the particulars of declaration
- make available the information of declaration furnished by the person referred to in sub-rule (3) to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to whom the Assessing Officer having jurisdiction to assess the person who has furnished the declaration under sub-section (1) or under sub-section (1A) or under sub-section (1C) of section 197A is subordinate.”.

In Appendix-II of the said rules, for Form No.15G and Form No.15H, the new Forms Form No.15G and Form No.15H has been respectively substituted.

NOTIFICATION NO. 78/2015 DATED 12TH OCTOBER, 2015 - INCOME-TAX (15TH AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has notified the Income-tax (15th Amendment) Rules, 2015 to amend

Sub-rules (2) and (3) in the rule 11DD of the Income-tax Rules shall come into force on the date of publication in the Official Gazette.

Sub-rule (2)

“The prescription in respect of the diseases or ailments specified in sub-rule (1) shall be issued by the following specialists:-

(a) for diseases or ailments mentioned in clause (i) of sub-rule (1) - a Neurologist having a Doctorate of Medicine (D.M.) degree in Neurology or any equivalent degree, which is recognised by the Medical Council of India;

(b) for diseases or ailments mentioned in clause (ii) of sub-rule (1) - an Oncologist having a Doctorate of Medicine (D.M.) degree in Oncology or any equivalent degree which is recognised by the Medical Council of India;

(c) for diseases or ailments mentioned in clause (iii) of sub-rule (1) - any specialist having a post-graduate degree in General or Internal Medicine, or any equivalent degree which is recognised by the Medical Council of India;

(d) for diseases or ailments mentioned in clause (iv) of sub-rule (1) - a Nephrologist having a Doctorate of Medicine(D.M.) degree in Nephrology or a Urologist having a Master of Chirurgiae(M.Ch.) degree in Urology or any equivalent degree, which is recognised by the Medical Council of India;

(e) for diseases or ailments mentioned in clause (v) of sub-rule (1) – a specialist having a Doctorate of Medicine (D.M.) degree in Hematology or any equivalent degree, which is recognised by the Medical Council of India:

Provided that where in respect of any diseases or ailments specified in sub-rule (1), the patient is receiving the treatment in a Government hospital, the prescription may be issued by any specialist working full-time in that hospital and having a post-graduate degree in General or Internal Medicine or any equivalent degree, which is recognised by the Medical Council of India.”

Sub-rule (3)

“The prescription referred to in sub-rule(2) shall contain the name and age of the patient, name of the disease or ailment along with the name, address, registration number and the qualification of the specialist issuing the prescription:

Provided that where the patient is receiving the treatment in a Government hospital, such prescription shall also contain the name and address of the Government hospital.”
The Central Board of Direct Taxes has notified the Income-tax (16th Amendment), Rules, 2015 to make following amendments in rule 10B and insert rule 10CA after rule 10C of the Income-tax Rules, 1962, which shall come into force on the date of their publication in the Official Gazette.

(I) in rule 10B
(i) in sub-rule (4),

(a) after the words “relating to the financial year”, the brackets, words, figures and letters “(hereafter in this rule and in rule 10 CA referred to as the ‘current year’)” shall be inserted;

(b) in the proviso, for the words “such financial year”, the words “the current year “ shall be substituted;

(c) after the proviso, the following proviso shall be inserted, namely:-

“Provided further that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014.”;

(ii) after sub-rule (4), the following sub-rule shall be inserted, namely:-

“(5) In a case where the most appropriate method for determination of the arm’s length price of an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014, is the method specified in clause (b), clause (c) or clause (e) of sub-section (1) of section 92 C , then, notwithstanding anything contained in sub-rule (4), the data to be used for analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be,

(i) the data relating to the current year ; or
(ii) the data relating to the financial year immediately preceding the current year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee , for the assessment year relevant to the current year:

Provided that where the data relating to the current year is subsequently available at the time of determination of arm’s length price of an international transaction or a specified domestic transaction during the course of any assessment proceeding for the assessment year relevant to the current year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year.”;

(II) after rule 10 C, the following rule and illustrations shall be inserted, namely

10 CA. Computation of arm’s length price in certain cases
(1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in sub-section (1) of section 92 C results in determination of more than one price, then the arm’s length price in respect of such international transaction or specified domestic transaction shall be computed in accordance with the provisions of this rule.

(2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm’s length price shall be determined on the basis of the dataset so constructed:

Provided that in a case referred to in clause (i) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,-
(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and
(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided further that in a case referred to in clause (ii) of sub-rule (5) of rule 10B, where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then, -

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and
(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1):

Provided also that where the use of data relating to the current year in terms of the proviso to sub-rule (5) of rule 10B establishes that,-

(i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year; or
(ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,
then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall not be included in the dataset.

(3) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:-

(i) where the prices have been determined using the method referred to in clause (b) of sub-rule (1) of rule 10 B, the weighted average of the prices shall be computed with weights being assigned to the quantum of sales which has been considered for arriving at the respective prices;
(ii) where the prices have been determined using the method referred to in clause (c) of sub-rule (1) of rule 10 B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs which has been considered for arriving at the respective prices;
(iii) where the prices have been determined using the method referred to in clause (e) of sub-rule (1) of rule 10 B, the weighted average of the prices shall be computed with weights being assigned to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

(4) Where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of sub-section (1) of section 92 C and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm’s length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm’s length price shall be computed in accordance with sub-rule(5) and sub-rule (6).

(5) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the range referred to in sub-rule (4), then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm’s length price.
(6) If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the arm’s length range referred to in sub-rule (4), the arm’s length price shall be taken to be the median of the dataset.

(7) In a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset:

Provided that, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent. of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, 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.

(8) For the purposes of this rule:-

(a) “the thirty-fifth percentile” of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least thirty five percent. of the values included in the dataset are equal to or less than such value;

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(b) “the sixth-fifth percentile” of a dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least sixty five percent. of the values included in the dataset are equal to or less than such value;

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset;

(c) “the median” of the dataset, having values arranged in an ascending order, shall be the lowest value in the dataset such that at least fifty percent of the values included in the dataset are equal to or less than such value:

Provided that, if the number of values that are equal to or less than the aforesaid value is a whole number, then the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

NOTIFICATION NO. 84/2015 DATED THE 20TH OCTOBER, 2015- INCOME-TAX (17TH AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has made the Income-tax (17th Amendment) Rules, 2015 to substitute sub-rules (1) and (2) sub-rules (1) and (2) of the Income-tax Rules, 1962 which shall come into force from the 14th day of May, 2015.

In the Income-tax Rules, 1962 in rule 2F for, the following sub-rules shall be substituted namely:-

Sub Rule (1) of 2F

The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Debt Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011, vide notification No, DNBS 233/CGM (US)-2011 dated the 21st November, 2011 as amended vide Notification No. DNBR.020/CGM (CDS)-2015 dated the 14th May, 2015

Sub Rule (2) of 2F

The funds of the Infrastructure Debt Fund shall be invested only in Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operations that are-

(i) Public Private Partnership Projects and are party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment;
(ii) Non-Public Private Partnership Projects and Public Private Partnership Projects without a project authority in sectors where there is no project authority”

NOTIFICATION NO. 89/2015 DATED 2ND DECEMBER, 2015-INCOME-TAX (18TH AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has notified the Income-tax (18th Amendment) Rules, 2015 to insert rule 127 after rule 126 in the Income-tax Rules, 1962, which shall come into force on the date of publication in the Official Gazette.

127 “Service of notice, summons, requisition, order and other communication.

(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as “communication”) may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be-
(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section(1) of section 282; the address available in -

(i) the PAN database of the addressee; or
(ii) the income-tax return to which the communication relates; or
(iii) the last income-tax return furnished by the addressee; or
(iv) the website of Ministry of Corporate Affairs as address of the registered office in the case of a company

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication;

(b) for communications delivered or transmitted electronically; email address-

(i) available in the income-tax return furnished by the addressee to which the communication relates; or
(ii) available in the last income-tax return furnished by the addressee; or
(iii) available on the website of Ministry of Corporate Affairs, in the case of a company,
(iv) made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

(3) The Principal Director General of Income-tax(Systems) or the Director General of Income-tax(Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.”

NOTIFICATION NO. 90 DATED 8TH DECEMBER, 2015- INCOME-TAX (19TH AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has notified the Income-tax (19th Amendment) Rules, 2015 to make following amendments in rule 10D,10THA, 10THB,10THC and 10THD of the Income-tax Rules, 1962 which shall come into force from the date of their publication in the Official Gazette.

In rule 10D, for sub-rule (2A), the following sub-rule has been substituted, namely:-

“(2A) Nothing contained in sub-rule (1), in so far as it relates to an eligible specified domestic transaction referred to in rule 10 THB , shall apply in a case of an eligible assessee mentioned in rule 10 THA and-

(a) the eligible assessee, referred to in clause (i) of rule 10THA, shall keep and maintain the following information and documents, namely:-

(i) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;
(ii) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(iii) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and value of each such transaction or class of such transaction;

(iv) a record of proceedings, if any, before the regulatory commission and orders of such commission relating to the specified domestic transaction;

(v) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(vi) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price; and

(vii) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price;

(b) the eligible assessee, referred to in clause (ii) of rule 10THA, shall keep and maintain the following information and documents, namely:-

(i) a description of the ownership structure of the assessee co-operative society with details of shares or other ownership interest held therein by the members;

(ii) description of members including their addresses and period of membership;

(iii) the nature and terms (including prices) of specified domestic transactions entered into with each member and the quantum and value of each such transaction or class of such transaction;

(iv) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(v) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;

(vi) the documentation regarding price being routinely declared in transparent manner and being available in public domain; and

(vii) any other information, data or document which may be relevant for determination of the transfer price.”.

In rule 10THA of the said rules, for the words “and is a Government company engaged in the business of generation, transmission or distribution of electricity” , the following shall be substituted, namely :-

“and-

(i) is a Government company engaged in the business of generation, transmission or distribution of electricity; or

(ii) is a co-operative society engaged in the business of procuring and marketing milk and milk products”.

In rule 10THB of the said Rules, after clause (iii) the following clause shall be inserted, namely:-

“or (iv) purchase of milk or milk products by a co-operative society from its members.”.

In sub-rule (2) of rule 10THC of the said rules, in the Table, after serial number 1 and entries relating thereto, the following serial number and entries shall be inserted, namely:-

“2 Purchase of milk or milk products referred to in clause (iv) of rule 10THB.

The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk; and-

(a) the said rate is irrespective of,-

(i) the quantity of milk procured;

(ii) the percentage of shares held by the members in the co-operative society;

(iii) the voting power held by the members in the society; and

(b) such prices are routinely declared by the cooperative society in a transparent manner and are available in public domain.”.

In sub-rule (1) of rule 10 THD of the said rules, after the second proviso, the following proviso shall be inserted, namely:-
“Provided also that in respect of eligible specified domestic transactions, referred to in clause (iv) of rule 10 THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of December, 2015.”

Notification No. 92 dated 11th December, 2015-Income-tax (20thAmendment) Rules, 2015
The Central Board of Direct Taxes has prescribed the Income-tax (20thAmendment) Rules, 2015, to insert rule 12CB after the rule 12CA of the Income-tax Rules, 1962 which shall come into force from the date of their publication in the Official Gazette.

12CB. “Statement under sub-section (7) of section 115UB.
(1) The statement of income paid or credited by an investment fund to its unit holder shall be furnished by the person responsible for crediting or making payment of the income on behalf of an investment fund and the investment fund to the-

(i) unit holder by 30th day of June of the financial year following the previous year during which the income is paid or credited in Form No. 64C, duly verified by the person paying or crediting the income on behalf of the investment fund in the manner indicated therein; and

(ii) Principal Commissioner or the Commissioner of Income-tax within whose jurisdiction the Principal office of the investment fund is situated by 30th day of November of the financial year following the previous year during which the income is paid or credited, electronically under digital signature, in Form No. 64D duly verified by an accountant in the manner indicated therein.

(2) 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. 64D and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements of income paid or credited so furnished under this rule.”

In Appendix-II, after the Form No. 64B, the Forms 64C and 64D have been inserted.

NOTIFICATION NO. 93 DATED 16TH DECEMBER, 2015-INCOME-TAX (21ST AMENDMENT) RULES, 2015
The Central Board of Direct Taxes has notified the Income-tax (21st Amendment) Rules, 2015 to amend rule 37BB of the Income-tax Rules, 1962, which shall come into force on the 1st day of April, 2016.

“37BB. Furnishing of information for payment to a non-resident, not being a company, or to a foreign company
The person responsible for paying to a non-resident, not being a company, or to a foreign company shall furnish following information:

<table>
<thead>
<tr>
<th>For transactions</th>
<th>Furnish the following</th>
</tr>
</thead>
<tbody>
<tr>
<td>For any sum chargeable under the provisions of the Act, if the amount of payment or the aggregate of such payments, made during the financial year does not exceed five lakh rupees</td>
<td>the information in Part A of Form No.15CA</td>
</tr>
<tr>
<td>For any sum chargeable under the provisions of the Act, for payments exceeding Rs. 5,00,000</td>
<td>the information: (a) in Part B of Form No.15CA after obtaining (I) a certificate from the Assessing Officer under section 197; or (II) an order from the Assessing Officer under sub-</td>
</tr>
</tbody>
</table>
section (2) or sub-section (3) of section 195; (b) in Part C of Form No.15CA after obtaining a certificate in Form No. 15CB from an accountant as defined in the Explanation below sub-section (2) of section 288.

For any sum which is not chargeable under the provisions of the Act, the information in Part D of Form No.15CA

For any sum which is not chargeable under the provisions of the Act

(3) Notwithstanding anything contained above, no information is required to be furnished for any sum which is not chargeable under the provisions of the Act, if,—

(i) the remittance is made by an individual and it does not require prior approval of Reserve Bank of India as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000; or

(ii) the remittance is of the nature specified below:

- Indian investment abroad- in equity capital (shares), debt securities, branches and wholly owned subsidiaries, subsidiaries and associates, real estate
- Loans extended to Non-Residents
- Advance payment against imports or payment towards imports-settlement of invoice
- Imports by diplomatic missions or imports below Rs.5,00,000-(For use by ECD offices)
- Intermediary trade
- Payment for operating expenses of Indian shipping companies operating abroad or Indian Airlines companies operating abroad
- Booking of passages abroad - Airlines companies

NOTIFICATION NO. 95 DATED 30TH DECEMBER, 2015- INCOME–TAX (22ND AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has notified the Income–tax (22nd Amendment) Rules, 2015 to amend the Income-tax Rules by substituting existing rule 114B, 114C, 114D and 114E, with the following rules respectively Rules 114B, 114C and 114D and shall come into force from the 1st day of January, 2016 and rule 114E shall come into force from the 1st day of April, 2016.

“114B. Transactions in relation to which permanent account number is to be quoted in all documents for the purpose of clause (c) of sub-section (5) of section 139A

Every person shall quote his permanent account number in all documents pertaining to the transactions specified in the Table below, namely:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Nature of transaction</th>
<th>Value of transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Sale or purchase of a motor vehicle or vehicle, as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988) which requires registration by a registering authority under Chapter IV of that Act, other than two wheeled vehicles.</td>
<td>All such transactions.</td>
</tr>
<tr>
<td>2.</td>
<td>Opening an account other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act).</td>
<td>All such transactions.</td>
</tr>
<tr>
<td>3.</td>
<td>Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.</td>
<td>All such transactions.</td>
</tr>
</tbody>
</table>
4. Opening of a demat account with a depository, participant, custodian of securities or any other person registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992). | All such transactions.  
---
5. Payment to a hotel or restaurant against a bill or bills at any one time. | Payment in cash of an amount exceeding fifty thousand rupees.  
---
6. Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time. | Payment in cash of an amount exceeding fifty thousand rupees.  
---
7. Payment to a Mutual Fund for purchase of its units. | Amount exceeding fifty thousand rupees.  
---
8. Payment to a company or an institution for acquiring debentures or bonds issued by it. | Amount exceeding fifty thousand rupees.  
---
9. Payment to the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934) for acquiring bonds issued by it. | Amount exceeding fifty thousand rupees.  
---
10. Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act). | Deposits in cash exceeding fifty thousand rupees during any one day.  
---
11. Purchase of bank drafts or pay orders or banker’s cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act). | Payment in cash for an amount exceeding fifty thousand rupees during any one day.  
---
12. A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013 (18 of 2013); or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public. | Amount exceeding fifty thousand rupees or aggregating to more than five lakh rupees during a financial year.  
---
13. Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under section 18 of the Payment and Settlement Systems Act, 2007 (51 of 2007), to a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution. | Payment in cash or by way of a bank draft or pay order or banker’s cheque of an amount aggregating to more than fifty thousand rupees in a financial year.  
---
14. Payment as life insurance premium to an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938). | Amount aggregating to more than fifty thousand rupees in a financial year.  
---
15. A contract for sale or purchase of securities (other than shares) as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). | Amount exceeding one lakh rupees per transaction.  
---
16. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange. | Amount exceeding one lakh rupees per transaction.  
---
17. Sale or purchase of any immovable property. | Amount exceeding ten lakh rupees or valued by stamp valuation authority referred
| 18. | Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any. | Amount exceeding two lakh rupees per transaction: |

Provided that where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the permanent account number of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction:

Provided further that any person who does not have a permanent account number and who enters into any transaction specified in this rule, he shall make a declaration in Form No. 60 giving therein the particulars of such transaction:

Provided also that the provisions of this rule shall not apply to the following class or classes of persons, namely:

(i) the Central Government, the State Governments and the Consular Offices;
(ii) the non-residents, in respect of certain transactions

Explanation to his rule defines (1) “payment in connection with travel”, (2) “travel agent or tour operator” and (3) “time deposit”

### 114C. Verification of Permanent Account Number in transactions specified in rule 114B

(1) Any person being,—

(a) a registering officer or an Inspector-General appointed under the Registration Act, 1908;
(b) a person who sells the immovable property or motor vehicle;
(c) a manager or officer of a banking company or co-operative bank, as the case may be
(d) post master;
(e) intermediaries registered under sub-section (1) section 12 of the Securities and Exchange Board of India Act, 1992;
(f) a depository, participant, custodian of securities or any other person registered under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992
(g) the principal officer of a company
(h) the principal officer of an institution
(i) any trustee or any other person duly authorised by the trustee of a Mutual Fund
(j) an officer of the Reserve Bank of India, or of any agency bank authorised by the Reserve bank of India;
(k) a manager or officer of an insurer

who, in relation to a transaction specified in rule 114B, has received any document shall ensure after verification that Permanent Account Number has been duly and correctly mentioned therein or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.

(2) Any person, being a person raising bills, who, in relation to a transaction specified in the rule 114B has issued any document shall ensure after verification that permanent account number has been correctly furnished and the same shall be mentioned in such document, or as the case may be, a declaration in Form 60 has been duly furnished with complete particulars.

### 114D. Time and manner in which persons referred to in rule 114C shall furnish a statement containing particulars of Form No. 60

(1) Every person referred to in rule 114C and who is required to get his accounts audited under section 44AB of the Act, who has received any declaration in Form No. 60, on or after the 1st day of January, 2016, in relation to a transaction specified in rule 114B, shall—

(i) furnish a statement in Form No. 61 containing particulars of such declaration to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose and obtain an acknowledgement number; and
(ii) retain Form No. 60 for a period of six years from the end of the financial year in which the transaction was undertaken.

(2) The statement referred to in clause (i) of sub-rule (1) shall—
(i) where the declarations are received by the 30th September, be furnished by the 31st October of that year; and
(ii) where the declarations are received by the 31st March, be furnished by the 30th April of the financial year immediately following the financial year in which the form is received.

(3) The statement referred to in clause (i) of sub-rule (1) shall be verified—
(a) in a case where the person furnishing the statement is an assessee as defined in clause (7) of section 2 of the Act, by a person specified in section 140 of the Act;
(b) in any other case, by the person referred to in rule 114C.

114E. Furnishing of statement of financial transaction
(1) The statement of financial transaction required to be furnished under sub-section (1) of section 285BA of the Act shall be furnished in respect of a financial year in Form No. 61A and shall be verified in the manner indicated therein.
(2) The statement referred to in sub-rule (1) shall be furnished by every person and in respect of all the transactions of the nature and value specified, which are registered or recorded by him on or after the 1st day of April, 2016.
CIRCULAR NO. 1 OF 2016 DATED 15TH FEBRUARY, 2016 - CLARIFICATION OF THE TERM ‘INITIAL ASSESSMENT YEAR’ IN SECTION 80IA (5) OF THE INCOME TAX ACT, 1961

The Board through this circular has clarified that it is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s 80IA has the options to choose the initial / first year from which it may desire to claim the deduction for 10 consecutive year out of slab of 15 years or 20 years as prescribed under that sub-section. It has clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 80IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term ‘initial assessment year’ would mean the first year opted for by the assessee for claiming deduction u/s 80IA of the Act. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years as the case may be and the period of claim should be availed in continuity.

CIRCULAR NO. 3 OF 2016 DATED 23RD FEBRUARY, 2016 - CLARIFICATION REGARDING NATURE OF SHARE BUY-BACK TRANSACTIONS UNDER INCOME TAX ACT, 1961

As per the provision of Section 46 of the Act applicable from 01.04.2000, any consideration received by the shareholder or a holder of other specified securities from any company for purchase of its own share or other specified security shall be, subject to the provision contained in section 48, deemed to be a capital gains. Further sub-clause (iv) of clause (22) of section 2 of the Act excludes any payment made by the company on purchase of its own share in accordance with the provision of section 77A of the companies Act from the ambit of dividend. Further, the Finance Act 2013 subsequently introduced section 115QA w.e.f. 01.06.2013 as per which any amount of distributed income by the company on buy-back of its unlisted share shall be charged to tax and the company so distributing its income shall be liable to pay additional tax @ 20% of the distributed income.

The CBDT through this circular clarify that consideration received on buy-back of shares between the period 01.04.200 till 31.05.2013 would be taxed as capital gains in the hands of recipient in accordance with the provision of section 46A of the Act and no such amount shall be treated as dividend in view of the provisions of section 2(22)(iv).

CIRCULAR NO. 4 OF 2016 DATED 29TH FEBRUARY, 2016 - TAX DEDUCTION AT SOURCE ON PAYMENTS BY BROADCASTERS OR TELEVISION CHANNELS TO PRODUCTION HOUSES FOR PRODUCTION OF CONTENTS OR PROGRAMME FOR TELECASTING

It has been clarified that where the content is produced as per the specification provided by the broadcaster / telecaster and the copyright of the content and programme also gets transferred to the telecaster / broadcaster, such contract is covered under the definition of ‘work’ in section 194C of the Act and therefore subject to TDS provision.

However, in a case where the telecaster / broadcaster acquires only the telecasting / broadcasting rights of the contents already produced by the production house, there is no contract for carrying out contract work as required u/s 194C. Accordingly, such payment are not liable for TDS u/s 194C of the Act. However, the payment of this nature may be liable for TDS deduction under other provision of the chapter XVII-C of the Act.

CIRCULAR NO. 5 OF 2016 DATED 29TH FEBRUARY, 2016

The issue is the applicability of TDS provisions on payments made by the television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisement has been examined.

Further, another issue has been raised in various cases as to whether the fees / charges taken or retained by the advertising companies from media companies for canvassing or booking advertisement (typically 15% of the billing) is commission or discount.
It has been clarified that no TDS is attracted on payments made by the television channels / newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that commission referred to in Question No. 27 of the Board’s circular no. 715 dated 8.8.95 does not refer to payments by media companies to advertising companies for booking of advertisements but to payment for engagement of models, artists, photographers, sportspersons etc. and therefore is not relevant to the issue of TDS referred to in this circular.

CIRCULAR NO. 6 OF 2016 DATED 29TH FEBRUARY, 2016 - ISSUE OF TAXABILITY OF SURPLUS ON SALE OF SHARES AND SECURITIES - CAPITAL GAINS OR BUSINESS INCOME - INSTRUCTIONS IN ORDER TO REDUCE LITIGATION

Sub-section (14) of Section 2 of the Income-tax Act, 1961 ("Act") defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ("CBDT") has also, through Instruction No. 1827, dated August 31, 1989 and Circular No.4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following:

a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain / Short Term Capital Loss or any other sham transactions.

It is reiterated that the above principles have been formulated with the sale objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

CIRCULAR NO. 7 OF 2016 DATED 7TH MARCH, 2016 - CLARIFICATION REGARDING TAXABILITY OF CONSORTIUM MEMBERS

A consortium of contractors is often formed to implement large infrastructure project, particularly in Engineering, Procurement and Construction ("EPC") contracts and Trunkey projects. The tax authorities in many cases have
taken a position that such a consortium constitutes an Association of Persons ‘AOP’ i.e separate entity for charging tax. The claim of the taxpayer, on the other hand, is of a contrary view.

The Board has examined the matter and with a view to avoid tax disputes has decided that a consortium arrangement for executing ‘EPC’ / Trunkey contracts which has the following attributes may not be treated as AOP:

- Each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work.
- Each member earn profits or incur losses based on the performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing.
- The men and material used for any area of work are under the risk and control of respective consortium members.
- The control and management of the consortium is not unified and common management is only for the inter-se coordination between the consortium members and administrative convenience.

There may be other additional factors also which may justify that the consortium is not an AOP and the same will depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter.

It is further clarified that this circular shall not applicable in cases where all or some of the members of the consortium are associated enterprise within the meaning of section 92A of the Act. In such cases, the assessing officer will decide whether an AOP is formed or not keeping in view the relevant provision of the Act and judicial jurisprudence on this issue.

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**CIRCULAR NO. 10/2016 DATED 26TH APRIL, 2016**

The Hon’ble High Court in the case of Commissioner of Income Tax vs. Worldwide Township Project Ltd. considered the issue and observed that “it is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. In this view Section 275(1)(a) of the Act would not be applicable and the provisions of Section 275(1)(c) would be attracted.

The above judgment has been accepted by the CBDT and accordingly it has been settled that the period of limitation of penalty proceedings u/s 271D and 271E of the Act is governed by the provisions of section 275(1)(c ) of the Act.

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**CIRCULAR NO. 11/2016 DATED 26TH APRIL, 2016 - PAYMENT OF INTEREST ON REFUND U/S 244A OF EXCESS TDS DEPOSITED U/S 195 OF THE INCOME TAX ACT, 1961**

The issue of eligibility for interest on refund of excess TDS to a deductor has been a subject matter of controversy and litigation.

In view of the judgment of Apex Court in case of Tata Chemical Limited, Civil Appeal No. 6301of 2011, it is settled that if a resident deductor is entitled for refund of tax deposited u/s 195, of the Act, then it has to be refunded with interest u/s 244A of the Act, from the date of payment of such tax.

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**CIRCULAR NO. 14/2016 DATED 18TH MAY, 2016**

All the fields in Form No.60 shall be considered to be mandatory in respect of transactions entered on or after 1.04.2016. It is also decided that online reporting of declarations in Form No. 61 for quarter ending March, 2016 may be done along with report for quarter ending September, 2016.

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**CIRCULAR NO. 15/2016 DATED 19TH MAY, 2016**

Whether or not an assesse engaged in printing and publishing is eligible for grant of additional depreciation under clause (iia) of sub section (1) of section 32 of the Act, has been a contentious issue. In other words whether printing or printing and publishing amounts to manufacture or production of article or thing has been contented in legal forums.
The judgements of Hon’ble Delhi and kerala High courts on this issue has been accepted by the Board and now it is therefore, a settled position that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and accordingly eligible for depreciation u/s 32(1)(iia) of the Act.

CIRCULAR NO. 18/2016 DATED 23RD MAY, 2016 - RELAXATION FOR FURNISHING OF UID IN CASE OF FORM 15G/15H FOR CERTAIN QUARTERS
The CBDT has relaxed the conditions of furnishing Unique Identification number allotted by the deductor for the quarter ending 31.12.2015 and 31.03.2016 in the quarterly statement of deduction of tax in accordance with sub-rule (5) of Rule 29C.

CIRCULAR NO. 21/2016 DATED 27TH MAY, 2016
It has been clarified vide circular no. 21/2016 that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the grounds prescribed in the Act.

CLARIFICATION ON APPLICABILITY OF CIRCULAR NO. 21 OF 2015
The CBDT has further clarified that the above monetary limit would apply equally to Cross Objections under section 253(4) of the Act. Cross Objection below this monetary limit already filed, should be perused for dismissal as withdrawn / not passed. Filing of Cross Objections below the monetary limit may not be considered henceforth. Similarly, reference to High Courts below the monetary limit of Rs. 20 lakhs should be perused for dismissal as withdrawn / not passed. Reference below this limit may not be considered henceforth.

CIRCULAR NO. 12/2016 DATED 30TH MAY, 2016 - ADMISSIBILITY OF CLAIM OF DEDUCTION OF BAD DEBTS UNDER SECTION 36(1)
As per circular no. 21/2016 claim for any debt or part thereof in any previous year shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub-section (2) of sub-section 36(2) of the Act.

CIRCULAR NO 22/ 2016 DATED 8TH JUNE, 2016 - FAQ ON SECTION 206C
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Questions</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Whether tax collection at source (‘TCS’) at the rate of 1 % is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors,</td>
<td>This is brought to cover all transactions of retail sales and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers/ distributors</td>
</tr>
<tr>
<td>2.</td>
<td>Whether TCS at the rate of 1 % is on sale of Motor Vehicle is applicable only to Luxury Cars?</td>
<td>No, it’s applicable on sale of any motor vehicle of the value exceeding ten lakh rupees,</td>
</tr>
<tr>
<td>3.</td>
<td>Whether TCS @ 1 % is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services?</td>
<td>No</td>
</tr>
<tr>
<td>4.</td>
<td>Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the</td>
<td>It is applicable to each sale and not to aggregate value of sale made during the year.</td>
</tr>
</tbody>
</table>
### Sr.No. | Questions | Answer
--- | --- | ---
1 | Whether tax collection at source ("TCS") u/s 206C(1D) @ 1% will apply in cases where the sale consideration is received partly in cash and partly in cheque and cash receipt is less than Rs. 2 lakh. | No
2 | Whether tax collection at source ("TCS") u/s 206C(1D) @ 1% will apply only on cash component or in respect of whole of sales consideration. | Under Section 206C(1D), the tax is required to be collected at source on cash component of the sales consideration and not on whole of the sales consideration.

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### CIRCULAR NO 23/ 2016 DATED 24TH JUNE, 2016 - FAQ ON SECTION 206C

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Whether TCS @ 1 % on sale of motor vehicle is applicable in case of an individual?</td>
</tr>
</tbody>
</table>

   An individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

| 6. | How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque? |

   The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees are not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS @ 1%.

| 7. | As per section 206C(1D), tax is to be collected at source @ 1 % if sale consideration received in cash exceeds two lakh rupees whereas as per section 206C(IF) tax is to be collected at source @ 1 % of the sale consideration of a motor vehicle exceeding 10 lakh rupees. Whether TCS will be made under both sub-section(ID) and (IF) of the section 206C @ 2 %, where part of the payment for purchase of motor vehicle exceeds 2 lakh rupees in cash? |

   Sub-section (1F) of the section 206C of the Act provides for TCS @ 1% on sale of motor vehicle of value exceeding 10 lakh rupees. This is irrespective of the mode of payment. Thus if the value of motor vehicle is 20 lakh rupees, out of which 5 lakh rupees has been paid in cash and balance amount by way of cheque, the tax shall be collected at source @ 1% on total sale consideration of 20 lakh rupees only under sub-section (IF) of section 206C of the Act. However, if a vehicle is sold for 8 lakh rupees and the consideration is paid in cash, tax shall be collected at source @ 1% on 8 lakh rupees as per sub-section (ID) of section 206C of the Act.

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### CIRCULAR NO. 14/2015 DATED AUGUST 17TH 2015- CLARIFICATION REGARDING EXEMPTIONS UNDER SECTION 10(23C) (VI) & 10(23C) (VIA)

Sub Clause (vi) of Section 10 (23C) of the Income Tax Act, 1961 prescribes that, income of any university or other educational institutions, existing solely for educational purposes and not for the purpose of profit, shall be exempt from taxes if such entities are approved by the prescribed authorities. While granting the approval, the prescribed authority has to ensure that the university or educational institutions exists, ‘solely for educational purposes and not for purposes of profit’.

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When is the approval not required?
Approval of the prescribed authority is not required in case of universities or educational institutions which are:

- wholly or substantially financed by the Government [Sub Clause (iiiab) of Section 10(23C)]
- Aggregate Annual Receipts do not exceed INR 1 Crore [Sub Clause (iiiad) of Section 10(23C), read with rule 2BC]

What is the scope of enquiry while granting approval?
The prescribed authority, before approval may call for such documents, including audited annual accounts, or information as necessary in order to satisfy itself about the genuineness of the activities and also make such inquiries as it deems necessary.

Whether the prescribed authority is required only to review the nature, existence of the non-profit purpose and the genuineness of the applicant or also ensure the conditions prescribed in the proviso to Section 10(23C) while granting the approval?
In the case of American Hotels and Lodging Association Educational Institute Vs. CBDT [301 ITR 86] 2008, the Apex Court has held that relevant authority should be satisfied about the “existence” of the institution during the “relevant previous year” solely for educational purposes and not for profit. Once this criterion is satisfied, the prescribed authority need not deny approval on the grounds, where compliance depends on events that have not taken place on date on which the application is made.

However, the prescribed authority may also review the conditions prescribed under Proviso to 10 (23C). It has also been clarified in the said judgement that the prescribed conditions can be gauged while monitoring the case and in the event of breach thereof, the approval can be withdrawn.

Is it necessary to obtain registration u/s 12AA while seeking approval or claiming exemption under Section 10 (23C)?
Obtaining prior registration before granting approval u/s 10 (23C) cannot be insisted upon. However, in case the institution has obtained registration u/s 12AA as well as approval u/s 10 (23C), if the registration is withdrawn at some point in time due to certain adverse findings, the withdrawal of approval shall NOT be automatic but will depend upon whether the adverse findings also impact the condition necessary to keep approval u/s 10(23C) alive.

Whether the generation of surplus out of the gross receipts would necessarily “breach” the threshold condition that the institution should exist ‘solely for educational purposes and not for purposes of profit’?
Mere generation of surplus by institutions from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for educational purposes unless the accumulation is contrary to the manner prescribed under law. The Third Proviso to 10(23C)(vi) specifically provides that accumulation of income is permissible provided such accumulation is to be applied ‘wholly and exclusively to the objects for which it is established’.

Does collection of amounts under different heads of fee from students Amounts collected by the institutions by way of application fee, examination fee, fee for issuing transfer certificates, subscription fee for library, etc. amount to profit making activities thereby leading to denial of exemption u/s 10(23C)(vi)?
No, the collection of small and reasonable fee amounts which are connected with imparting education and which do not violate any Central and State Regulation does not, in general, represent a profit making activity, unless the amount is in the nature of “capitation fee” charged directly or indirectly.

Can exemption be denied under the premise that the Managing Trustee has extraordinary powers to appoint or remove and also nominate their successors which may affect the nature of charitable activity of the trust?
There is no provision under the Act which calls for denial of exemption merely on the grounds of appointment or removal of Trustees, unless such appointment or removal results in the nature of activities of the trust getting modified or the trust no longer exists ‘solely for educational purposes and not for purposes of profit’.

Similar principles would also apply to cases covered under section 10(23C)(via) of the Income Tax Act, 1961.

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A of Income Tax Rules, 1962.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The matter has been examined in light of judicial decisions on this subject. The order of the Hon. Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of Venus Records and Tapes Pvt. Ltd. on this issue has been accepted and the aforesaid disputed issue has not been further contested. Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is not to be treated as a capital expenditure. The cost of production of an abandoned feature film, is to be treated as revenue expenditure and allowed as per the provisions of Section 37 of the Income Tax Act.


"Agricultural Land" is excluded from the definition of capital asset as per section 2(14)(iii) of the Income-Tax Act based, inter-alia, on its proximity to a municipality or cantonment board.

The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f. 1.04.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.

The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court vide order dated 30.03.2015 in ITA 151 of 2013 in the case of Smt. Maltibai R Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment years. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance.

CIRCULAR NO. 18/2015 DATED 2ND NOVEMBER, 2015 - INTEREST FROM NON-SLR SECURITIES OF BANKS

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources.

Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if, the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The matter has been examined in light of the judicial decisions on this issue. In the case of CIT Vs Nawanshahar Central Cooperative Bank Ltd. [2007] 160TAXMAN 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

The abovementioned decision is equally applicable to all banks/commercial banks/co-operative societies to which Banking Regulation Act, 1949 applies.
In supersession of the Board’s instruction No 5/2014 dated 10.07.2014, it has been decided by the Board that departmental appeals may be filed on merits before Appellate Tribunal and High Courts and SLP before the Supreme Court keeping in view the monetary limits and conditions.

Revised Limits

Henceforth, appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

1. Before Appellate Tribunal - Rs. 10,00,000/-
2. Before High Court - Rs. 20,00,000/-
3. Before Supreme Court - Rs. 25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

Further, adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the specified monetary limits or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
(b) Where Board’s order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
(c) Where Revenue Audit objection in the case has been accepted by the Department, or
(d) Where the addition relates to undisclosed foreign assets/bank accounts.

The specified monetary limits shall not apply to writ matters and direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute & rules.

Further, filing of appeal in cases of Income Tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12 A of the IT Act, 1961, shall not be governed by the limits specified above and decision to file appeal in such cases may be taken on merits of a particular case.

Meaning and calculation of Tax Effect

Tax effect means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed issues”). The tax will not include any interest thereon, except where chargeability of interest itself is in dispute.

In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect.

In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions.

In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

Tax Effect and Relevant Year

“In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues.”
Appeals can be filed only with reference to the tax effect in the relevant assessment year. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the specified monetary limit. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit.

In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the specified monetary limit, the Commissioner of Income-tax shall specifically record that “even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction”. Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of CsIT must be maintained in a systemic manner for easy retrieval.

The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

Further, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the ‘tax effect’ is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed. In case where a composite order/judgment involve more than one assessee, each assessee shall be dealt with separately.

This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

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**CIRCULAR NO. 22/2015 DATED 17-12-2015- ALLOWABILITY OF EMPLOYER'S CONTRIBUTION TO FUNDS FOR THE WELFARE OF EMPLOYEES IN TERMS OF SECTION 43B (B) OF THE INCOME TAX ACT**

As per section 43B of the Act certain deductions are admissible only on payment basis. It is observed by the Board that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B of the Act, if it has been paid after the ‘due dates’, as per the relevant Acts.

The matter has been examined in light of the judicial decisions on this issue. In the case of Commissioner vs. Alom Extrusions Ltd, [2009] 185 TAXMAN 416 (SC), the Apex Court held that the amendments made in section 43B of the Act i.e, deletion of second proviso and amendment in the first proviso, being curative in the nature are retrospectively applicable from 01.04.1988. It further held that by deleting the second proviso to section 43B and by amending first proviso, the contributions to welfare funds have been brought at par with other duty, cess, fee, tax etc. Thus, the proviso is equally applicable to the welfare funds also. Therefore the deduction is allowable to employer assessee if he deposits the contributions to welfare funds on or before the due date of filing of return of income.

Accordingly, w.e.f. 01.04.1988 as per the Apex court judgment, no disallowances under section 43B if the employer deposits the dues in respect of employee welfare funds on or before the due dates as specified in section 139(1).
This Circular does not apply to employee welfare expenses governed by the provisions of section 36(1) (va) of the Income Tax Act.

CIRCULAR NO. 23/2015 DATED - 28TH DECEMBER, 2015 - TDS UNDER SECTION 194A OF THE ACT ON FIXED DEPOSIT MADE ON DIRECTION OF COURTS

Section 194A of Income Tax Act, 1961 ("the Act") stipulates deductions of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount.

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No. 8 of 2011.

Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.


The CBDT has drawn attention to the verdict of the Supreme Court in CIT vs. Calcutta Knitwears 362 ITR 673 in which the stages at which the satisfaction note has to be prepared have been set out.

It clarifies that recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person u/s 158BD.

The CBDT has further clarified that even if the Assessing Officer of the searched person and the “other person” is one and the same, then also he is required to record his satisfaction as has been held by the Courts.


Section 115JB and 115JC of the Act contains provisions relating to levy of Minimum Alternate Tax on Companies and Alternate Minimum Tax on person other than Companies respectively.

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

Pointing out that pursuant to the judgement of the Delhi High Court in Nalwa Sons Investment Ltd 327 ITR 543 (Delhi) and the substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 01/04/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act is not attracted with reference to additions/disallowances made under normal provisions. The CBDT has clarified that in cases prior to 01/04/2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.
Introduction: The Income Declaration Scheme, 2016 (‘the Scheme’) is contained in the Finance Act, 2016, which received the assent of the President on the 14th of May 2016.

The Scheme provides an opportunity to persons who have paid not full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

Scope of the Scheme: A declaration under the aforesaid Scheme may be made in respect of any income or income in the form of investment in any asset located in India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2017-18 for which the declarant had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Scheme, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on 1st June, 2016 computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 shall be deemed to be the undisclosed income.

Rate of tax, surcharge and penalty: The person making a declaration under the Scheme would be liable to pay tax at the rate of 30 percent of the value of such undisclosed income as increased by surcharge at the rate of 25 percent of such tax. In addition, he would also be liable to pay penalty at the rate of 25 percent of such tax. Therefore, the declarant would be liable to pay a total of 45 percent of the value of the undisclosed income declared by him. This special rate of tax, surcharge and penalty specified in the Scheme will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

Time limits for declaration: A declaration under the Scheme can be made anytime on or after 1st June, 2016 but before a date to be notified by the Central Government. The Central Government has further notified 30th September, 2016 as the last date for making a declaration under the Scheme Accordingly, a declaration under the Scheme in Form 1 as prescribed in the Rules may be made at any time before 30.09.2016. After such declaration has been furnished, the jurisdictional Principal CIT/ CIT will issue an acknowledgment in Form-2 to the declarant within 15 days from the end of the month in which the declaration under Form-1 is made. The declarant shall not be liable for any adverse consequences under the Scheme in respect of, any income which has been duly declared but has been found ineligible for declaration. However, such information may be used under the provisions of the Income-tax Act. The declarant shall furnish proof of payment made in respect of tax, surcharge and penalty to the jurisdictional Principal CIT/CIT in Form-3 after which the said authority shall issue a certificate in Form-4 of the accepted declaration within 15 days of submission of proof of payment by the declarant.

Form for declaration: As per the Scheme, declaration is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 1 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Status of the declarant</th>
<th>Declaration to be signed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Individual</td>
<td>Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.</td>
</tr>
<tr>
<td>2.</td>
<td>HUF</td>
<td>Karta; where the karta is absent from India or is mentally incapacitated from</td>
</tr>
</tbody>
</table>


attending to his affairs, by any other adult member of the HUF

3. Company Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.

4. Firm Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.

5. Any other association Any member of the association or the principal officer.

6. Any other person That person or by some other person competent to act on his behalf.

The declaration may be filed online on the e-filing website of the Income-tax Department using the digital signature of the declarant or through electronic verification code or in paper form before the jurisdictional Principal CIT/CIT.

Declaration not eligible in certain cases: As per the provisions of the Scheme, no declaration can be made in respect of any undisclosed income chargeable to tax under the Income-tax Act for assessment year 2016-17 or any earlier assessment year in the following cases—

i. where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under the Scheme, it is clarified that the person will not be eligible under the Scheme if any notice referred above has been served upon the person on or before 31st May, 2016 i.e. before the date of commencement of this Scheme.

ii. where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 1) the declarant will also verify that these facts do not prevail in his case.

iii. cases covered under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under the Scheme.

A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act or a person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, subject to the conditions specified in the Scheme, shall also not be eligible for making a declaration under the Scheme.

Circumstances where declaration shall be invalid: In the following situations, a declaration shall be void and shall be deemed never to have been made:

a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, i.e., 30.11.2016;

b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly.

Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.
Effect of valid declaration

- 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;
- The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act;
- Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30th September, 2017;
- The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years.
- Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

Time line for payment

- Effective from 1 June 2016 for a period of 4 months (i.e. till 30 September 2016) for declaration of undisclosed income and
- The Applicable tax (including Krishi Kalyan Cess) and penalty (as per recently issued notification no. 59 dated 20th July, 2016) shall be paid as under

<table>
<thead>
<tr>
<th>Due Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Till 30th November, 2016</td>
<td>Amount not less than 25% of such tax, surcharge and penalty;</td>
</tr>
<tr>
<td>Till 31st March, 2017</td>
<td>Amount not less than 50% of such tax, surcharge and penalty as reduced by the amount already paid;</td>
</tr>
<tr>
<td>Till 30th September, 2017</td>
<td>100% of such tax, surcharge and penalty as reduced by the amount already paid;</td>
</tr>
</tbody>
</table>

CIRCULAR NO.17 DATED 20TH MAY, 2016 – FAQ IN INCOME DECLARATION SCHEME, 2016

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Questions</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the fair market value of the asset as on 01.06.2016, then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be calculated?</td>
<td>Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. However, since the asset will be taxed at its fair market value, the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of FMV for the purposes of the Scheme).</td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td>Answer</td>
</tr>
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</tr>
<tr>
<td>2.</td>
<td>Where a notice under section 142(1)/143(2)/148/153A/153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?</td>
<td>The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.</td>
</tr>
<tr>
<td>3.</td>
<td>As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?</td>
<td>The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.</td>
</tr>
<tr>
<td>4.</td>
<td>In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?</td>
<td>As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset.</td>
</tr>
<tr>
<td>5.</td>
<td>Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?</td>
<td>As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.</td>
</tr>
<tr>
<td>6.</td>
<td>Can a person against whom a search/survey operation has been initiated file declaration under the Scheme?</td>
<td>The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A. In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an</td>
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<td>---</td>
</tr>
<tr>
<td>7.</td>
<td>Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?</td>
<td>Yes</td>
</tr>
<tr>
<td>8.</td>
<td>What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?</td>
<td>As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.</td>
</tr>
<tr>
<td>9.</td>
<td>If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?</td>
<td>In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.</td>
</tr>
<tr>
<td>10.</td>
<td>If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?</td>
<td>It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.</td>
</tr>
<tr>
<td>11.</td>
<td>Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?</td>
<td>No</td>
</tr>
<tr>
<td>12.</td>
<td>Whether at the time of declaration under the Scheme, will the Principal Commissioner /Commissioner do any enquiry in respect of the declaration made?</td>
<td>After the declaration is made the Principal Commissioner/Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.</td>
</tr>
<tr>
<td>13.</td>
<td>Will the declarations made under the Scheme be kept confidential?</td>
<td>The information in respect of declaration made is confidential as in the case of return of income filed by assesses.</td>
</tr>
<tr>
<td>14.</td>
<td>Is it necessary to file a valuation</td>
<td>No, However, the declarant should have the valuation report.</td>
</tr>
</tbody>
</table>
report of an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?

While e-filing the declaration on the departmental website a facility for uploading the documents will be available.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Questions</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?</td>
<td>In case of part payment, the entire declaration made under the Scheme shall be invalid.</td>
</tr>
<tr>
<td>2.</td>
<td>In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/conversion, then whether a declaration is to be filed in the name of amalgamated entity/LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?</td>
<td>Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/conversion takes place.</td>
</tr>
<tr>
<td>3.</td>
<td>Whether the Scheme is open only to residents or to non-residents also?</td>
<td>The Scheme is available to every person, whether resident or nonresident.</td>
</tr>
<tr>
<td>4.</td>
<td>If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?</td>
<td>As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.</td>
</tr>
<tr>
<td>5.</td>
<td>Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?</td>
<td>No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.</td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Questions</td>
<td>Answer</td>
</tr>
<tr>
<td>--------</td>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6.</td>
<td>It is not mandatory to attach the valuation report. But Form-1 states “attach valuation report”. How to interpret?</td>
<td>It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1.</td>
</tr>
<tr>
<td>7.</td>
<td>Is it mandatory to furnish PAN in the Form of declaration?</td>
<td>Yes</td>
</tr>
<tr>
<td>8.</td>
<td>If any proceeding is pending before the Settlement Commission, can a person be considered eligible for the Scheme?</td>
<td>No, a person shall not be eligible for the Scheme in respect of assessment years for which proceeding is pending with Settlement Commission.</td>
</tr>
<tr>
<td>9.</td>
<td>Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?</td>
<td>Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.</td>
</tr>
<tr>
<td>10.</td>
<td>Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?</td>
<td>Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued are eligible for the Scheme.</td>
</tr>
<tr>
<td>11.</td>
<td>If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?</td>
<td>A person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year.</td>
</tr>
</tbody>
</table>

**CIRCULAR NO.25 DATED 30TH JUNE, 2016 – [FAQ IN INCOME DECLARATION SCHEME, 2016]**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Questions</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Will the information contained in the declaration be shared with other law enforcement agencies?</td>
<td>No</td>
</tr>
<tr>
<td>2.</td>
<td>Whether immunity will be provided under other economic laws including Service Tax, VAT, Companies Act, SEBI Act &amp; regulations etc.?</td>
<td>The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988 subject to the condition.</td>
</tr>
<tr>
<td>3.</td>
<td>Where the value of immovable property determined under Rule 3 of the IDS Rules is lower than the value adopted or assessed/assessable by</td>
<td>The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>What is the purpose of obtaining the information about the nature of undisclosed income in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1?</td>
<td>The purpose of obtaining information about the nature of undisclosed income is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash.</td>
<td></td>
</tr>
<tr>
<td>In case the value of immovable property is evidenced by registered deed, whether the value as per registered deed or the market value as on 01.06.2016 is to be declared?</td>
<td>As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1st June, 2016.</td>
<td></td>
</tr>
<tr>
<td>In case a declaration relating to investment in undisclosed asset is made under the Scheme, whether any investigation will be initiated against the seller in respect of such declaration?</td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>
| What are the advantages of the Scheme as against declaring the past undisclosed income as current income in the return of income to be filed for Assessment Year 2017-18? How will the Department identify the year in which the undisclosed income was earned. | Declaration of past undisclosed income in the current year has following consequences:  
- amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.  
- Assessee to explain the source of income and substantiate the manner of earning the said income. |
|   | A person invested his undisclosed income in a house property in the previous year 2010-11 which has not been let out. The person also owned another house property from disclosed sources, which has been claimed as self-occupied property for the purposes of computation of income under the head income from house property. In case the person declares the undisclosed house property at its fair market value on 01.06.2016, whether any action will be taken for bringing the annual value of the undisclosed property to tax as income from house property by deeming it to be let property as provided under section 23(4)(b) of the Income-tax Act for the earlier previous years? | No. However, where the house property as let-out during the relevant period, the actual rent received or receivable will be required to be declared under the Scheme in addition to the fair market value of the house property as on 01.06.2016. |
NOTIFICATION NO. 2/2016 DATED 13TH JANUARY, 2016

Whereas, a Protocol amending the agreement between the Government of the Republic of India and the Government of the Republic of Belarus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (Capital) of the 27th September, 1997 (hereinafter referred to as the said Protocol) as set out in the Annexure to this notification, was signed at Minsk, Belarus on the 3rd June, 2015;

And whereas, the date of entry into force of the said Protocol is the 19th November, 2015, being the date of the latter of the notifications of completion of the legal requirement and procedures for giving effect to the said Protocol in accordance with paragraph 1 of Article 2;

And whereas, paragraph 2 of Article 2 of the said Protocol provides that the provisions of the same shall have effect forthwith from the date of entry into force;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has notified that all the provisions of the said Protocol annexed hereto, shall be given effect to in the Union of India with effect from the 19th November, 2015.


The Central Board of Direct Taxes vide this notification has made the following rules further to amend the Income-tax Rules, 1962,

Rule No. 17 - Exercise of option etc under section 11 - The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.

The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

i. specify the procedure for filing of Forms referred to in sub-rule (3);

ii. specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said Forms; and

iii. be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.”.

NOTIFICATION NO. 5/2016 DATED 17TH FEBRUARY, 2016

In exercise of the powers conferred by section 92CB read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has made the following rules further to amend the Income-tax Rules, 1962,

- In the Income-tax Rules, 1962, in rule 10THA, after the word “generation,” the word “supply,” shall be inserted.
- In the said rules, in rule 10THB, in clause (i), the words “by a generating company” shall be omitted.
In the said rules, in rule 10 THD, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely:

“Provided further that in respect of eligible specified domestic transactions, other than the transaction referred to in clause (iv) of rule 10 THB, undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014 or beginning on the 1st day of April, 2015, Form 3CEFB may be furnished by the assessee on or before the 31st day of March, 2016.”

NOTIFICATION NO 54/2016, DATED 27TH JUNE, 2016
In exercise of the powers conferred by clause(ha) of sub-section (2) of section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has made the following rules further to amend the Income-tax Rules, 1962, as under:

Foreign Tax Credit - An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule:

Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

The foreign tax referred to in sub-rule (1) shall mean,-

i. in respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 or section 90A, the tax covered under the said agreement;

ii. in respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in clause (iv) of the Explanation to section 91.

The credit under sub-rule (1) shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty.

No credit under sub-rule (1) shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee:

Provided that the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the following manner:-

- the credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income: Provided that where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation, such excess shall be ignored for the purposes of this clause;

- the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
In a case where any tax is payable under the provisions of section 115JB or section 115JC, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act other than the provisions of the said sections (hereafter referred to as the “normal provisions”). Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or section 115JC exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored.

Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee:

i. a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;

ii. certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee;
   (a) from the tax authority of the country or specified territory outside India; or
   (b) from the person responsible for deduction of such tax; or
   (c) signed by the assessee;

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by:
   A. an acknowledgment of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
   B. proof of deduction where the tax has been deducted.

The statement in Form No.67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income.

Form No.67 shall also be furnished in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.”

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**NOTIFICATION NO. 86/2015 DATED 29TH OCTOBER, 2015**

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 has notified 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 2015-2016.

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**NOTIFICATION 63/2015 DATED 12TH AUGUST, 2015**

The agreement between the Government of the Republic of India and the Government of the Republic of San Marino, for the exchange of information with respect to taxes was signed at Rome, on the 19th day of December, 2013; the said agreement shall have effect in the Union of India from the 29th day of August, 2014.

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**NOTIFICATION NO. 77/2015 DATED 30TH SEPTEMBER, 2015**

An Inter-Governmental Agreement and Memorandum of Understanding (MoU) between the Government of the Republic of India and the Government of the United States of America to improve International Tax Compliance and to implement Foreign Account Tax Compliance Act of the United States of America was signed at New Delhi.
on the 9th day of July, 2015; the said Agreement, shall be given effect to in the Union of India with effect from the 31st August, 2015.

**NOTIFICATION NO. 88/2015 DATED 1ST DECEMBER, 2015**

An Agreement between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income was signed in Thailand on the 29th day of June, 2015, the said Agreement entered into force on the 13th day of October, 2015, 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 29 of the said Agreement;

And whereas, clause (a) of paragraph 3 of Article 29 of the said Agreement provides that the provisions of the 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 said 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, shall be given effect to in the Union of India.

**NOTIFICATION NO. 94 DATED 21ST DECEMBER, 2015**

An Agreement was entered into between the Government of the Republic of India and the Government of the Republic of Macedonia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income that was signed at Delhi on the 17th December, 2013, the date of entry into force of the said Agreement is the 12th September, 2014, being the date of the later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement.

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has directed that all the provisions of the said Agreement between the Government of the Republic of India and the Government of the Republic of Macedonia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as set out in the Annexure hereto, shall be given effect to in the Union of India from the first day of April, 2015.

**CIRCULAR NO. 2 OF 2016 DATED 25TH FEBRUARY, 2016- BENEFITS OF INDIA – UNITED KINGDOM (UK) DOUBLE TAXATION AVOIDANCE AGREEMENT TO UK PARTNERSHIPS FIRMS**

The terms “person” in the DTAA does not specifically include ‘partnership firms’ have been brought to the notice to the CBDT and further, clarify has been sought on whether the provision of the treaty are applicable to the partnership. The Board, in exercise of the power conferred u/s 119 of the Act, clarifies that the provisions of the India –UK DTAA would be applicable to partnership that is a resident of either India or UK to the extent that the income derived by such partnership, estate or trust is subject to tax in that state as the income of the resident, either in its own hands or in the hands of its partners or beneficiaries.
THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 as passed by the Parliament received the assent of the President on the 26th of May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad.

It, inter alia:

- levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets
- provides for a penalty equal to 90 percent of the value of such asset
- provides for rigorous imprisonment of three to ten years for willful attempt to evade tax in relation to a undisclosed foreign income or asset.

Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. The provisions regarding compliance window are:

A declaration under the aforesaid chapter can be made in respect of:

- undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.
- undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2016-17 for which he had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Act, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

The person making a declaration under the provisions of the chapter would be liable to:

- pay tax at the rate of 30 percent of the value of such undisclosed asset.
- in addition, also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act).

Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the Annual Finance Acts.

Time limits for declaration and making payment

A declaration under the Act can be made in Form 6 anytime on or after the date of commencement of the Act i.e. 1st July, 2015 but before a date to be notified by the Central Government. The declaration is to be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

The Central Government has notified 30th September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31st December, 2015 as the last date by which the tax and penalty shall be paid.

Declaration to be signed by:

<table>
<thead>
<tr>
<th>Status of the declarant</th>
<th>Declaration to be signed by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Individual; person authorized by the declarant, where he is absent from India; Guardian or other person competent to act on behalf of individual, where the individual is mentally incapacitated</td>
</tr>
<tr>
<td>HUF</td>
<td>Karta; Any other adult member of the HUF, where the karta is absent from</td>
</tr>
</tbody>
</table>
India or is mentally incapacitated from attending to his affairs

| Company                        | • Managing Director;  
|                               | • Any director, where for any unavoidable reason the managing director is not able to sign or there is no managing director |
| Firm                          | • Managing partner;  
|                               | • By any partner, not being a minor, where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner |
| Any other association         | • Any member of the association or the principal officer. |
| Any other person              | • The person or by some other person competent to act on his behalf |

**Declaration not eligible in certain cases**

(i) As per the provisions of section 71 read with section 59 of the Act, no declaration under the compliance window can be made in respect of any undisclosed foreign asset acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year by a person who has been served upon notice under below mentioned provisions on or before 30th June 2015 (i.e. before the date of commencement of this Act.) in respect of such assessment year and the proceeding is pending before the Assessing Officer.

- notice under section 142; or  
- notice under section 143(2); or  
- notice under section 148; or  
- notice under section 153A; or  
- notice under section 153C

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143(2) or section 153A or section 153C for the relevant assessment year has not expired.

(iii) where any information has been received by the competent authority on or before 30th June 2015 under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.

(iv) A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under Chapter VI.

**In the form of declaration (Form 6) the declarant shall verify:**

- no such notice has been received by him on or before 30th June 2015.  
- the facts stated above do not prevail in his case.

**Circumstances where declaration shall be invalid**

(a) If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;  
(b) Where the declaration has been made by misrepresentation or suppression of facts or information.

**Effect of Void Declaration**

- A declaration shall be deemed never to have been made  
- All the provisions of the Act, including penalties and prosecutions, shall apply accordingly  
- Any tax or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

**Effect of valid declaration**

Where a valid declaration has been made, the following consequences will follow:
(a) The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
(b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
(c) The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
(d) Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.

**NOTIFICATION NO. 56/2015 DATED 1ST JULY, 2015 - THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT (REMOVAL OF DIFFICULTIES) ORDER, 2015**

Sub-section (3) of section 1 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act provides that save as otherwise provided in the Act, the Act shall come into force on the 1st day of April, 2016;

It has been clarified that in sub-section (3) of section 1 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), for the words, figures and letters “the 1st day of April, 2016”, the words, figures and letters “the 1st day of July, 2015” shall be substituted. Since the Act received the assent of the President on 26th May, 2015 and therefore the provisions of this Act cannot be given effect prior to the 26th day of May, 2015 irrespective of the fact that the assessment year beginning on the 1st day of April, 2016 relates to the previous year commencing on the 1st day of April, 2015;

**NOTIFICATION NO. 57/2015 DATED 1ST JULY, 2015 – SPECIFIED DATES UNDER THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT**

In exercise of the powers conferred by section 59 and sub-section (1) of section 63 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Central Government appointed:

30th September, 2015

Date on or before which a person may make a declaration in respect of an undisclosed asset located outside India

31st December, 2015

Date on or before which a person shall pay the tax and penalty in respect of the undisclosed asset located outside India so declared

**NOTIFICATION NO. 58/2015 DATED 2ND OF JULY, 2015 - THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX RULES, 2015**

In exercise of the powers conferred by sub-sections (1) and (2) of section 85 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Central Board of Direct Taxes with the approval of the Central Government has made the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 which shall come into force on the date of their publication in the Official Gazette.

**Fair market value**

For the purposes of sub-section (2) of section 3 of the Act, the fair market value of the assets shall be determined in the following manner:

<table>
<thead>
<tr>
<th>Asset</th>
<th>Fair Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bullion, jewellery or precious stone</td>
<td>the higher of:</td>
</tr>
<tr>
<td></td>
<td>(I) its cost of acquisition; and</td>
</tr>
<tr>
<td></td>
<td>(II) the price that it shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of</td>
</tr>
</tbody>
</table>
| **Archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred to as artistic work)** | The higher of:  
(I) its cost of acquisition; and  
(II) the price that it shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law; |
| **Quoted share and securities – where there is trading on valuation date** | The higher of:  
(i) its cost of acquisition; and  
(ii) the price as determined in the following manner, namely:—  
(A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date; or  
(B) the average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market; |
| **Quoted share and securities – where there is no trading on valuation date on any established securities market** | The higher of:  
(i) its cost of acquisition; and  
(ii) the average of the lowest and highest price of such shares and securities |
| **Unquoted equity shares** | The higher of:  
(i) its cost of acquisition; and  
(ii) the value, on the valuation date, of such equity shares as determined in the following manner, namely:—  
The fair market value of unquoted equity shares = (A+B−L) x (PV), (PE)  
where,  
A= book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,-  
(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and  
(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;  
B= fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;  
L= book value of liabilities, but not including the following amounts, namely:-  
(i) the paid-up capital in respect of equity shares; |
(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, 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;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares;

<table>
<thead>
<tr>
<th>Unquoted share and security other than equity share in a company</th>
<th>the higher of,-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) its cost of acquisition; and</td>
</tr>
<tr>
<td></td>
<td>(ii) the price that the share or security shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>An immovable property</th>
<th>the higher of,-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(I) its cost of acquisition; and</td>
</tr>
<tr>
<td></td>
<td>(II) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law;</td>
</tr>
</tbody>
</table>

| An account with a bank | (I) the sum of all the deposits made in the account with the bank since the date of opening of the account; or |
|------------------------| (II) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration: |
|            | **Provided** that where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account. |

An interest of a person in a partnership firm or in an association of persons or a limited

The net asset of the firm, association of persons or limited liability partnership on the valuation date shall first be determined and the portion of the net asset of the firm, association of persons or limited liability partnership as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which
liability partnership of which he is a member
capital has been contributed by them and the residue of the net asset shall be allocated among the partners or members in accordance with the agreement of partnership or association for distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.

Explanation.- For the purposes of this clause the net asset of the firm, association of persons or limited liability partnership shall be \((A + B - L)\),

Where:

\(A=\) book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,-

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

\(B=\) fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;

\(L=\) book value of liabilities, but not including the following amounts, namely:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, 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;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

Any other asset
The higher of:
(I) its cost of acquisition or the amount invested; and
(II) the price that the asset would fetch if sold in the open market on the valuation date in an arm’s-length transaction.

(2) Notwithstanding anything contained in the table above:
<table>
<thead>
<tr>
<th>Asset</th>
<th>Fair Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where an asset (other than a bank account) was transferred before the valuation date</td>
<td>the higher of: (i) its cost of acquisition; and (ii) the sale price</td>
</tr>
<tr>
<td>where such asset was transferred without consideration or inadequate consideration before the valuation date</td>
<td>the higher of: (i) its cost of acquisition; and (ii) the fair market value on the date of transfer</td>
</tr>
</tbody>
</table>

(3) Where a new asset has been acquired or made out of consideration received on account of transfer of an old asset or withdrawal from a bank account, then the fair market value of the old asset or the bank account, as the case may be, shall be the fair market value, determined as per sub-rule (1); less amount of the consideration invested in the new asset.

(4) The fair market value of an asset determined in a currency permitted by the Reserve Bank of India under the Foreign Exchange Management Regulations, shall be converted into Indian currency as per the reference rate of the Reserve Bank of India on the date of valuation.

(5) Where the fair market value of an asset is determined in a currency other than the permitted currencies designated by the Reserve Bank of India, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the Central Bank of the country or jurisdiction in which the asset is located and such value in United States Dollar shall be converted into Indian currency as per the reference rate of the Reserve Bank of India on the date of valuation:

Provided that where the Central Bank of the country or jurisdiction in which the asset is located does not specify the rate of conversion from its local currency to United States Dollar then such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

**Tax Authorities**

*For the purposes of section 8*
- Assessing Officer,
- Joint Commissioner,
- Commissioner (Appeals),
- Commissioner or Principal Commissioner,
- Chief Commissioner or
- Principal Chief Commissioner.

*For the purposes of clause (c) of sub-section (4) of section 78*
- Principal Chief Commissioner
- Chief Commissioner
- Principal Commissioner
- Commissioner having jurisdiction over the case in the proceedings connected with which the tax practitioner is alleged to be guilty of misconduct.

**Rounding off of income, value of asset and tax**

For the purpose of section 79 the amount of undisclosed foreign income and asset computed in accordance with the Act and any amount payable or receivable by the assessee under the Act shall be rounded off to the nearest multiple of one hundred rupees or ten rupees, as the case may be.
<table>
<thead>
<tr>
<th>Form</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form 1 - Notice of Demand</td>
<td>Where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, the Assessing Officer serves upon the assessee a notice of demand in specifying the sum so payable.</td>
</tr>
</tbody>
</table>
| Form 2 - Appeal to Commissioner (Appeals) under sub-section (1) of section 15 | At the time of filing of the appeal the assessee must have paid the tax alongwith penalty and interest thereon on the amount of liability which has not been objected to by the assessee. The appeal must be:
- Accompanied with the grounds of appeal
- Accompanied with the form of verification verified by the person who is authorised to sign the return of income under section 140 of the Income-tax Act
- Accompanied with a fee of ten thousand rupees. |
| Form 3 - Appeal to Appellate Tribunal under sub-section (1) of section 18 | An appeal to the Appellate Tribunal shall be:
- Accompanied with the grounds of appeal
- Accompanied with the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act
- Accompanied by a fee of twenty five thousand rupees. |
| Form 4 - The memorandum of cross-objections under sub-section (4) of section 18 to the Appellate Tribunal | Where the memorandum of cross objection is made by the assessee, the grounds of cross-objections and the form of verification appended thereto shall be signed by the person specified who is authorised to sign the return of income under section 140 of the Income-tax Act |
| Form 5 - Form of tax arrears under section 31 or section 33 | A statement of tax arrears shall be drawn up by the Tax Recovery Officer |
| Form 6 - Declaration of undisclosed asset located outside India under section 59 | The assessee shall file the Declaration of undisclosed asset located outside India under section 59 |
| Form 7 - Acknowledgement of declaration filed | The Principal Commissioner or the Commissioner shall grant an acknowledgement to the declarant within fifteen days of the submission of proof of payment of tax alongwith penalty by the declarant under sub-section (2) of section 63 of the Act in respect of the undisclosed asset located outside India. |

**NOTIFICATION NO. 73/2015 DATED 24TH AUGUST, 2015**

In exercise of the powers conferred by clause (b) of sub-section (4) of section 120 of the Income-tax Act, 1961 (43 of 1961) read with section 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Central Board of Direct Taxes hereby directs that the Additional Commissioners of Income-tax or the Joint Commissioners of Income-tax, as the case may be, shall exercise the powers and perform the functions of the Assessing Officers under the said Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, in respect of territorial areas or persons or classes of persons or incomes or classes of incomes or cases or classes of cases, in respect of which such Additional Commissioners of Income-tax or Joint
Commissioners of Income-tax have been authorised by the Principal Chief Commissioner of Income-tax or the Chief Commissioner of Income-tax or the Director General of Income-tax or the Principal Commissioner of Income-tax or the Commissioner of Income-tax in pursuance to the directions of the Board under sub-section (1) and (2) of section 120 of the said Income-tax Act, 1961.

CBEC has clarified the points raised by the stakeholders with respect to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 by issue of a circular in the form of questions and answers as follows.-

**Question:** If firm has undisclosed foreign assets, can the partner file declaration in respect of such asset?

**Answer:** The declaration can be made by the firm which shall be signed by the person specified in sub-section (2) of section 62 of the Act. The partner cannot make a declaration in his name. However, the partner may file a declaration in respect of an undisclosed asset held by him.

**Question:** Where a company has undisclosed foreign assets, can it file a declaration under Chapter VI of the Act? If yes, then whether immunity would be granted to Directors of the company?

**Answer:** Yes, the company can file a declaration under Chapter VI of the Act. The Directors of the company shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of declaration made in the name of the company.

**Question:** Whether immunity in respect of declaration made under the scheme is provided in respect of Acts other than those mentioned in section 67 of the Act?

**Answer:** Section 67 provides immunity from prosecution under the five Acts viz. the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act. It does not provide immunity from prosecution under any other Act. For example- if the undisclosed asset has been acquired out of the proceeds of sale of protected animals the person will not be eligible for immunity under the Wildlife (Protection) Act, 1972.

**Question:** Whether the person making the declaration will be provided immunity from the Prevention of Money Laundering Act (PMLA), 2002?

**Answer:** The offence under the PMLA arises while laundering money generated from the process or activity connected with the offences specified in the schedule to the PMLA. Therefore, the primary requirement under PMLA is commission of a scheduled offence. With the enactment of the Act, the offence of wilful attempt to evade tax under section 51 of the Act has become a scheduled offence under PMLA. However, where a declaration of an asset has been duly made under section 59 of the Act the provisions of section 51 will not be applicable in respect of that asset. Therefore, PMLA will not be applicable in respect of the scheduled offence of wilful attempt to evade tax under section 51 of the Act in respect of assets for which declaration is made under section 59 of the Act.

**Question:** Where an undisclosed foreign asset is declared under Chapter VI of the Act and tax and penalty is paid on its fair market value then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?

**Answer:** Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the said fair market value and the period of holding shall start from the date of declaration of such asset under Chapter VI of the Act.

**Question:** Where a notice under section 142/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from voluntary declaration under section 59 of the Act?

**Answer:** The person will only be ineligible from declaration of those foreign assets which have been acquired during the year for which a notice under section 142/ 143(2)/ 148/ 153A/ 153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare other foreign assets which have been acquired during other years for which no notice under above referred sections have been issued.
Question: As per section 71(d)(i), declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?

Answer: The declarant will not be eligible for declaration under Chapter VI of the Act where an undisclosed asset has been acquired during any previous year relevant to any assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 30th day of June, 2015. The declarant is required to file a declaration regarding receipt of any such notice in Form 6.

Question: Where an undisclosed foreign asset has been acquired partly during a previous year relevant to the assessment year which is pending for assessment and partly during other years not pending for assessment then whether such asset is eligible for declaration under Chapter VI of the Act?

Answer: In the case where proceedings are pending before an Assessing Officer in pursuance of a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act served on or before 30-06-2015, the declarant may declare the undisclosed asset under Chapter VI of the Act. However, while computing the amount of declaration the investment made in the asset during the previous year relevant to the assessment year for which such notice is issued needs to be deducted from the fair market value of the asset for which the person shall provide a computation alongwith the declaration. Further, such investment which is deducted from the fair market value shall be assessable in the assessment of the relevant assessment year pending under the Income-tax Act and the person shall inform the Assessing Officer the investment made during the relevant year in such asset.

Also to clarify, where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act is issued on or after 30-06-2015, the declarant shall be eligible to declare full value of asset even if such asset (or part of such asset) is acquired in the previous year relevant to the assessment year for which such notice is issued.

Question: Can a declaration be made of undisclosed foreign assets which have been assessed to tax and the case is pending before an Appellate Authority?

Answer: As per section 65 of the Act, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of those assets. However, he can voluntarily declare other undisclosed foreign assets which have been acquired or made from income not disclosed and consequently not assessed under the Income-tax Act.

Question: Where a search/ survey operation was conducted and the assessment has been completed but the undisclosed foreign asset was not taxed, then whether such asset can be declared under Chapter VI of the Act?

Answer: Yes, such undisclosed asset can be declared under Chapter VI of the Act.

Question No.12: Whether a person is barred from voluntary declaration under Chapter VI of the Act if any information has been received by the Government under DTAA?

Answer: As per section 71(d)(iii), the person cannot make a declaration of an undisclosed foreign asset where the Central Government has received an information in respect of such asset under the DTAA. The person is entitled for voluntary declaration in respect of other undisclosed foreign assets for which no information has been received.

Question: How would the person know that the Government has received information of an undisclosed foreign asset held by him which will make the declaration ineligible?
Answer: The person may not know that the Government has information about undisclosed foreign asset held by him if the same has not been communicated to him in any enquiry/proceeding under the Income-tax Act. After the person has filed a declaration, which is to be filed latest by 30th September, 2015, he will be issued intimation by the Principal Commissioner/Commissioner by 31st October, 2015, whether any information has been received by the Government and consequently whether he is eligible to make the payment on the declaration made. If no information has been received up to 30th June, 2015 by the Government in respect of such asset the person will be allowed a time upto 31st December, 2015 for payment of tax and penalty in respect of the declared asset. There may be a case where person makes declaration in respect of 5 assets whereas the Government has information about only 1 asset. In such situation the person will be eligible to declare the balance 4 assets under Chapter VI of the Act. In such case the declarant, on receipt of intimation by the Principal Commissioner/Commissioner, shall revise the declaration made within 15 days of such receipt of intimation to exclude the asset which is not eligible for declaration. Tax and penalty on the eligible assets under the Act shall be payable in respect of the revised declaration by 31st of December, 2015. In respect of the ineligible assets provisions of the Income-tax Act shall apply. (Please also see answer to question no. 15)

**Question: What are the consequences if no declaration under Chapter VI of the Act is made in respect of undisclosed foreign assets acquired prior to the commencement of the Act?**

Answer: As per section 72(c), where any asset has been acquired prior to the commencement of the Act and no declaration under Chapter VI of the Act is made then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the Assessing Officer and the provisions of the Act shall apply accordingly.

**Question: If a declaration of undisclosed foreign asset is made under Chapter VI of the Act and the same was found ineligible due to the reason that Government had prior information under DTAA then will the person be liable for consequences under the Act?**

Answer: In respect of such assets which have been duly declared in good faith under the tax compliance but not found eligible, he shall not be hit by section 72(c) of the Act and no action lies in respect of such assets under the Act. However, such information may be used for the purpose of the Income-tax Act.

**Question No.16: In respect of the undisclosed foreign assets referred to in answer to question No. 15 above, where the proceedings under the Income-tax Act are initiated, can the options of settlement commission etc. under the Income-tax Act be availed in respect of such assets?**

Answer: All the provisions of the Income-tax Act shall be applicable in respect of those assets.

**Question: A person has some undisclosed foreign assets. If he declares those assets in the Income-tax Return for assessment year 2015-16 or say 2014-15 (in belated return) then should he need to declare those assets in the voluntary tax compliance under Chapter VI of the Act?**

Answer: As per the Act, the undisclosed foreign asset means an asset which is unaccounted/ the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of computation of total income in the Income-tax Return and consequently does not get taxed, mere reporting of a foreign asset in Schedule FA of the Return does not mean that the source of investment in the asset has been explained. The foreign asset is liable to be taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under Chapter VI of the Act in respect of all those foreign assets which are unaccounted/ the source of investment in such asset is not fully explainable.

**Question: A person holds certain foreign assets which are fully explained and acquired out of tax paid income. However, he has not reported these assets in Schedule FA of the Income-tax Return in the past. Should he declare such assets under Chapter VI of the Act?**

Answer: Since, these assets are fully explained they are not treated as undisclosed foreign assets and should not be declared under Chapter VI of the Act. However, if these assets are not reported in Schedule FA of the Income-tax Return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs. 10 lakhs under section 43 of the Act. The penalty is, however, not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to Rs. 5 lakhs at any time during the previous year.
**Question:** A person has a foreign bank account in which undisclosed income has been deposited over several years. He has spent the money in the account over these years and now it has a balance of only $500. Does he need to pay tax on this $500 under the declaration?

**Answer:** Section 59 of the Act provides for declaration of an undisclosed asset and not income. In this case the Bank account is an undisclosed asset which may be declared. Tax on undisclosed asset is required to be paid on its fair market value. In case of a bank account the fair market value is the sum of all the deposits made in the account computed in accordance with Rule 3(1)(e). Therefore, tax and penalty needs to be paid on such fair market value and not on the balance as on date.

**Question:** A person held a foreign bank account for a limited period between 1994-95 and 1997-98 which was unexplained. Since such account was closed in 1997-98 does he need to declare the same under Chapter VI of the Act?

**Answer:** Section 59 of the Act provides that the declaration may be made of any undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Income-tax Act. Since the investment in the bank account was unexplained and was from untaxed income the same may be declared under Chapter VI of the Act. The consequences of non-declaration may arise under the Act at any time in the future when the information of such account comes to the notice of the Assessing Officer.

**Question:** A person inherited a house property in 2003-04 from his father who is no more. Such property was acquired from unexplained sources of investment. The property was sold by the person in 2011-12. Does he need to declare such property under Chapter VI of the Act and if yes then, what will be the fair market value of such property for the purpose of declaration?

**Answer:** Since the property was from unexplained sources of investment the same may be declared under Chapter VI of the Act. However, the declaration in this case needs be made by the person who inherited the property in the capacity of legal representative of his father. The fair market value of the property in his case shall be higher of its cost of acquisition and the sale price as per Rule 3(2) of the Rules.

**Question:** A person acquired a house property in a foreign country during the year 2000-01 from unexplained sources of income. The property was sold in 2007-08 and the proceeds were deposited in a foreign bank account. Does he need to declare both the assets under Chapter VI of the Act and pay tax on both the assets?

**Answer:** The declaration may be made in respect of both the house property and the bank account at their fair market value. The fair market value of the house property shall be higher of its cost and the sale price, less amount deposited in bank account. If the cost price of the house property is higher the declarant will be required to pay tax and penalty on (cost price – sale price) of the house. If the sale price of the house property is higher the fair market value of the house property shall be nil as full amount was deposited in the bank account. The fair market value of the bank account shall be as determined under Rule 3(1)(e) and tax and penalty shall be paid on this amount. (Please also refer to the illustration under Rule 3(3) for computation of fair market value.)

Further, it is advisable to declare all the undisclosed foreign assets even if the fair market value as computed in accordance with Rule 3 comes to nil. This may avoid initiation of any inquiry under the Act in the future in case such asset comes to the notice of the Assessing Officer.

**Question:** A person is a non-resident. However, he was a resident of India earlier and had acquired foreign assets out of income chargeable to tax in India which was not declared in the return of income or no return was filed in respect of that income. Can that person file a declaration under Chapter VI of the Act?

**Answer:** Section 59 provides that a declaration may be made by any person of an undisclosed foreign asset acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year 2016-17. Since the person was a resident in the year in which he had acquired foreign assets (which were undisclosed) out of income chargeable to tax in India, he is eligible to file a declaration under section 59 in respect of those assets under Chapter VI of the Act.

**Question:** A person is a resident now. However, he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under Chapter VI of the Act?

**Answer:** No. Those assets do not fall under the definition of undisclosed assets under the Act.
**Question:** If a person has 3 undisclosed foreign assets and declares only 2 of those under Chapter VI of the Act, then will he get immunity from the Act in respect of the 2 assets declared?

**Answer:** It is expected that one should declare all his undisclosed foreign assets. However, in such a case the person will get immunity under the provisions of the Act in respect of the two assets declared under Chapter VI of the Act and no immunity will be available in respect of the third asset which is not declared.

**Question:** A resident earned income outside India which has been deposited in his foreign bank account. The income was charged to tax in the foreign country when it was earned but the same was not declared in the return of income in India and consequently not taxed in India. Does he need to disclose such income under Chapter VI of the Act? Will he get credit of foreign tax paid?

**Answer:** Declaration under Chapter VI is to be made of an undisclosed foreign asset. In this case, the person being a resident of India, the foreign bank account needs to be declared under Chapter VI as it is an undisclosed asset and acquired from income chargeable to tax in India. The fair market value of the bank account shall be determined as per Rule 3(1)(e). No credit of foreign taxes paid shall be allowable in India as section 84 of the Act does not provide for application of sections 90(1)(a)/90(1)(b)/90A(1)(a)/90A(1)(b) of the Income-tax Act (relating to credit of foreign tax paid) to the Act. Further, section 73 of the Act does not allow agreement with foreign country for the purpose of granting relief in respect of tax chargeable under the Act.

**Question:** Can a person declare under Chapter VI his undisclosed foreign assets which have been acquired from money earned through corruption?

**Answer:** No. As per section 71(b) of the Act, Chapter VI shall not apply, inter-alia, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such asset cannot be made under Chapter VI. However, if such a declaration is made and in an event it is found that the asset represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 68 of the Act. If a declaration is held as void, the provisions of the Act shall apply in respect of such asset as they apply in relation to any other undisclosed foreign asset.

**Question:** If a foreign asset has been acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/exempt income (tax paid income) then whether that foreign asset will be treated as undisclosed? Whether declaration under Chapter VI needs to be made in respect of such asset? If yes, what amount should be disclosed?

**Answer:** As per section 5 of the Act, in computing the value of an undisclosed foreign asset any income which has been assessed to tax under the Income-tax Act from which that asset is acquired shall be reduced from the value of the undisclosed foreign asset. Only part of the investment is such foreign asset is undisclosed (unexplained) hence declaration of such foreign asset may be made under Chapter VI of the Act. The amount of declaration shall be the fair market value of such asset as on 1st July, 2015 as reduced by the amount computed in accordance with section 5 of the Act.

**Question:** Whether for the purpose of declaration, the undisclosed foreign asset should be held by the declarant on the date of declaration?

**Answer:** No, there is no such requirement. The declaration may be made if the foreign asset was acquired out of undisclosed income even if the same has been disposed off and is not held by the declarant on the date of declaration.

**Question:** Whether at the time of declaration under Chapter VI, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?

**Answer:** After the declaration is made the Principal Commissioner/Commissioner will enquire whether any information has been received by the competent authority in respect of the asset declared. Apart from this no other enquiry will be conducted by him at the time of declaration.

**Question:** A person is a beneficiary in a foreign asset. Is he eligible for declaration under section 59 of the Act?

**Answer:** As far as ownership is concerned, as per section 2(11) of the Act “undisclosed asset located outside India” means an asset held by the person in his name or in respect of which he is a beneficial owner. The definition of “beneficial owner” and “beneficiary” is provided in **Explanation 4** and **Explanation 5** to section 139(1) of the
Income-tax Act, respectively (which is at variance with the determination of beneficial ownership provided under Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005). Therefore, for the purpose of the Act “beneficial owner” in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. Further, “beneficiary” in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary. Therefore, as per the Act the beneficial owner is eligible for declaration under section 59 of the Act.

There may be a case where a person is listed as a beneficiary in a foreign asset, however, if he has provided consideration for the asset, directly or indirectly, he will be covered under the definition of beneficial owner for the purposes of the Act.

**Question:** A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Whether such asset is required to be declared under Chapter VI of the Act?

**Answer:** If the person, while he was a non-resident in India, acquired or made a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the Act.

However, if income was accrued or received in India while he was non-resident, such income is chargeable to tax in India. If such income was not disclosed in the return of income and the foreign asset was acquired from such income then the asset becomes undisclosed foreign asset and the person may declare such asset under Chapter VI of the Act.
PART B–INDIRECT TAXATION

SERVICE TAX

AMENDMENT VIDE FINANCE ACT, 2016

Amendment of section 65B
In section 65B
(a) clause (11) shall be omitted;
(b) in clause (44), in Explanation 2, in sub-clause (ii), for item (a), the following item shall be substituted, namely:—
"(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998; (17 of 1998)".

Amendment of section 66D
In section 66D
(a) clause (l) shall be omitted;
(b) with effect from the 1st day of June, 2016—
(i) in clause (o), sub-clause (i) shall be omitted;
(ii) in clause (p), sub-clause (ii) shall be omitted.

Amendment of section 66E
In section 66E, after clause (i), the following clause shall be inserted, namely:—
"(j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.”.

Amendment of section 67A
In section 67A, the existing section shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—
"(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed.”

Amendment of section 73
In section 73
(i) in sub-sections (1), (1A), (2A) and (3), for the words "eighteen months", wherever they occur, the words "thirty months" shall be substituted;
(ii) in sub-section (4B), in clause (a), for the words "whose limitation is specified as eighteen months in", the words "falling under” shall be substituted.

Amendment of section 75
In section 75, for the words "Provided that", the following shall be substituted:
"Provided that in the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary:
Provided further that”.

Amendment of section 78A
In section 78A, the following Explanation shall be inserted:
"Explanation.— For the removal of doubts, it has clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, and the proceedings with respect to a notice issued under sub-section (1) of section 73 or the proviso to sub-section (1) of section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to section 76 or clause (i) of the second proviso to section 78, as the case may be, the proceedings pending against any person under this section shall also be deemed to have been concluded.”.

Amendment of section 89
In section 89, in sub-section (1), for the words "fifty lakh rupees", at both the places where they occur, the words "two hundred lakh rupees" shall be substituted.

Amendment of section 90
In section 90, sub-section (2) shall be omitted.

Amendment of section 91
In section 91
(a) in sub-section (1), the words, brackets and letter "clause (i) or" shall be omitted;
(b) sub-section (3) shall be omitted.

Amendment of section 93A
In section 93A, for the word "prescribed", the words "prescribed or specified by notification in the Official Gazette" shall be substituted.

Insertion of new sections 101, 102 and 103
After section 100, the following sections shall be inserted:

Section 101 - Special provision for exemption in certain cases relating to construction of canal, dam, etc.—
Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of July, 2012 and ending with the 29th day of January, 2014 (both days inclusive) in respect of taxable services provided to an authority or a board or any other body:

(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by the Government,

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works.

Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

Section 102 - Special provision for exemption in certain cases relating to construction of Government buildings.—Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as—

(i) an educational establishment;

(ii) a clinical establishment; or
an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in *Explanation* 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

### Section 103 - Special provision for exemption in certain cases relating to construction of airport or port.

Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

### Amendment of notification issued under section 93A of Finance Act, 1994

The Notification No. dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (3) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.

Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of rebate of service tax under sub-section (2) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

### Introduction of Krishi Kalyan Cess ‘KKC’ by inserting Chapter VI vide Finance Act, 2016

- This Chapter shall come into force on the 1st day of June, 2016.
- There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 per cent. on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.
- The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.
• The proceeds of the Krishi Kalyan Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Krishi Kalyan Cess for such purposes specified in sub-section (2), as it may consider necessary.

• The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made thereunder, as the case may be.

• After levy of Krishi Kalyan Cess, the effective rate of Service Tax becomes 15% i.e. (14% + 0.5% + 0.5%) w.e.f. 1st June, 2016

• Accounting code for payment of Krishi Kalyan Cess is “507-Krishi Kalyan Cess” vide Circular No. 194/04/2016 dated May 26, 2016
NOTIFICATION NO.1/2016 - SERVICE TAX DATED 3RD FEBRUARY, 2016
Notification No. 41/2012- ST, dated the 29th June, 2012 was amended by notification No.1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of Service Tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods. This amendment is being made effective from the date of application of the parent notification (i.e. 1st July 2012).

NOTIFICATION NO. 2/2016 - SERVICE TAX DATED 3RD FEBRUARY, 2016
Notification No. 12/2013 Service Tax, dated the 1st July, 2013 has been amended vide Notification No. 2/2016 ST dated 3rd February, 2016 as under:

In the said notification, in paragraph 3, in subparagraph (III), after clause (b), the following clause shall be inserted, namely: “(ba) the SEZ Unit or the Developer shall be entitled to:

i. refund of the Swachh Bharat Cess paid on the specified services on which abinitio exemption is admissible but not claimed; and

ii. the refund of amount as determined by multiplying total service tax distributed to it in terms of clause (a) by effective rate of Swachh Bharat Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994.”

Notification No. 39/2012 Service Tax, dated the 20th June, 2012, has been amended vide Notification No. 2/2016 ST dated 3rd February, 2016 as under:

Explanation 1, after clause (c), the following clause shall be inserted, namely:

(d) Swachh Bharat Cess as levied under subsection (2) of section 119 of the Finance Act, 2015 (20 of 2015).

It aims at providing rebate on Swachh Bharat Cess paid on all services which are used in providing Services exported in terms of Rule 6A of ST Rules.

In exercise of the powers conferred by section 15A, read with section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94, read with section 83 of the Finance Act,1994 (32 of 1994), the Central Government has made Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016 which came into force from the 1st day of April, 2016.

Rule 2 provides for definition which are as follows:

a) Aggregate value of clearances has the same meaning as assigned to it in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 9/2003Central Excise dated the 1st March 2003, published vide number G.S.R. 139, dated the 1st March , 2003;

b) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);

c) Digital signature has the same meaning as assigned to it in the Information Technology Act, 2000 ( 21 of 2000);

d) Form means Form appended to these rules.

Further, words and expressions used herein and not defined but defined in the Finance Act, 1994 (32 of 1994) and the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, shall have the meanings respectively assigned to them in those Acts and rules.

Rule 3 provides that information return to under subsection (1) of section 15A of Central Excise Act, 1944 shall be furnished annually by every person mentioned in column (2) of the Table below in respect of all transactions of the nature and value specified in the corresponding entry in column (3) of the said Table, recorded or received by him during every financial year beginning on or after the 1st day of April, 2015, in the Form AIRF, along with the Annexure to the said Form, as specified in column (4) of the Tables as notified in the prescribed Notification.
Rules 4 provides that the information return referred to in rule 3 shall be:

a) filed on or before the 31st of December of the financial year following the financial year to which the return pertains:

Provided that the Board, may, by way of an order, extend the date for filing such return for reasons to be recorded in writing in such order;

b) filed electronically, in Form AIRF, along with the Annexure of this Form, to the Directorate General of Systems and Data Management:

Provided that the Board, may by way of order, designate an officer in the office of the Directorate General of Systems and Data Management, or any other officer or agency to receive the returns and may appoint an officer designated as the Annual Information return Administrator, not below the rank of the Commissioner of Central Excise and Service Tax, for the purposes of day to day administration of furnishing of the said information return including specification of the procedures, data structure, formats and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies:

Provided further that till such time as the Board designates such an officer or agency for receiving the said information returns in the electronic format, or till such time the Annual Information Return Administrator finalises the formats and standards for secure capture and transmission of data, the said returns may be filed in a computer readable media being a compact DiscRead Only Memory (CDROM) or a Digital Video Disc (DVD);

c) signed and verified by the person referred to in column (2) of the Table in rule 3.

Form AIRF and instructions for filing Annual Info Return have been prescribed in the said notification.

**NOTIFICATION NO. 5/2016-SERVICE TAX DATED 17TH FEBRUARY, 2016**

Notification No. 22/2015 ServiceTax dated the 6th November, 2015, has been amended vide Notification No. 5/2016 dated 17th February, 2016 as under:

In the first proviso, for the words, brackets and figure notification issued under subsection (1), the words, brackets and figures notification or special order issued under subsection (1) or as the case may be under subsection (2) shall be substituted.

**NOTIFICATION NO. 6/2016-SERVICE TAX DATED 18TH FEBRUARY, 2016**

In exercise of the powers conferred by section 109 of the Finance Act, 2015 (No. 20 of 2015), the Central Government has appointed the 1st day of April, 2016 as the date on which the provisions of subsection (1) of section 109 of the said Act come into effect.

**NOTIFICATION NO. 7/2016-SERVICE TAX DATED 18TH FEBRUARY, 2016**

The Central Government has made the following further amendment in the Notification No.25/2012 Service Tax, dated the 20th June, 2012,

(i) after entry No. 47, entry no. 48 has been inserted. Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year. The amendment came into effect on 1st April, 2016. Thereby notifying such services to be exempted under 25/2012.

**NOTIFICATION NO. 8/2016-SERVICE TAX DATED 1ST MARCH, 2016**

The Central Government aims at amending the notification no. 26/2012 to make amendments in taxable portion for the specified entries:

1. In the said notification,
   (a) in the first paragraph, in the TABLE, -
   (i) for Sl. No. 2 and the entries relating thereto, the following shall be substituted, namely :-
(ii) after Sl. No. 2 and the entries relating thereto, the following serial number and entries relating thereto shall be inserted, namely :-

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| “2A” | Transport of goods in containers by rail by any person other than Indian Railways | 40 | CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.”;

(iii) against Sl.No. 3, in column (4), for the entry, the following shall be substituted, namely:-
“CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.”;

(iv) against Sl. No. 7, in column (2), for the entry, the following shall be substituted, namely :-
“Services of goods transport agency in relation to transportation of goods other than used household goods.”

(v) after Sl. No. 7 and the entries relating thereto, the following serial numbers and entries relating thereto shall be inserted:

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| “7A” | Services of goods transport agency in relation to transportation of used household goods. | 40 | CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.
| 8 | Services provided by a foreman of chit fund in relation to chit | 70 | CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.

(vi) against Sl. No. 9A, in column (2), after item (b) and the entry relating thereto, the following item and entry relating thereto shall be inserted with effect from 1st June, 2016, namely :-
“(c) a stage carriage”;

(vii) against Sl. No. 10, in column (4), for the entry, the following shall be substituted:
“CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.”.

(viii) for Sl. No. 11 and the entries relating thereto, the following shall be substituted:
(1) Services by a tour operator in relation to,-
(i) a tour, only for the purpose of arranging or booking accommodation for any person.

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| 11 | 10 | (i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.
(iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.

8 (ii) tours other than (i) above 30 (i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

(ix) for Sl. No. 12 and the entries relating thereto, the following shall be substituted:

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| 12 | 30 | (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.
(ii) The value of land is included in the amount charged from the service receiver.;

(b) in the Explanation, after paragraph B, the following paragraph shall be inserted:
“BA. For the purposes of exemption at Serial number 9, the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods (including fuel) and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.”.

(c) in the paragraph 2, the clause „b“ shall be omitted.
This notification came into force on the 1st April, 2016.

NOTIFICATION NO. 9/2016-SERVICE TAX DATED 1ST MARCH, 2016
It seeks to amend Notification No. 25/2012 by inserting new entries & amending the existing entries in the following manner

(a) in the first paragraph,-

(i) in entry 6, for clause (b) and clause (c), the following clauses shall be substituted, namely,-
“(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
   (i) an advocate or partnership firm of advocates providing legal services;
   (ii) any person other than a business entity; or
   (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;”;

(ii) after entry 9A, the following entry shall be inserted with effect from 1st March, 2016, namely,-

“9B. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -
   (a) two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;
   (b) fellow programme in Management;
   (c) five year integrated programme in Management.”;

(iii) after entry 9B as so inserted, the following entries shall be inserted, namely:-

“9C. services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme;

9D. services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training.”;

(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely-

“12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
   (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
   (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
   (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act; under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”;

(v) in entry 13, after item (b), the following items shall be inserted with effect from 1st March, 2016, namely –

“(ba) a civil structure or any other original works pertaining to the „In-situ rehabilitation of existing slum dwellers using land as a resource through private participation“ under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

(bb) a civil structure or any other original works pertaining to the „Beneficiaryled individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;“;

(vi) in entry 14, with effect from 1st March, 2016, A. for item (a), the following shall be substituted, namely:-
“(a) railways, excluding monorail and metro;

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”.

B. after item (c), the following item shall be inserted, namely –

“(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
(ii) any housing scheme of a State Government.”.

(vii) after entry 14, with effect from the 1st March, 2016, the following entry shall be inserted, namely-

“14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:
provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015:
provided further that nothing contained in this entry shall apply on or after the 1st April, 2020;”;

(viii) in entry 16, for the words “one lakh rupees”, the words “one lakh and fifty thousand rupees” shall be substituted;

(ix) in entry 23,-
(A) after clause (b), the following clause shall be inserted with effect from 1st June 2016, namely,-

“(bb) stage carriage other than air-conditioned stage carriage;”;
(B) clause (c) shall be omitted;

(x) in entry 26, after clause (p), the following clause shall be inserted, namely,-

“(q) Niramaya” Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).”;

(xi) after entry 26B, the following entry shall be inserted, namely,-

“26C. Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory And Development Authority Act, 2013 (23 of 2013);”;

(xii) after entry 48, the following entries shall be inserted, namely,-

“49. Services provided by Employees” Provident Fund Organisation (EPFO) to persons governed under the Employees” Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);
50. Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999);
51. Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market;
52. Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer’s Welfare by way of cold chain knowledge dissemination;"

(xiii) after entry 52 as so inserted, the following entries shall be inserted with effect from 1st June 2016, namely:

“53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.”;

(b) in paragraph 2, -

(i) after clause (b), the following clause shall be inserted with effect from such date on which the Finance Bill, 2016 receives assent of the President of India, namely: -

“(ba) “approved vocational education course” means, -

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;”;

(ii) for clause (oa), the following shall be substituted with effect from such date on which the Finance Bill, 2016, receives assent of the President of India, namely : -

“(oa) “educational institution” means an institution providing services by way of:
(i) pre-school education and education up to higher secondary school or equivalent;
(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
(iii) education as a part of an approved vocational education course;”;

(iii) after clause (zd), the following clause shall be inserted, namely: -

“(zdd) “senior advocate” has the meaning assigned to it in section 16 of the Advocates Act, 1961 (25 of 1961);”

Save as otherwise provided in this notification, this notification came into force on the 1st of April, 2016.

NOTIFICATION NO. 10/2016-SERVICE TAX DATED 1ST MARCH, 2016
It provides to amend Point of Taxation Rules, 2011 and provide explanations w.e.f. 1st March, 2016.

(1) in the opening paragraph, after the words —powers conferred underl, the word, letters and signs —sub-section (2) of section 67A andl shall be inserted with effect from the date of enforcement of the Finance Act, 2016.

(2) in rule 5, after clause (b), the following explanations shall be inserted, namely:–

Explanation 1.- This rule shall apply mutatis mutandis in case of new levy on services.
Explanation 2.- New levy or tax shall be payable on all the cases other than specified above.

NOTIFICATION NO. 11/2016-SERVICE TAX DATED 1ST MARCH, 2016
It seeks to provide exemption in services in relation to IT software, subject to conditions as provided in the Notifications.

It exempts service in relation to Information Technology Software (hereinafter referred to as such services) leviable to service tax under section 66B read with section 66E of the said Act when such Information Technology Software is recorded on a media (hereinafter referred to as such media) under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), on which it is required, under the provisions of the Legal Metrology Act, 2009
(1 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on package of such media thereof, the retail sale price, from whole of the service tax subject to the condition that-

(i) the value of the package of such media domestically produced or imported, for the purposes of levy of the duty of central excise or the additional duty of customs leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), if imported, as the case may be, has been determined under section 4A of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as such value); and

(ii) (a) the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of such media manufactured in India; or
(b) the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of such media which has been imported into India;

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on such media has been recovered from the customer.

Explanations. - For the purpose of this notification, the expression,-
(i) “appropriate duties of excise” shall mean the duties of excise leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) and a notification, for the time being in force, issued in accordance with the provision of subsection (1) of section 5A of the said Central Excise Act; and
(ii) “appropriate duties of customs” shall mean the duties of customs leviable under section 12 of the Customs Act, 1962 (52 of 1962) and any of the provisions of the Customs Tariff Act, 1975 (51 of 1975) and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 25 of the said Customs Act.

NOTIFICATION NO. 12/2016-SERVICE TAX DATED 1ST MARCH, 2016

It seeks to amends Notification No. 32/2012 dated 20th June, 2016 as under:

(1) in the opening paragraph,-
(a) after the words “Department of Science and Technology, Government of India”, the following words shall be inserted, namely:-
“or bio-incubators recognized by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India,”;
(b) in conditions 1 and 2, after the words and letters “or the TBI”, the words “or the incubator” shall be inserted;

(2) in Format-I,-
(a) in the heading, after the word and letters “the STEP”, the words “or the Bio- Incubator” shall be added;
(b) in item (a), after the word “Park”, the words and signs “/bio-incubator” shall be inserted;

(3) in Format-II,-
(a) in the heading, after the letters “STEP”, the signs and words “/the Bio-Incubator” shall be inserted;
(b) in serial number 4, after the letters, brackets and word “STEP (incubator)”, the signs and words “/the bio-incubator” shall be inserted.

This notification came into force on the 1st of April, 2016.

NOTIFICATION NO. 13/2016-SERVICE TAX DATED 1ST MARCH, 2016

The Notification seeks to prescribe interest rate under section 75 as under:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Situation</th>
<th>Rate of simple interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>86</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due. 24 per cent.

2. Other than in situations covered under serial number 1 above. 15 per cent.

This notification came into force on the day the Finance Bill, 2016 received the assent of the President i.e. May 14, 2016.

NOTIFICATION NO. 14/2016-SERVICE TAX DATED 1ST MARCH, 2016
In exercise of the powers conferred by section 73B of the Finance Act, 1994 (32 of 1994), the Central Government amended the No.8/2006-Service Tax, dated the 19th April, 2006 as under:

For the words “eighteen per cent.”, the words “fifteen per cent” has been substituted.

This notification came into force on the day the Finance Bill, 2016 received the assent of the President i.e. May 14, 2016.

NOTIFICATION NO. 15/2016-SERVICE TAX DATED 1ST MARCH, 2016
The Notification appointed 1st April, 2016 as the date for making applicable the provisions of clause (h) of Section of the Finance Act, 2015.

NOTIFICATION NO. 16/2016-SERVICE TAX DATED 1ST MARCH, 2016
It appoints 01/04/2016 for applicability of the provisions of Notification No. 7/2015-ST

NOTIFICATION NO. 17/2016-SERVICE TAX DATED 1ST MARCH, 2016
It provide as the date for bringing into effect the provisions of Notification No. 5/2015-ST

NOTIFICATION NO. 18/2016-SERVICE TAX DATED 1ST MARCH, 2016
The Central Government has made the following further amendments in the Notification No. 30/2012-Service Tax, dated the 20th June, 2012, which shall came into force w.e.f. April 1, 2016:

(a) in paragraph I, in clause (A),-

(i) sub-clause (ib) shall be omitted;

(ii) for sub-clause (ic), the following shall be substituted, namely:-

“(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998);”;

(iii) in sub-clause (iv), for item (B), the following shall be substituted, namely:-

“(B) a firm of advocates or an individual advocate other than senior advocate, by way of legal services, or”;

(b) in paragraph (II), in the TABLE,-

(i) Sl. No. 1B and the entries relating thereto shall be omitted;

(ii) against Sl. No. 1C, for the entry under column (2), the following shall be substituted, namely:-
“in respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)”;

(iii) against Sl. No. 5, for the entry under column (2), the following shall be substituted, namely:-

“in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services”;

(iv) against Sl. No. 6, in column (2), the words “by way of support services” shall be omitted.

NOTIFICATION NO. 19/2016-SERVICE TAX DATED 1ST MARCH, 2016

In exercise of the powers conferred by sub-section (1) read with subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified the Service Tax (Amendment) Rules, 2016 further to amend the Service Tax Rules, 1994 as under and shall come into force on the 1st day of April, 2016.

(1) in rule 2, in sub-rule (1), in clause (d), in sub-clause(i),-

(a) in item (D), for sub-item(II), the following shall be substituted, namely:-

“(II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services”;

(b) item (EEA) shall be omitted;

(2) in rule 6,-

(i) in sub-rule (1),-

(a) in the first proviso, for the words “assessee is an individual or proprietary firm or partnership firm”, the following shall be substituted,-

“assessee is a one person company whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, or is an individual or proprietary firm or partnership firm or Hindu Undivided Family”;

(b) in the third proviso, for the words “in case of individuals and partnership firms whose”, the following words shall be substituted,-

“in case of such individuals, partnership firms and one person companies whose”;

(ii) in sub-rule (4), for the words, brackets and figures “Central Excise (No. 2) Rules, 2001”, the words and figures “Central Excise Rules, 2002” shall be substituted;

(iii) in sub-rule (7A), after clause (i), the following clause shall be inserted, namely:-

“(ia) in case of single premium annuity policies other than (i) above, 1.4 per cent. of the single premium charged from the policy holder;”;

(3) in rule 7,-

(i) after sub-rule (3), the following sub-rules shall be inserted, namely:-

“(3A) Notwithstanding anything contained in sub-rule (1), every assessee shall submit an annual return for the financial year to which the return relates, in such form and manner as may be specified in the notification in the Official Gazette by the Central Board of Excise and Customs, by the 30th day of November of the succeeding financial year;

(3B) The Central Government may, subject to such conditions or limitations, specify by notification an assessee or class of assesses who may not be required to submit the annual return referred to in sub-rule(3A).”;

(ii) in sub-rule (4), for the words, brackets, and figure “sub-rule (2)”, the words, brackets, figures and letter “sub-rules (2) and (3A)” shall be substituted;
(4) rule 7B shall be renumbered as sub-rule (1) thereof, and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

“(2) An assessee who has filed the annual return referred to in sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of one month from the date of submission of the said annual return.”;

(5) rule 7C shall be renumbered as sub-rule (1) thereof, and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

“(2) Where the annual return referred to in sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day for the period of delay in filing of such return, subject to a maximum of twenty thousand rupees.”.

**NOTIFICATION NO. 21/2016-SERVICE TAX DATED 30TH MARCH, 2016**

In exercise of the powers conferred by clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified Point of Taxation (2nd Amendment) Rules, 2016 as under :

In the Point of Taxation Rules, 2011, in rule 7, after second proviso, the following proviso shall be inserted, namely:–

“Provided also that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.”.

**NOTIFICATION NO. 22/2016-SERVICE TAX DATED 13TH APRIL, 2016**

In exercise of the powers conferred by subsection (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, has made the following further amendments in the Notification No.25/2012Service Tax, dated the 20th June, 2012.

(i) in the first paragraph,( i) in entry 39, after the words Services by , the words Government, a local authority or shall be inserted;

(ii) after entry 53, the following entries shall be inserted, namely:"

54. Services provided by Government or a local authority to another Government or local authority: Provided that nothing contained in this entry shall apply to services specified in subclauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994;

55. Services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate;

56. Services provided by Government or a local authority where the gross amount charged for such services does not exceed Rs. 5000/:

Provided that nothing contained in this entry shall apply to services specified in subclauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:

Provided further that in case where continuous supply of service, as defined in clause (c) of rule 2 of the Point of Taxation Rules, 2011, is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5000/in a financial year;

57. Services provided by Government or a local authority by way of tolerating nonperformance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;
58. Services provided by Government or a local authority by way of:
(a) registration required under any law for the time being in force;
(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;
59. Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture;
60. Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution;
61. Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:
Provided that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource;
62. Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, as the case may be;
63. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT)."

NOTIFICATION NO. 23/2016-SERVICE TAX DATED 13TH APRIL, 2016
In exercise of the powers conferred by clause (aa) of subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified the Service Tax (Determination of Value) Amendment Rules, 2016 as under:
They shall come into force on the date of their publication in the Official Gazette.
In rule 6, in subrule (2), in clause (iv), the following proviso shall be inserted namely:
“Provided that this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration.”

NOTIFICATION NO. 24/2016-SERVICE TAX DATED 13TH APRIL, 2016
In exercise of the powers conferred by clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified Point of Taxation (Third Amendment) Rules, 2016 further to amend the Point of Taxation Rules, 2011, as under, which shall come into force on the date of their publication in the Official Gazette.
In the Point of Taxation Rules, 2011, in rule 7, after the third proviso, the following proviso shall be inserted namely:
“Provided also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which,
(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or
(b) payment for such services is made.”

NOTIFICATION NO. 25/2016-SERVICE TAX DATED 17TH MAY, 2016
Whereas the Central government is satisfied that in the period commencing on and from 1st Day of July, 2012 and ending with the 19th Day of August, 2014 (herein after referred to as the said period) according to the practice that was generally prevalent, there was non levy of service tax on the services provided by the specified organizations
as defined in clause (zfa) of paragraph 2 of the notification no. 25/2012 – Service tax dated 20th June, 2012 in respect of religious pilgrimage facilitated by the Ministry of External affairs of the Government of India, under bilateral arrangement and these services were liable to service tax, which was not being paid according to the said practice.

In exercise of the power conferred under section 11C of the Central Excise Act, 1944 read with section 83 of the finance act, 1994 the Central Government has directed that the service tax payable under section 66B of the Finance Act, 1994 on the services provided by the said specified organization in respect of religious pilgrimage facilitated by the Ministry of External affairs of the Government of India, under bilateral arrangement, in the said period but for the said practice, shall not be required to be paid.

**NOTIFICATION NO. 26/2016-SERVICE TAX DATED 20TH MAY, 2016**

The Central Government being satisfied that it is necessary in the public interest so to do, has made the following further amendment in the Notification No.25/2012-Service Tax, dated the 20th June, 2012,

In the said notification, in Entry 48, the following Explanation shall be inserted, namely:-

“Explanation. - For the purposes of this entry, it has clarified that the provisions of this entry shall not be applicable to the following services, namely:-

a) services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994;

b) services by way of renting of immovable property.”

**NOTIFICATION NO. 27/2016-SERVICE TAX DATED 26TH MAY, 2016**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has provided that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, shall be applicable mutatis mutandis for the purposes of Krishi Kalyan Cess.

This notification shall come into force from the 1st day of June, 2016.

**NOTIFICATION NO. 28/2016-SERVICE TAX DATED 26TH MAY, 2016**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has exempted such taxable services from whole of Krishi Kalyan Cess leviable thereon which are either exempt from the whole of service tax by a notification or special order issued under sub-section (1) or as the case may be under sub-section (2) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994:

Provided that Krishi Kalyan Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the Notification No. 26/2012-Service Tax, dated 20th June, 2012.

Explanation.- It is has clarified that value of taxable services for the purposes of the Krishi Kalyan Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

This notification shall come into force from the 1st day of June, 2016.

**NOTIFICATION NO. 29/2016-SERVICE TAX DATED 26TH MAY, 2016**

In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994, the Central Government, has made following amendments in the Notification No. 39/2012- Service Tax, dated the 20th June, 2012.

In the said notification, in Explanation 1, after clause (d), the following clause shall be inserted, namely:-

“(e) Krishi Kalyan Cess as levied under sub-section (2) of section 161 of the Finance Act, 2016.”

This notification shall come into force from the 1st day of June, 2016.
NOTIFICATION NO. 30/2016-SERVICE TAX DATED 26TH MAY, 2016

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, read with sub-section (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has made following further amendments in the Notification No. 12/2013-Service Tax, dated the 1st July, 2013

In the said notification, in paragraph 3, in sub-paragraph (III),

(i) for clause (b), the following clause shall be substituted, namely:-

“(b) the SEZ Unit or the Developer shall be entitled to refund of-

(i) the service tax paid on the specified services on which ab-initio exemption is admissible but not claimed; and

(ii) the amount distributed to it in terms of clause (a).”;

(ii) in clause (ba),

(a) in item (i), after the words “Swachh Bharat Cess”, the words “and Krishi Kalyan Cess” shall be inserted;

(b) in item (ii) for the words “by effective rate of Swachh Bharat Cess”, the words “by sum of effective rates of Swachh Bharat Cess and Krishi Kalyan Cess” shall be substituted.

This notification shall come into force from the 1st day of June, 2016.

NOTIFICATION NO. 31/2016-SERVICE TAX DATED 26TH MAY, 2016

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified Service Tax (Third Amendment) Rules, 2016 further to amend the Service Tax Rules, 1994 which shall come into force from the 1st day of June, 2016.

In the Service Tax Rules, 1994, in rule 6,

i. in sub-rule (7D), for the figures “0.5” the words “effective rate of Swachh Bharat Cess” and for the words, figures and brackets “14 (fourteen)”, the words and figures “rate of service tax specified in section 66B of the Finance Act, 1994” shall be substituted;

ii. after sub-rule (7D), the following sub-rule shall be inserted, namely:-

“(7E) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by effective rate of Krishi Kalyan Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994, during any calendar month or quarter, as the case may be, towards the discharge of his liability for Krishi Kalyan Cess instead of paying Krishi Kalyan Cess at the rate specified in sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016) and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.”

NOTIFICATION NO. 32/2016-SERVICE TAX DATED 6TH JUNE, 2016

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, has made the following further amendments in the Notification No.25/2012-Service Tax, dated the 20th June, 2012,

In the said notification, in the first paragraph, in entry 6, for clause (c), the following clause shall be substituted, namely:-

“(c) a senior advocate by way of legal services to-

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;”
NOTIFICATION NO. 33/2016-SERVICE TAX DATED 6TH JUNE, 2016

In exercise of the powers conferred by sub-section (1) read with subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has notified Service Tax (Fourth Amendment) Rules, 2016 further to amend the Service Tax Rules, 1994.

In the Service Tax Rules, 1994, in rule 2, in sub-rule (1), in clause (d), in sub-clause(i),

a) in item (D), for sub-item (II), the following sub-item shall be substituted, namely:-

“(II) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates;”

b) after item (D), the following item shall be inserted, namely:-

“(DD) in relation to service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, the recipient of such services, which is the business entity who is litigant, applicant, or petitioner, as the case may be”. 

NOTIFICATION NO. 34/2016-SERVICE TAX DATED 6TH JUNE, 2016

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994, the Central Government has made the following further amendments in the Notification No. 30/2012-Service Tax, dated the 20th June, 2012.

(a) in paragraph I, in clause (A),

(i) in sub-clause (iv), for item (B), the following item shall be substituted, namely:-

“(B) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates, or”;

(ii) for sub-clause (iva), the following sub-clauses shall be substituted, namely:-

“(iva) provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant, or petitioner, as the case may be”;

(ivb) provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;”

(b) in paragraph (II):

(i) in the TABLE, against Sl. No. 5, for the entry under column (2), the following entry shall be substituted, namely:-

“in respect of services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly”,

(ii) after Explanation II., the following shall be inserted, namely:-

“Explanation III. – The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.”.

NOTIFICATION NO. 35/2016-SERVICE TAX DATED 23RD JUNE, 2016

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, read with sub-section (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has exempted taxable services with respect to which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of Krishi Kalyan Cess leviable thereon, subject to condition that the provision of service has been completed on or before the 31st May, 2016.
NOTIFICATION NO. 36/2016-SERVICE TAX DATED 23RD JUNE, 2016
In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, has exempted the taxable services by way of transportation of goods by a vessel from outside India upto the customs station in India with respect to which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of service tax leviable thereon, subject to the condition that the import manifest or import report required to be delivered under section 30 of the the Customs Act, 1962 (52 of 1962) has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

NOTIFICATION NO. 19/2015-SERVICE TAX DATED 14TH OCTOBER, 2015
The Central Government being satisfied that in the period commencing on and from the 1st day of July, 2012 and ending with the 13th day of October, 2014 (the said period) according to a practice that was generally prevalent, there was no levy of service tax on the services provided by an Indian Bank or other entity acting as an agent to the Money Transfer Service Operators (MTSO), in relation to remittance of foreign currency from outside India to India (the said practice), and this service was liable to service tax, which was not being paid according to the said practice.

The Central government has directed that the service tax payable under section 66B of the Finance Act, 1994, on the service provided by an Indian Bank or other entity acting as an agent to the MTSO in relation to remittance of foreign currency from outside India to India, in the said period, but for the said practice, shall not be required to be paid.

NOTIFICATION NO. 20/2015-SERVICE TAX DATED 21ST OCTOBER, 2015
The Central Government, being satisfied that it is necessary in the public interest so to do, made the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012.

(i) in the opening paragraph, in entry 29, for clause (g), the following clauses shall be substituted, namely-
“(g) business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company’s rural area branch, by way of account opening, cash deposits, cash withdrawals,obtaining e-life certificate, Aadhar seeding;
(ga) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g);
(gb) business facilitator or a business correspondent to an insurance company in a rural area; or”

(ii) in paragraph 2,-
(a) after clause (g), the following clause shall be inserted, namely “(ga) Basic Savings Bank Deposit Account means a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto;
(b) in clause (k), in sub-clause (ii), for the words “religion or spirituality”, the words “religion, spirituality or yoga” shall be substituted.

NOTIFICATION NO. 21/2015-SERVICE TAX DATED 6TH NOVEMBER, 2015
The Central Government has appointed the 15th day of November, 2015 as the date with effect from which the provisions of Chapter VI of the said Act, shall come into force.

NOTIFICATION NO. 22/2015-SERVICE TAX 6TH NOVEMBER, 2015
The Central Government, being satisfied that it is necessary in the public interest so to do, has exempted all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5% of the value of taxable services:
Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15th day of November, 2015.

NOTIFICATION NO. 23 /2015-SERVICE TAX DATED 12TH NOVEMBER, 2015

The Central Government, being satisfied that it is necessary in the public interest so to do, made the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 22/2015-Service Tax, dated the 6th November, 2015.

In the said notification, after the proviso, the following shall be inserted, namely:-

“Provided further that Swachh Bharat Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the notification No. 26/2012-Service Tax, dated 20th June, 2012.

Explanation.- It is hereby clarified that value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.”

NOTIFICATION NO. 24 /2015-SERVICE TAX DATED 12TH NOVEMBER, 2015

The Central Government, being satisfied that it is necessary in the public interest so to do, provided that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, shall be applicable for the purposes of Swachh Bharat Cess mutatis mutandis.


The Central Government has made the Service Tax (Second Amendment) Rules, 2015 to insert sub-rule 7D after sub-rule (7C) in rule 6 of the Service Tax Rules, 1994 which shall come into force on the 15th day of November, 2015.

“(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6th November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.”

This notification shall come into force from the 15th day of November, 2015.


The Central Government has prescribed the Service Tax (Third Amendment) Rules, 2015 to insert the following proviso after the third proviso , in rule 6, in sub-rule (1) of the Service Tax Rules, 1994 which shall come into force on the date of their publication in the Official Gazette.

“Provided also that in the case of an assesse in the State of Tamil Nadu, the service tax payable for the month of November, 2015 shall be paid to the credit of the Central Government by the 20th day of December, 2015”.


The Central Government has made the Service Tax (Fourth Amendment) Rules, 2015 to substitute the following in the fourth proviso of sub-rule (1) in rule 6 of the Service Tax Rules, 1994 which shall come into force on the date of their publication in the Official Gazette.

For the words "State of Tamil Nadu", the words “State of Tamil Nadu and the Union Territory of Puducherry (except Mahe & Yanam)” shall be substituted.
Background
Chapter VI (Section 119) of the Finance Act 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC). The Government has announced 15th November, 2015 as the date from which the provisions of Section 119 would come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers). Simultaneously, Government has also notified levy of Swachh Bharat Cess at the rate of 0.5% on all taxable services.

Effectively, the rate of SBC is 0.5% and new rate of service tax plus SBC is 14.5%. The proceeds from this cess will be exclusively used for Swachh Bharat initiatives. In this context certain points have been clarified with the help of FAQs given below:

Q.1 What is Swachh Bharat Cess (SBC)?
Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015 on all the taxable services at the rate of 0.5% of the value of taxable service.

Q.2 What is the date of implementation of SBC?
Ans. The Central Government has appointed 15th day of November, 2015 as the date from which provisions of Swachh Bharat Cess will come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers).

Q.3 Whether SBC is leviable on exempted services and services in the negative list?
Ans. Swachh Bharat Cess is not leviable on services which are fully exempt from service tax or those covered under the negative list of services.

Q.4 Why has SBC been imposed?
Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q. 5 Where will the money collected under SBC go?
Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilise such sums of money of the SBC for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6 How will the SBC be calculated?
Ans. SBC would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax.

Q. 7 Whether SBC would be required to be mentioned separately in invoice?
Ans. SBC would be levied, charged, collected and paid to Government independent of service tax. This needs to be charged separately on the invoice, accounted for separately in the books of account and paid separately under separate accounting code.

Q. 8 Whether separate accounting code is there for Swachh Bharat Cess?
Ans. Yes, for payment of Swachh Bharat Cess, there is a separate accounting code. These are as follows:

<table>
<thead>
<tr>
<th>Swachh Bharat Cess (Minor Head)</th>
<th>Tax Collection</th>
<th>Other Receipts</th>
<th>Penalties</th>
<th>Deduct Refunds</th>
</tr>
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<tr>
<td>0044-00-506</td>
<td>00441493</td>
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<td>00441496</td>
<td>00441495</td>
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CIRCULAR NO. 192/02/2016 DATED 13TH APRIL, 2016 - CLARIFICATION ON ISSUES REGARDING LEVY OF SERVICE TAX ON THE SERVICES PROVIDED BY GOVERNMENT OR A LOCAL AUTHORITY TO BUSINESS ENTITIES

Any service provided by Government or a local authority to a business entity has been made taxable w.e.f 1st April 2016. Post Budget 2016, representations have been received from several quarters including business and industry associations in respect of various aspects pertaining to the taxation of such services. Accordingly, the following clarifications have been issued:

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<th>Sr. No.</th>
<th>Issues</th>
<th>Clarification</th>
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<tr>
<td>1.</td>
<td>Services provided by Government or a local authority to another Government or a local authority.</td>
<td>Such services have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 54 refers]. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.</td>
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| 2.      | Services provided by Government or a local authority to an individual who may be carrying out a profession or business. | • Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 55 refers].
• Further, for services provided up to a taxable value of Rs 5000/-, Sl. No. 5 below may please be seen. |
| 3.      | Service Tax on taxes, cesses or duties.                               | Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax. |
| 4.      | Service Tax on fines and penalties.                                  | 1. It is clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.
2. Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 57 refers]. |
| 5.      | Services provided in lieu of fee charged by Government or a local authority. | It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be |

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regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.

However, services provided by the Government or a local authority by way of:

(i) registration required under the law;

(ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 58 refers].

Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs 5000/- have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 56 refers]. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year.

It is also clarified that Circular No. 89/7/2006-Service Tax dated 18-12-2006 & and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23.8.2007 issued in the pre-negative list regime are no longer applicable.

6. Services in the nature of allocation of natural resources by Government or a local authority to individual farmers.

Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 59 refers]. Such allocations/auctions to categories of persons other than individual farmers would be leviable to Service Tax.

7. Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority.

Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 – ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempted from Service Tax vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 39 refers].

8. Services provided by Government, a local authority

Such services have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated
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<td>or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.</td>
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<tr>
<td>9. Whether Service Tax is payable on yearly installments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016.</td>
<td>Service Tax is payable on such installments in view of rule 7 of Point of Taxation Rules, 2011 as amended by vide Notification No. 24/2016 – ST dated 13.4.2016. However, the same have been specifically exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 61 refers]. The exemption shall apply only to Service Tax payable on one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.</td>
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<td>10. When does the liability to pay Service Tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) instalments under deferred payment option for rights assigned after 1.4.2016.</td>
<td>Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 – ST dated 13.4.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made. Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier.</td>
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<td>11. How to determine the date on which payment in respect of any service provided by Government or a local authority becomes due for determination of point of taxation (Sl. No. 10 refers)?</td>
<td>The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment [Point of Taxation Rules, 2011 as amended by Notification No. 24/2016 – ST dated 13.4.2016 refers].</td>
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<td>12. Whether Service Tax is</td>
<td>Service Tax is payable on such payments in view of rule 7 of Point of</td>
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| 100 | leviable on spectrum user charges and license fee payable after 1.4.2016 for the year 2015-16.  

| 13. | Whether Service Tax is payable on the interest charged by Government or a local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option.   |
|   | Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 has been amended vide Notification No. 23/2016 – ST dated 13.4.2016 so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service.   |
| 14. | When and how will the allottee of the right to use natural resource be entitled to take CENVAT Credit of Service Tax paid for such assignment of right.   |
|   | The CENVAT Credit Rules, 2004 have been amended vide Notification No. 24/2016 C.E. (N.T.) dated 13.4.2016. Consequently, the CENVAT Credit of the Service Tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 (three) years. [Rule 4(7) of CENVAT Credit Rules, 2004 as amended refers]. Detailed illustrations explaining how the CENVAT Credit is to be availed, are given in para 2 below.   |
|   | However, the Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year in which the same is paid. Likewise, Service Tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid. The existing eighth proviso in sub-rule (7) of rule 4 of CENVAT Credit Rules, 2004 is being omitted because the same is superfluous.   |
|   | Amendments have also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in subrule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource [Fifth Proviso to sub-rule (7) of Rule 4 of CENVAT Credit Rules, 2004].   |
| 15. | On basis of which documents can CENVAT Credit be availed in respect of services provided by Government or a local authority.   |
|   | CENVAT Credit may be availed on the basis of challan evidencing payment of Service Tax by the Service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004, refers].   |
CIRCULAR NO.193/03/2016 DATED 18TH MAY, 2016 - CLARIFICATION REGARDING LEVIABILITY OF SERVICE TAX IN RESPECT OF SERVICES PROVIDED BY ARBITRAL TRIBUNAL AND MEMBERS OF SUCH TRIBUNAL - REG.

It has come to the notice of the Board that there is some confusion regarding the legal position with respect to continuance of reverse charge mechanism for services provided by arbitral tribunals and individual arbitrators on the arbitral tribunal, with effect from 1.4.2016.

Services provided by an arbitral tribunal to (i) any person other than a business entity; or (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year, are exempt from service tax [Entry 6(a) of Notification No. 25/2012 – ST refers]. “Arbitral tribunal” has been assigned the same meaning in the exemption notification No. 25/2012 – ST [paragraph 2(c)] as in clause (d) of Section 2 of the Arbitration and Conciliation Act 1996, which is as follows:-

“arbitral tribunal means a sole arbitrator or a panel of arbitrators”

In the Budget 2016-17, the entry at (c) of Sl. No. 6 of notification No.25/2012-ST, has been omitted with effect from 1.4.2016. It read as:

“Services provided by a person represented on an arbitral tribunal to an arbitral tribunal.”

The matter has been examined. It may be noted that the services provided or agreed to be provided by an arbitral tribunal to a business entity (turnover exceeding Rs 10 lakh) located in the taxable territory, is taxable under reverse charge mechanism and recipient of service is liable to discharge service tax liability [Rule 2(d)(D)(I) of Service Tax Rules, 1994 and Notification No. 30/3012 – ST (Sl. No. 4) refer]. There is no change in the Budget 2016-17 with respect to the said provisions.

It could be argued that service provided by an arbitrator on the panel of arbitrators, to the arbitral tribunal is taxable under forward charge. However, this does not appear to be a correct interpretation of law. Any reference in Service Tax law to an “arbitral tribunal” necessarily includes the natural persons on the arbitral tribunal, by virtue of clause (d) of Section 2 of the Arbitration and Conciliation Act, 1996. Services are provided or agreed to be provided by the panel of arbitrators, as comprising the several natural persons on the said panel, to the business entity or to the arbitration institution approached by the business entity for purposes of arbitration. The liability to discharge service tax is on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

In view of the above, it has been clarified that Service Tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.
2.0 Applicability of the scheme

2.1 At the outset it is reiterated that this scheme is not a substitute for the various notifications but is meant to complement them and is aimed at enabling ease of doing business. It has to operate within the general parameters of the notifications governing such refunds.

2.2 This scheme is applicable only to service tax registrants who are exporters of services, with respect to refund claims under rule 5 of the CENVAT Credit Rules, 2004, which have been filed on or before 31-3-2015, and which have not been disposed of as on the date of the issue of the circular dated 10-11-2015. As clarified therein, claims which have been remanded are out of the purview of this scheme.

3.0 Additional documents to be submitted (i.e. in addition to those required to be filed along with the claim)

3.1 At the outset, the relevance of the certificate has to be clearly understood. It is not a substitute for verification by the refund sanctioning authority. It will ensure diligence on the part of the claimant and the statutory auditor, which will make him eligible for a provisional payment of 80% of the claimed amount. It had been clarified in the circular that the decision to grant provisional payment is an administrative order and not a quasi-judicial order and should not be subjected to review. There is thus no reason to treat either the certificate or the provisional payment with fear or suspicion.

3.2 The certificate has to be furnished by the statutory auditor in the case of companies, and from a chartered accountant in the case of assesses who are not companies, in the prescribed format. The phrase “statutory auditor” will refer to the auditor who prepares the financial statements under the Companies Act 2013. The certificate cannot be furnished by a Cost and Management Accountant or a Company Secretary. In the case of companies, it cannot be furnished by a Chartered Accountant who is not the statutory auditor.

3.3 The certificate has to be given in the format given in Annexure-1 to the circular dated 10-11-2015. During the conference of Service Tax Chief Commissioners and Commissioners in November 2015 itself, it had been clarified that “the averments in Annexure-1 have to be made and any general additional remarks, which do not negate the wording of paragraphs 1.1 to 1.4, may be ignored.” Inspite of this it has been reported that general disclaimers by the auditor are resulting in the rejection of the certificate and consequently the claim for 80% provisional payment.

3.4 It must be understood that auditors while discharging their duties are bound by the provisions of the statute governing them as well as Guidance Notes, Accounting Standards etc relating to their profession. The Institute of Chartered Accountants of India has issued Guidance Notes on reports and certificates issued by auditors. These Guidance Notes relate to situations where the auditor has freedom with respect to the wording of a certificate as well as to situations where he has to adhere to a prescribed format. In both situations the auditor has to indicate the manner in which the audit was done, assumptions, limitations in scope and reference to information and explanations obtained in the certificate. Adherence of the auditors to these requirements should not be considered to be violations of the circular. If at all, by mentioning that they have adhered to the various legal and accounting requirements, they are adding value to their certificate. It is clarified once again that as long as the four points which are contained in Annexure-1 to the circular dated 10-11-2015 are present, the certificate should not be rejected on the ground of any disclaimers which the auditor has to give, owing to the Guidance Notes.
CIRCULAR NO.186/5/2015-ST DATED 5TH OCTOBER, 2015 - SERVICE TAX LEVY ON SERVICES PROVIDED BY A GOODS TRANSPORT AGENCY

The difficulties were being faced by the Goods Transport Agencies (GTAs) in respect of service tax levy on the services of goods transport. Doubts have been raised by the All India Motor Transport Congress (AIMTC) regarding treatment given to various services provided by GTAs in the course of transportation of goods by road.

Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service.

While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

It is also clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as ‘services of goods transport agency in relation to transportation of goods’ for the purpose of notification No. 26/2012- ST dated 20.06.2012, serial number 7, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever name called


The Board has noted that the certain field formations have taken a view that all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the Negative List.

In this regard, it may be noted that in the Budget 2013-14, the word “seed” prefixed to “seed testing” was omitted w.e.f. 10.05.2013. The intent was clarified by the Joint Secretary (Tax Research Unit) vide Budget D.O.F. No. 334/3/2013-TRU, New Delhi, dated February 28, 2012, in para 1 (iii) of the letter that the negative list entry in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994 is being modified by deleting the word “seed”. This will allow the benefit to all other testing in relation to “agriculture” or “agricultural produce”. It is thus clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of ‘testing’ as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.
CIRCULAR NO. 190/9/2015-SERVICE TAX DATED 15TH DECEMBER, 2015- APPLICABILITY OF SERVICE TAX ON THE SERVICES RECEIVED BY APPAREL EXPORTERS IN RELATION TO FABRICATION OF GARMENTS

Board has noted that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work.

Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax.

The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider’s accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work and not about the manpower. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B (40) of the Finance Act, 1994. However, every job work is not covered under the negative list.

Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.


The Board has issued consolidated guidelines for launching prosecution under the Central Excise Act, 1944 and the Finance Act, 1994, in supersession of the following circulars/instructions issued by the Board regarding guidelines for launching of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994:

5. Letter F. No. 203/05/98-CX.6 dated 06.04.1998 regarding making DG, CEI competent authority to sanction prosecution in respect of cases investigated by DGCEI.

Guidelines

- Whoever commits any of the offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994, can be prosecuted. Section 9AA (1) of Central Excise Act, 1944
Provided that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 9AA (2) of Central Excise Act, 1944

Provided further that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Monetary limits
In order to optimally utilize limited resources of the Department, prosecution should normally not be launched unless evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is equal to or more than Rs. One Crore.

Habitual evaders
- Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility.
- A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than Rs. One Crore.
- Offence register (335J) may be used to monitor and identify assessees who can be considered to be habitually evading duty.
- Sanction of prosecution has serious repercussions for the assessee and therefore along with the above monetary limits, the nature of evidence collected during the investigation should be carefully assessed.
- The evidences collected should be adequate to establish beyond reasonable doubt that the person, company or individual had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens rea (guilty mind) for committing the offence.

Authority to sanction prosecution
- The criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be.
- In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the criminal complaint for prosecuting a person should be filed only after obtaining the sanction of Principal Director General/ Director General, CEI.
- An order conveying sanction for prosecution shall be issued by the sanctioning authority and forwarded to the Commissionerate concerned for taking appropriate action for expeditious filing of the complaint.

Procedure for sanction of prosecution
- Prosecution proposal should be forwarded to the Chief Commissioner / Principal Chief Commissioner or Director General / Principal Director General of DGCEI (in respect of cases booked by DGCEI) after the case has been carefully examination.
- In all cases of arrest, examination of the case to ascertain fitness for prosecution shall be necessarily carried out.
- Prosecution should not be launched in cases of technical nature, or where the additional claim of duty/tax is based totally on a difference of opinion regarding interpretation of law.
- Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt.
- Prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it.
• Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings particularly in cases of technical nature or where interpretation of law is involved.

• The standard of proof required in a criminal prosecution is higher as the case has to be established beyond reasonable doubt whereas the adjudication proceedings are decided on the basis of preponderance of probability. Therefore, evidence collected should be weighed so as to likely meet the test of being beyond reasonable doubt for recommending prosecution.

• Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty/tax evaded or Cenvat credit wrongly availed and the nature as well as quality of evidence collected.

• Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon’ble Supreme Court of India in the case of Radheshyam Kejriwal [2011(266)ELT 294 (SC)] has interalia, observed the following :- “(i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent in nature to each other and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.” Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.

• Principal Commissioner/Commissioner or ADG (Adjudication) acting as adjudicating authority should indicate at the time of passing the adjudication order itself whether he considers the case to be fit for prosecution so that it can be further processed and sent to Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI, as the case may be, for sanction of prosecution.

• Where at the time of adjudication proceedings no view has been taken on prosecution by the Adjudicating Authority then the adjudication wing shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view of prosecution.

• Where, prosecution is proposed before the adjudication of the case, Commissioner/Principal Commissioner or Principal Additional Director General/Additional Director General, DGCEI who supervised the investigation shall record the reason for the same and forward the proposal to the sanctioning authority.

• The adjudicating authority shall also be informed of the decision to forward the proposal so that there is no need for him to examine the case at the time of passing of adjudication order from the perspective of prosecution.

• Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI may on his own motion also, taking into consideration the seriousness of an offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution.

• In respect of cases investigated by DGCEI, the adjudicating authority would intimate the decision taken regarding fitness of the case for prosecution to the Principal Additional Director General/ Additional Director General of the Zonal Unit or Headquarters concerned, where the case was investigated and show cause notice issued. The officers of unit of Directorate General of Central Excise Intelligence concerned would prepare an investigation report for the purpose of launching prosecution, within one month of the date of receipt of the decision of the adjudicating authority and would send the same to the Director General, CEI for taking decision on sanction of prosecution.

• In respect of cases not investigated by DGCEI, where the Principal Commissioner/Commissioner who has adjudicated the case is satisfied that prosecution should be launched, an investigation report for the purpose of launching prosecution should be carefully prepared within one month of the date of issuance of the adjudication order. Investigation report should be signed by an Assistant/Deputy Commissioner, endorsed by the jurisdictional Principle Commissioner/Commissioner and sent to the Principal Chief/ Chief Commissioner for taking a decision on sanction for launching prosecution.

• A criminal complaint in a court of law should be, filed by the jurisdictional Commissionerrate only after the sanction of the Principal Chief / Chief Commissioner or Principal Director General/Director General of DGCEI has been obtained.

• Principal Commissioner/Commissioner or Additional Director General (Adjudication) shall submit a report by 10th of every month to the Principal Chief /Chief Commissioner or the Principal Director General/
Director General of CEI, who is the sanctioning authority for prosecution, conveying whether a view on launching prosecution has been taken in respect of adjudication orders issued during the preceding month.

- Once the sanction for prosecution has been obtained, criminal complaint in the court of law should be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.
- It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of three months from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Principal Chief/ Chief Commissioner or the Principal Director General or Director General of DGCEI by the Principal Commissioner/ Commissioner in charge of the Commissionerate responsible for filing of the complaint.

**Monitoring of Prosecution**

Prosecution, once launched, should be vigorously followed. The Principal Commissioner/Commissioner of Central Excise/Service Tax should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGCEI, an Additional/ Joint Director in each zonal unit and DGCEI (Hqrs) shall supervise the prosecution related work. The register shall be updated regularly and inspected by the Principal Commissioner/Commissioner at least once in every quarter of a financial year.

**Appeal against Court order in case of inadequate punishment/acquittal:**

Principal Commissioner/Commissioner responsible for the conduct of prosecution or Principal Additional Director General or Additional Director General of DGCEI (in respect of cases booked by DGCEI), should study the judgment of the Court and, where it appears that the accused person have been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, appeal should be considered against the order.

Sanction for appeal in such cases shall be accorded by Principal Chief/ Chief Commissioner or Principal Director General/ Director General of DGCEI.

**Publication of names of persons convicted:**

Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.

**Procedure for withdrawal of sanction-order of prosecution**

In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidences have come to light necessitating review of the sanction for prosecution, the Commissionerate or the DGCEI unit concerned should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidences, the sanctioning authority namely Principal Chief/ Chief Commissioner or Principal Director General or Director General of DGCEI, if satisfied, may recommend to the Board (Member of the policy wing concerned) that the sanction for prosecution be withdrawn.

**Procedure for withdrawal of Complaint already filed for prosecution**

In cases where the complaint has already been filed complaint may be withdrawn as per Circular No. 998/5/2015-CX dated 28.02.2015 which provides that where on identical allegation a noticee has been exonerated in the quasi-judicial proceedings and such order has attained finality, Principal Chief Commissioner/ Chief Commissioner or the Principal Director General/ Director General of DGCEI shall give direction to the concerned Commissionerate to file an application through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law.
Compounding of offences
Section 9A(2) of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 provides for compounding of offences by the Principal Chief/Chief Commissioner on payment of compounding amount. Circular No. 54/2005-Cus dt 30-12-2005 and Circular no 862/20/2007-CX-8 dated 27-12-2007 on the subject of compounding of offences may be referred in this regard which inter alia provides that all persons against whom prosecution is initiated or contemplated should be informed in writing, the offer of compounding.

Inspection of prosecution work by the Directorate of Performance Management:
Director General, Directorate of Performance Management and Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instruction contained in this Circular are being followed scrupulously and to ensure that reasons for pendency and non-compliance of pending prosecution cases are looked into during field inspections apart from recording of statistical data.
Recently, on June 14, 2016, the Government has put the Draft Model GST Law on public domain after getting in-principle nod from the Empowered Committee of State Finance Ministers, in a way, indicating that the GST might mark its advent from April 1, 2017.

The Draft Model GST Law is a model, which the Central Government and each of the State Governments would use to draft their respective Central and State GST Acts. Further, a Draft of the Integrated GST (IGST) Act, 2016, which will govern levy of GST on inter-State supplies by the Central Government, is also issued.

The Draft Model GST Law provides an insight on the governing provisions regarding levy and collection of GST. It also states that the Act shall be referred as the Central/State Goods and Services Tax Act, 2016. The Draft Model GST Law consists of 162 clauses divided into 25 Chapters along with 4 Schedules and Rules as to Valuation under GST. Further, the Draft IGST Act consists of 33 clauses divided into 11 Chapters.

Key Highlights of the Draft Model GST Law are as follows:

**Levy of GST**
- Levy and collection of Central GST (“CGST”), State GST (“SGST”) and Integrated GST (“IGST”)
  1. On Intra-State supplies of goods and/or services: CGST & SGST shall be levied by the Central and State Government respectively, at the rate to be prescribed;
  2. On Inter-State supplies of goods and/or services: IGST shall be levied by the Central Government at the rate to be prescribed.
- Reverse charge basis: Notification may be issued for providing specific categories of supply of goods and/or services, on which, GST is payable by the person receiving such goods and/or services, on reverse charge basis.
- Composition levy: A registered taxable person, whose aggregate turnover in a financial year does not exceed Rs. 50 lakhs, shall be provided an option to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 1% of the turnover during the year, subject to certain conditions.

**Taxable person**
- A person is liable to pay tax if his aggregate turnover in a financial year exceeds Rs. 10 lakhs. However, a person conducting business in any of the North Eastern States including Sikkim, is required to pay tax if his aggregate turnover exceeds Rs. 5 lakhs.
- The Central Government, a State Government or any Local Authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act, like activities of issuance of passport, visa, birth certificate etc.

**Registration**
- Threshold limit: A supplier is required to get registered under the GST if his aggregate turnover in a Financial Year exceeds Rs. 9 lakhs and Rs. 4 Lakhs where business is conducted in any of the North Eastern States including Sikkim. No threshold exemption for persons making Inter-State supply and those who are required to pay GST under reverse charge mechanism.
- Place of registration: A supplier has to take registration in the State from where taxable goods and/or services are supplied.
Taxable Event
The taxable event under the GST regime shall be supply of goods and/or services. Thus, meaning of the term ‘supply’ plays a crucial role since under GST, tax would be levied on supply of goods & services and the present concepts of manufacture/ rendering of services/ sale would lose its relevance.

Meaning and scope of ‘supply’
‘Supply’ includes:
- All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- Importation of service, whether or not for a consideration and whether or not in the course or furtherance of business.
- A supply specified in Schedule I, made or agreed to be made without a consideration. Schedule I covers matter to be treated as supply like permanent transfer/disposal of business assets, supply of goods and/ or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business etc.

Point of taxation
- Time of supply of goods: CGST/SGST shall be payable at the earliest of the following:
  a) Date on which the goods are removed for supply to the recipient (in case of movable goods); or
  b) Date on which the goods are made available to the recipient (in case of immovable goods); or
  c) Date of issuing invoice by supplier; or
  d) Date of receipt of payment by supplier, or
  e) Date on which recipient shows the receipt of the goods in his books of account.
- Time of supply of services
  The time of supply of services shall be as under:
  o The date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or
  o The date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or
  o The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of (i) or (ii) do not apply.

Place of supply of goods and/or services
Since, the proposed GST framework will work on the principle of destination based consumption tax, place of supply rules plays an important role to build up a mechanism to determine taxable jurisdictions for the smooth implementation of GST. It becomes more important in case of Inter-State transactions and e-commerce transactions. Thus, the relevant provisions have been prescribed for determining the place of supply of goods and/or services under Chapter IV of the Draft IGST Act.

Determination of the Value of supply of goods and services
In this regard, Draft GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016, has been prescribed, which shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act. Methods prescribed for determination of value of supply are as follows:

a) Transaction Value Method: The value of goods and/or services shall be the transaction value i.e. the value determined in monetary terms.

b) Comparison Method: Where value of supply cannot be determined under the Transaction Value Method, the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.

c)Computed Value Method: Where value cannot be determined under the Comparison method, it shall be based on a computed value which shall include cost of production, manufacture or processing of the goods or, the cost of
the provision of services, the charges, if any, for design & brand and amount towards profit & general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

d) Residual Method: Where the value cannot be determined under the Computed Value method, the value shall be determined using reasonable means consistent with the principles and general provisions of the Valuation Rules.

e) Valuation in certain cases: Provisions prescribed in relation to the valuation in the case of Pure Agent (such as exclusion of the expenditure or costs incurred by the service provider as a pure agent of the recipient of service subject to the fulfilment of the conditions);

Money Changer (such as for a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency, etc.) are also prescribed under the Draft Valuation Rules.

**Payment of tax, interest, penalty and other amounts**
Every deposit towards tax, interest, penalty, fee or any other amount by a taxable person shall be made by internet banking or by using credit/debit cards or National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or by any other mode.

The amount shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

**Returns**
Every registered taxable person shall be required to furnish the following returns:
- Monthly Return: Every registered taxable person shall have to file a monthly return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within 20 days after the end of such month.
- Return for Composition Scheme: A registered taxable person paying tax under composition scheme shall have to furnish a return for each quarter or part thereof, electronically, within 18 days after the end of such quarter.
- TDS Return: Every registered taxable person who is required to deduct tax at source shall furnish a return, electronically, within 10 days after the end of month in which deduction is made.
- Return for Input Service Distributor: Every Input Service Distributor shall file return for every calendar month or part thereof, electronically, within 13 days after the end of such month.
- First Return: Every registered taxable person shall have to furnish the first return from the date on which he became liable to registration till the end of the month in which the registration has been granted.
- Annual return: Every registered taxable person except certain specified person shall have to furnish an annual return for every financial year electronically on or before the 31st day of December following the end of such financial year.
- Final return: Every registered taxable person who applies for cancellation of registration shall have to furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in a prescribed form.

**Utilization of input tax credit**

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It is to be noted that input tax credit on account of CGST shall not be available for payment of SGST and vice versa.

Refund
Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

However, the limitation of two years shall not apply where such tax or interest or the amount referred to above has been paid under protest. A taxable person may also claim refund of any unutilized input tax credit at the end of any tax period subject to the conditions specified.

E-commerce - Tax at source to be deducted on online sales of goods and/or services
Every E-commerce operator who is directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection therewith (like Amazon, Flipkart etc.), but shall not include persons engaged in supply of such goods and/or services on their own behalf, shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and/or services made through it, calculated at such rate as may be notified.

Tax deduction at source
The Central or a State Government may mandate certain Departments, Local Authority, Governmental agencies, etc., to deduct tax at the rate of 1% on the notified goods and/or services, where the total value of such supply, under a contract, exceeds Rs. 10 lakhs.

GST compliance rating score
Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of the GST Act. The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain, which in return, shall enhance the reputation of the taxable person.

Issuance of Notification from retrospective effect
The Central/ State Government may, on the recommendation of the Council, make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.

Transitional Provisions
The transitional provisions have also been provided in respect of various matters which, inter alia, includes:
- Migration of existing taxpayers to GST
- Treatment of carried forward Cenvat credit and unavailed Cenvat credit
- Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract
- Pending refund claims to be disposed of under earlier law
- Treatment of long term construction/ works contracts, etc.

*Full text of Draft Model GST Law is available at: //finmin.nic.in/reports/ModelGSTLaw_draft.pdf

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