EXECUTIVE PROGRAMME

SUPPLEMENT FOR TAX LAWS AND PRACTICE

(Relevant for students appearing in June, 2016 examination)

MODULE 1- PAPER 4

Students appearing in June 2016 Examination shall note the following:

1. 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 will not be asked in examination from December 2015 session onwards.

4. 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 December, 2015, applicable for June, 2016 Examination. The students are advised to read their Study Material (2014 Edition) along with this Supplement.

In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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MAJOR AMENDMENTS VIDE FINANCE ACT, 2015

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- Substituted new sections for sections 151 and 269SS;

- inserted new sections 9A, 32AD, 158AA, 192A, 194LBB, 206CB, 271FAB, 271GA, 271-I and 285A in the Income-tax Act, 1961;

- inserted Chapter XII-FB consisting of section 115UB in the Income-tax Act, 1961;

- repealed the Wealth-tax Act, 1957;

- amended sections 97, 98, 100 and 101 of the Finance (No.2) Act, 2004.

RATES OF TAX

- There is no change in the rate of personal income-tax and the rate of tax for companies in respect of income earned in the financial year 2015-16, assessable in the assessment year 2016-17.
- Surcharge to be levied @12% on individuals, HUFs, AOPs, BOIs, artificial juridical persons, firms, cooperative societies and local authorities having income exceeding Rs. 1 crore.
- Surcharge in the case of domestic companies having income exceeding Rs. 1 crore and upto Rs. 10 crore to be levied @ 7% and surcharge @ 12% to be levied on domestic companies having income exceeding Rs. 10 crore.
- In the case of foreign companies the surcharge continue to be levied @2% if the income exceeds Rs. 1 crore and is up to Rs. 10 crore, and @5% if the income exceeds Rs. 10 crore.
- Surcharge is to be levied @ 12% as against @10% on additional income-tax payable by companies on distribution of dividends and buyback of shares, or by mutual funds and securitisation trusts on distribution of income.
- The education cess on income-tax @ 2% and Secondary and Higher Education Cess @ 1% on tax be continued for the financial year 2015-16 for all taxpayers.

MEANING OF BUSINESS TRUST - SECTION 2(13A)

Business Trust means a trust registered as,— (i) an Infrastructure Investment Trust under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992; or (ii) a Real Estate Investment Trust under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992, and the units of which are required to be listed on recognised stock exchange in accordance with the aforesaid regulations;

RATIONALIZATION OF DEFINITION OF CHARITABLE PURPOSE- SECTION 2(15)

- 'Yoga' has been included as a specific category of activity in the definition of 'charitable purpose'

- The first proviso to clause (15) of section 2,*inter alia*, provides that advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for any consideration, irrespective of the nature of use or application, or retention, of the income from such activity. However, as per the second proviso, this restriction shall not apply if the aggregate value of the receipts from the activities referred above is 25 lakhs or less in the previous year.

  The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding program on yoga or other programs as part of actual carrying out of the objects which are of charitable nature were being put to hardship due to first and second proviso to section 2(15). Thus, Income tax Act has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose**,** if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

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

  (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year .

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

AMENDMENTS REGARDING DETERMINATION OF RESIDENTIAL STATUS- SECTION 6

- It has been observed that in the case of foreign bound ships where the destination of the voyage is outside India, there was uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens. Thus, the Income-tax Act has been amended to provide that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed in the Income-tax Rules, 1962.

  Further, rule 126 of Income-tax Rules, 1962 notified vide S.O. No. 2240(E) dated 17th August, 2015 prescribes the manner for determination of the period of stay in India. This amendment takes effect retrospectively from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

- The provisions of section 6 has been amended vide Finance Act, 2015 to provide that a person being a company shall be said to be resident in India in any previous year, if-
    - it is an Indian company; or
    - its place of effective management, at any time in that year, is in India .

  Further, place of effective management has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. These amendments will take effect from 1 April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

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

CLARITY RELATING TO INDIRECT TRANSFER PROVISIONS- SECTION 9

Section 9 of the Act deal with income which are deemed to accrue or arise in India. Sub-section(1) of the said section creates a legal fiction that certain incomes shall be deemed to accrue or arise in India. Section 9 of the Act has been amended vide Fide Finance Act, 2015 in the following manner:-

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

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

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

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

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

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

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

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

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

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

(b) nor holds voting power or share capital or interest exceeding five per cent. of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets (direct holding company).

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

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

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

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

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

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

(a) a sum equal to two percent of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or

control in relation to the Indian concern; and
(b) a sum of five hundred thousand rupees in any other case.

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

Section 9A has been inserted to provide clarity regarding certain activities which do not constitute business connection in India

AMENDMENTS IN THE PROVISIONS RELATING TO EXEMPT INCOME SECTION 10

- Following clauses have been inserted to exempt certain income:
    - Clause (11A) - any payment from an account, opened in accordance with the Sukanya Samriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873;
    - Clause (23C)(iiiaa)- any income of the Swachh Bharat Kosh, set up by the Central Government;
    - Clause (23C) (iiiaaa)-any income of the Clean Ganga Fund, set up by the Central Government;
    - Clause (23EE)- any specified income of such Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations, as the Central Government may, by notification in the Official Gazette, specify in this behalf
    - Clause (23FBA)- any income of an investment fund other than the income chargeable under the head "Profits and gains of business or profession";
    - Clause (23FBB)- any income referred to in section 115UB, accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head "Profits and gains of business or profession".
    - Clause (23FCA) -any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust.

RATIONALISATION OF PROVISIONS OF SECTION 11 OF THE INCOME-TAX ACT RELATING TO ACCUMULATION OF INCOME BY CHARITABLE TRUSTS AND INSTITUTIONS

Under the provisions of section 11 of the Income-tax Act, the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for charitable purposes in India.

Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. While 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed Form 10 to the Assessing Officer in this regard and the money so accumulated or set apart is invested or deposited in the specified forms or modes.

In order to remove the ambiguity regarding the period within which the assessee is required to furnish Form 10, the Income-tax Act has been amended to provide that the Form 10 shall be furnished before the due date of furnishing the return of income specified under section 139 of the Income-tax Act for the fund or institution. Thus, the benefit of accumulation would also not be available if:

- return of income is not furnished before the due date of furnishing the return of income; or
- Form is not submitted before the due date of furnishing the return

Also section 11 have also been amended to prescribe a format for exercise of option by the trust/institution for the purposes of clause (2) of the Explanation to sub-section (1) of section 11 of the Income-tax Act.

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

DEPRECIATION RELATED PROVISIONS - SECTION 32 & 32AD

- Clarity on the allowance of the balance additional depreciation. Earlier, when the new Plant and Machinery acquired by an assessee (engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power) was put to use for less than 180 days in the Previous Year, the additional depreciation used to be restricted to 50%. The additional depreciation that got restricted on account of usage for less than 180 days in the previous year was not being considered/ allowed as the case may be in the subsequent Assessment Years.

  The Finance Act, 2015 provides that allowance for the additional depreciation which has not been allowed in the year of acquisition, shall be allowed in the year immediately succeeding the previous year. This is applicable with effect from AY 2016-17 and subsequent Assessment Year's.

- Additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee is allowed, if—

  (a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and
  (b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

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

CONDITIONS RELATING TO MAINTENANCE OF ACCOUNTS, AUDIT ETC TO BE FULFILLED BY THE APPROVED IN-HOUSE R&D FACILITY- SECTION 35(2AB)

Under section 35(2AB) of the Income-tax Act, weighted deduction of 200% is allowed to a company engaged in the business of biotechnology or manufacturing of any article or thing (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an approved in-house research and development facility.

In order to have a better and meaningful monitoring mechanism for weighted deduction allowed under section 35 (2AB) of the Income-tax Act, the provisions of section 35(2AB) of the Income-tax Act has been amended so as to provide that deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and fulfils such conditions as may be prescribed with regard to maintenance and audit of accounts and also furnishes prescribed reports.

Further a reference of the Principal Chief Commissioner or Chief Commissioner is inserted in section 35(2AA) and section 35(2AB) of the Income-tax Act so as to provide that the report referred to therein may also be sent to the Principal Chief Commissioner or Chief Commissioner.

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

ALIGNMENT OF PROVISIONS WITH THE PROVISIONS OF THE INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) - SECTION 36

- The proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act provided for capitalisation of borrowing costs incurred for acquisition of assets for extension of existing business up to the date the asset is put to use. However, the provisions of ICDS-IX do not make any distinction between the asset acquired for extension of business or otherwise.

  In view of the above, the provisions of proviso to clause (iii) of sub-section (1) of section 36 of the Income-tax Act have been amended so as to provide that the borrowing cost incurred for acquisition of an asset shall be capitalised up to the date the asset is put to use without making any distinction as to whether an asset is acquired for extension of existing business or not.

- The provisions of the ICDS are applicable for computation of income and not for the purposes of maintenance of books of account. There may be cases where the income is recognised for computation of taxable income in accordance with the provisions of ICDS without recording the same in the books of account and such income may be required to be reversed in accordance with the provisions of the ICDS.

- For claiming bad debt, the provisions of section 36(1)(vii) of the Income-tax Act, *inter alia*, require that the amount should be written off in the accounts of the assessee. Therefore, the reversal of income in accordance with the provisions of the ICDS may not be allowable on the ground that same has not been written off in the accounts as per the provisions of section 36(1)(vii) of the Income-tax Act. In view of

this, a proviso has been inserted in section 36(1)(vii) of the Income-tax Act so as to provide that for claiming deduction under section 36(1)(vii) of the Income-tax Act, the income which have been recognised as per the provisions of ICDS without recording in the accounts and is required to be written off as irrecoverable as per the provisions of ICDS, shall be deemed to be written off as irrecoverable in the accounts.

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

TAX NEUTRALITY ON MERGER OF SIMILAR SCHEMES OF MUTUAL FUNDS- SECTION 47 & 49

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

- In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, tax neutrality has been provided to unit holders upon consolidation or merger of mutual fund schemes provided that the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than an equity oriented fund by amending section 47 of the Income-tax Act.

- Section 49 of the Income-tax Act has also been amended to provide that the cost of acquisition of
- the units in a consolidated scheme of a mutual fund shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee.

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

AMENDMENTS RELATING TO DEDUCTION- CHAPTER VI

- Sukanya Samriddhi Account Scheme has been notified vide Notification No. 9/2015, dated January 21, 2015 to qualify for deduction within the overall ceiling of Rs. 1,50,000 of Section 80C.
- In order to promote social security, sub-section (1) of section 80CCC has been amended to raise the limit of deduction under section 80CCC from one lakh rupees to one hundred and fifty thousand rupees, within the overall limit provided in section 80CCE.
- With a view to encourage people to contribute towards NPS, sub-section (1A) of section 80CCD has been omitted. The overall limit of one hundred and fifty thousand rupees under section 80CCE shall apply in respect of the contribution made in accordance with sub-section (1) of section 80CCD.
- In addition to the enhancement of the limit under section 80CCD(1), a new sub-section (1B) has been inserted in section 80CCD so as to provide for an additional deduction in respect of any amount paid, upto fifty thousand rupees for contributions made by any individual assessee under the NPS. The additional deduction of

Rs.50,000/- will be available whether or not any claim under sub-section (1) of section 80CCD has been made. Consequential amendments have also been made in sub-section (3) and subsection (4) of section 80CCD.

- The quantum of deduction allowed under Section 80D to individuals and HUF in respect of premium paid for health insurance had been fixed vide Finance Act, 2008 at Rs.15000/- and Rs.20,000/- for senior citizens. In view of continuous rise in the cost of medical expenditure, section 80D has been amended to raise the limit of deduction from **fifteen thousand rupees to twenty five thousand rupees**. The limit of deduction for senior citizens has been raised from **twenty thousand rupees to thirty thousand rupees.**
- Further, very senior citizens are often unable to get health insurance coverage and are therefore unable to take tax benefit under section 80D. Accordingly, as a welfare measure towards very senior citizens, section 80D has further been amended to provide that any payment upto Rs.30,000/- made on account of medical expenditure shall be allowed as a deduction under section 80D, in respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person. The aggregate deduction available to any individual who is a very senior citizen in respect of health insurance premia and the medical expenditure incurred for his family would, however, be limited to thirty thousand rupees.
- Section 80DD and section 80U have been amended to raise the limit of deduction in respect of a person with severe disability from one lakh rupees to one hundred and twenty five thousand rupees.
- Section 80DDB has been amended further to provide for a higher limit of deduction of upto eighty thousand rupees, for the expenditure incurred in respect of the medical treatment of a "very senior citizen".
- Under the provisions of section 80G of the Income-tax Act, **100% deduction shall be available in respect of contribution to:**
    - National Fund for Control of Drug Abuse
    - Swachh Bharat Kosh and Clean Ganga Fund
    - Clean Ganga Fund

  However, any sum spent on this account in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor.
- With a view to encourage generation of employment, section 80JJAA has been amended to extend the benefit to all assessees having manufacturing units rather than restricting it to corporate assessees only. Further, in order to enable the smaller units to claim this incentive, the benefit under section 80JJAA has been extended to units employing 50 (instead of 100) regular workmen.

RAISING THE THRESHOLD FOR SPECIFIED DOMESTIC TRANSACTION--SECTION 92BA

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

In order to address the issue of compliance cost in case of small businesses on account of low threshold of five crores rupees, an amendment is made in section 92BA to provide that the aggregate of specified transactions entered into by the assessee in the previous year

should exceed a sum of **twenty crore rupees** for such transaction to be treated as 'specified domestic transaction'.

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

DEFERMENT OF GAAR- SECTION 95

GAAR provisions had to come into effect from 1.04.2016. These provisions, therefore, had to be applicable to the income of the financial year 2015-16 (Assessment Year 2016-17) and subsequent years. However, the implementation of GAAR provisions was reviewed, concerns were expressed regarding certain aspects of GAAR and it has been proposed that implementation of GAAR be deferred by two years and GAAR provisions be made applicable to the income of the financial year 2017-18 (Assessment Year 2018-19) and subsequent years by amendment of the Act. Further, investments made up to 31.03.2017 are proposed to be protected from the applicability of GAAR by amendment in the relevant rules in this regard.

TAX RATE ON ROYALTY AND FTS PAYMENTS MADE TO NON-RESIDENTS SECTION 115A

In order to reduce the hardship faced by small entities due to high rate of tax of 25%, amendment has been made vide Finance Act, 2015 to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents to 10%. These amendments are effective from 1st April, 2016 and accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

RATIONALIZATION OF MAT PROVISIONS-SECTION 115JB

An amendment to the provisions of section 115JB has been made vide Finance Act, 2015 so as to provide that income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor, shall be excluded from the chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit. The expenditures, if any, debited to the profit and loss account, corresponding to such income (which is to be excluded from the MAT liability) are also added back to the book profit for the purpose of computation of MAT.

In view of the above, A new clause (iic)has been inserted in Explanation 1 so as to provide that the amount of income from transactions in securities, (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable), accruing or arising to an assessee being a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act,1992,if any such amount is credited to the profit and loss account, shall be reduced from the book profit for the purposes of calculation of income-tax payable under the section. Further by inserting a new clause (fb) in Explanation 1, it has been provided that the book profit shall be increased by the amount or amounts of expenditure relatable to the above income. The amendments are effective from 1st April, 2016.

SETTLEMENT COMMISSION- SECTION 132B

Section 132B of the Income-tax Act, has been amended to provide that the asset seized under section 132 or requisitioned under section 132A may also be adjusted against the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C of the Income-tax Act. The amendments have taken effect from 1st day of June, 2015.

FURNISHING OF RETURN OF INCOME-SECTION 139

- Under the provisions of section 139 of the said Act, all entities whose income were exempt under clause (23C) of section 10, other than those referred to in subclauses (iiiab) and (iiiac) of the said clause, are mandatorily required to furnish their return of income. The Income-tax Act has been amended to provide that entities covered under clauses (iiiab) and (iiiac) of clause (23C) of section 10 shall be mandatorily required to file their return of income.
- Section 139 has been amended to provide for furnishing of return of income by the beneficial owner or beneficiary of a foreign asset. The amendment also defines the term 'beneficial owner' to mean 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. The term 'beneficiary' has been defined to mean 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.

The above amendments are w.e.f. 1st April, 2016 and accordingly, applicable in relation to the assessment year 2016-17 and subsequent assessment years.

SIMPLIFICATION OF APPROVAL REGIME FOR ISSUE OF NOTICE FOR RE-ASSESSMENT-SECTION 151

In order to provide simplify the regime for the issue of notice for re-assessment, section 151 has been amended to provide that no notice under section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. This amendment has taken effect from 1st day of June, 2015.

ASSESSMENT OF INCOME OF A PERSON OTHER THAN THE PERSON IN WHOSE CASE SEARCH HAS BEEN INITIATED OR BOOKS OF ACCOUNT, OTHER DOCUMENTS OR ASSETS HAVE BEEN REQUISITIONED- SECTION 153C

Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been conducted or requisition has been made. Disputes have arisen as to the interpretation of the words "belong to" in respect of a document as for instance when a given document seized from a person is a copy of the original document.

Accordingly, section 153C has been amended so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates

to, any person, other than the person referred to in section 153A of the Income-tax Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of section 153A. This amendment has taken effect from the 1st day of June, 2015.

PROCEDURE WHEN IN AN APPEAL BY REVENUE AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE SUPREME COURT - SECTION 158AA

A new section 158AA is inserted in the Income-Tax Act by Finance Act, 2015 relating to procedure when in an appeal by revenue on an identical question of law is pending before Supreme Court. Sub-section (1) seeks to provide that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court, he may, instead of directing the Assessing Officer to file appeal to the Appellate Tribunal, direct the Assessing Officer to make an application to the Appellate Tribunal, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

Sub-section (2) seeks to provide that the Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application under subsection (1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253 (2) or sec 253(2A).

Sub-section (3) seeks to provide that where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order and, save as otherwise provided in this section, all other provisions of Part B of chapter XX shall apply accordingly.

RATIONALISATION OF PROVISIONS RELATING TO TDS/TCS

- The provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. This amendment is effective from the prospective date of 1st June, 2015, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015.

  However, the existing exemption provided under section 194A(3)(viia)(a) of the Income-tax Act to primary agricultural credit society or a primary credit society or a cooperative land mortgage bank or a co-operative land development bank from

deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these cooperative credit societies/banks referred to in said clause (viia)(a) of section 194A(3) of the Income-tax Act shall not be required to deduct tax on interest payment to depositors even after the said amendment.

- The provisions of section 194A (3) of the Income-tax Act has been amended so as to provide that deduction of tax under section 194A of the Income-tax Act from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds Rs.50,000/-.

- the provisions of section 194C(6) of the Income-tax Act have been amended so as to expressly provide that the relaxation under sub-section (6) of section 194C of the Income-tax Act for non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE of the Income-tax Act (i.e a person who is not owning more than 10 goods carriages at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN, to the person paying such sum.

- Section 194LD has been amended to provide that the concessional rate of 5% withholding tax on interest payment under section 194LD will now be available on interest payable upto 30th June, 2017.

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

- The provisions of section 197A of the Income-tax Act has been amended so as to provide that the recipients of payments referred to in section 194DA of the Income-tax Act shall also be eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A of the Income-tax Act.

- The obtaining of TAN creates a compliance burden for those individuals or Hindu Undivided Family (HUF) who are not liable for audit under section 44AB of the Income tax Act. For reducing the compliance burden for these types of deductors, the provisions of section 203A of the Income-tax Act have been amended so as to provide that the requirement of obtaining and quoting of TAN under section 203A of the Income-tax Act shall not apply to the notified deductors or collectors.

- The Income-tax Act contains detailed provisions for processing of TDS statements, however, there did not exist any provision for processing of TCS statement. As the mechanism of TCS statement is similar to TDS statement, a new section 206CB has been inserted in the Income-tax Act for enabling processing of TCS statements on the lines of existing provision for processing of TDS statement contained in section 200A

of the Income-tax Act. This newly inserted section also incorporates the mechanism for computation of fee payable under section 234E of the Income-tax Act for late furnishing of TCS statement.

- the provisions of section 220 of the Income-tax Act have been amended so as to provide that where interest is charged for any period under section 206C (7) of the Income-tax Act on the tax amount specified in the intimation issued under amended provision, then, no interest shall be charged under section 220(2) of the Income-tax Act on the same amount for the same period.

- In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, the provisions of sections 200 and 206C of the Income-tax Act have been amended so as to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth particulars.

- To ensure compliance, provisions of section 272A of the Income-tax Act have also been amended to provide that a penalty of Rs.100/- for every day of default, subject to the limit of the amount deductible or collectible, shall be levied in case of failure to furnish the said statement.

- The provisions of section 192 of the Income-tax Act have been amended so as to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1) of the Income-tax Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Income-tax Act in the prescribed form and manner.

- Section 192A has been inserted w.e.f 1.06.2015 to provide that trustees of RPFs shall, at the time of payment of the accumulated balance due to the employee, deduct tax at source at the rate of 10%, where the aggregate withdrawal is Rs. 30,000/- or more.

- The provisions of section 195 of the Income-tax Act have been amended so as to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident, not being a company, or to a foreign company, shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed. Further, there was no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident.

- For ensuring submission of accurate information in respect of remittance to nonresident, a new section 271-I has been inserted in the Income-tax Act to provide that in case of non-furnishing of information or furnishing of incorrect information

under subsection (6) of section 195 of the Income-tax Act, a penalty of one lakh rupees shall be levied

- Further, the provisions of section 273B of the Income-tax Act have been amended so as to provide that no penalty shall be imposable under this new provision if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under sub-section (6) of section 195 of the Income-tax Act.

AMENDMENTS IN PROCEDURAL PROVISONS

- Clause (3) of section 234B of the Income-tax Act has been amended so as to provide that the period for which the interest is to be computed will begin from the 1st day of April next following the financial year and end on the date of determination of total income under section 147 or section 153A.

- Sub-section (2A) has been inserted in section 234B of Income-tax Act so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section.

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

- Accordingly, section 234B of the Income-tax Act has been amended so as to provide that where as a result of rectification order under sub-section (6B) of section 245D, the amount on which interest was payable under clause (b) of sub-section (2A) of section 234B is increased or reduced, the interest shall also be increased or reduced accordingly .

- sub-section (6B) of section 245D of the Income-tax Act has been amended so as to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4), at any time within a period of six months from the end of month in which the order was passed or, on an application made by the Principal Commissioner or Commissioner or the applicant before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

- With a view to provide for justification for grant of immunity from penalty and prosecution, sub-section (1) of section 245H of the Income-tax Act has been amended

to provide that the Settlement Commission while granting immunity from prosecution to any person shall record the reasons in writing in the order passed by it.

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

- Section 245K of the Income-tax Act has been amended to provide that any person 'related' to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently.

- In order to widen the scope for eligibility, section 245-O has been amended to provide that a person from Indian legal Service who is, or is qualified to be, an Additional Secretary to the Government of India shall be qualified for appointment as a law Member.

- Considering the rise in number of cases before ITAT where total income of assessee exceeded five lakh rupees, sub-section (3) of section 255 of the Income-tax Act has been amended to provide that a single member bench may dispose of a case where the total income of assessee as computed by the Assessing Officer does not exceed fifteen lakh rupees. This amendment has taken effect from 1st day of June, 2015.

- In order to provide clarity, section 263 of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,— (a) the order is passed without making inquiries or verification which, should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. This amendment has taken effect from 1st day of June, 2015.

MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUMS AND MODE OF REPAYMENT OF LOANS OR DEPOSITS AND SPECIFIED ADVANCES- SECTION 269SS, 269T, 271D AND 271E

In order to curb generation of black money by way of dealings in cash, section 269SS & Section 269T have been amended to provide that no person shall:

- accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property(specified sum) otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

- shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more.
- Consequential amendments in section 271D and section 271E, to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively, have also been made.

These amendments are w.e.f. 1st day of June, 2015.

AMOUNT OF TAX SOUGHT TO BE EVADED FOR THE PURPOSES OF PENALTY FOR CONCEALMENT OF INCOME UNDER CLAUSE (III) OF SUB SECTION (1) OF SECTION 271

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

Accordingly, section 271 of the Income-tax Act has been amended so as to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC of the Income-tax Act. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC.

Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored. This amendment is w.e.f. 1st April, 2016 and accordingly apply, in relation to the assessment year 2016-17 and subsequent assessment years.

CERTAIN ACCOUNTANTS NOT TO GIVE REPORTS/CERTIFICATES-SECTION 288

To ensure the independence of auditor, sub-section (3) of section 141 of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor. The audit/certification function under the Income-tax Act is mainly provided for protecting the interests of revenue. An auditor who is not independent cannot meaningfully discharge his function of protecting the interests of revenue.

Therefore, the provisions of section 288 of the Income-tax Act have been amended so as to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Income-tax Act in respect of that company.

However, it is provided that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for

attending income-tax proceeding referred to in sub-section (1) of section 288 of the Income-tax Act as authorised representative on behalf of that assessee.

It has been further provided that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction. These amendments are w.e.f. 1st June, 2015.

ENABLING THE BOARD TO NOTIFY RULES FOR GIVING FOREIGN TAX CREDIT- SECTION 295

Sub-section (2) of section 295 of the Income-tax Act has been amended to enable CBDT to prescribe the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Income-tax Act. The amendment have taken effect from 1st day of June, 2015.

AMENDMENTS RELATING TO GLOBAL DEPOSITORY RECEIPTS (GDRS)

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

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

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

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

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

INCOME TAX ACT, 1961

NOTIFICATION NO. 59/ 2015 DATED 6TH JULY, 2015- ENTITIES AUTHORISED TO ISSUE, TAX-FREE, SECURED, REDEEMABLE, NON-CONVERTIBLE BONDS DURING THE FINANCIAL YEAR 2015-16

In exercise of the powers conferred by item (h) of sub-clause (iv) (15) of section 10 of the Income-Tax Act, 1961 (43 of 1961), the Central Government has authorised the entities mentioned in the Table given below to issue, tax-free, secured, redeemable, non-convertible bonds during the financial year 2015-16, aggregating to amounts mentioned against respective entities subject to the conditions

Sl. No.	Entities	Allocated amount of bonds (₹ in crore)
(1)	(2)	(3)
1	National Highways Authority of India (NHAI)	24000
2	Indian Railways Finance Corporation (IRFC)	6000
3	Housing and Urban Development Corporation (HUDCO)	5000
4	Indian Renewable Energy Development Agency (IREDA)	2000
5	Power Finance Corporation Limited (PFC)	1000
6	Rural Electrification Corporation Limited (REC)	1000
7	NTPC Limited	1000

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, co-operative 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:

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

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 t e 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

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:

1. Patna	8. Aurangabad	15. Purnea
2. Nalanda	9. Nawada	16. Katihar
3. Bhojpur	10. Vaishali	17. Araria
4. Rohtas	11. Sheohar	18. Jamui
5. Kaimur	12. Samastipur	19. Lakhisarai
6. Gaya	13. Darbhanga	20. Supaul
7. Jehanabad	14. Madhubani	21. Muzaffarpur.

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.

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'.

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.

Circular No. 16/2015 dated 6th October, 2015- Non-applicability of Rule 9A of the Income Tax Rules, 1962 in the case of Abandoned Feature Films

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 .15 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.

CIRCULAR NO. 17/2015 DATED 6TH OCTOBER, 2015 - MEASUREMENT OF THE DISTANCE FOR THE PURPOSE OF SECTION 2(14) (III)(B) OF THE INCOME-TAX ACT FOR THE PERIOD PRIOR TO ASSESSMENT YEAR 2014-15

"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 ClT 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.

CIRCULAR NO. 21/2015 DATED 10TH DECEMBER, 2015 - REVISION OF MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL AND HIGH COURTS AND SLP BEFORE SUPREME COURT WITH REFERENCE TO BOARD'S INSTRUCTION NO 5/2014 DATED 10.07.2014 – ISSUES UNDER SECTION 268A (1) OF THE INCOME-TAX ACT 1961

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. lf, 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.

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 INTEREST 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. The Hon'ble High Court thus held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. 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.

CIRCULAR NO. 24/2015 DATED 31.12.2015- RECORDING OF SATISFACTION NOTE UNDER SECTION 158BD/153C OF THE ACT

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.

CIRCULAR NO. 25/2015 DATED 31.12.2015- PENALTY U/S 271 (1)(C) WHEREIN ADDITIONS/DISALLOWANCES MADE UNDER NORMAL PROVISIONS OF THE INCOME TAX ACT, 1961 BUT TAX LEVIED UNDER MAT PROVISIONS U/S 115JB/115JC, FOR CASES PRIOR TO A.Y. 2016-17

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. T

he 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.

INCOME TAX RULES, 1962

NOTIFICATION NO. 61/ 2015 DATED 29TH JULY, 2015- THE INCOME-TAX (TENTH AMENDMENT) RULES, 2015

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,

NOTIFICATION NO. 62 DATED 7TH AUGUST, 2015- THE INCOME–TAX (11TH AMENDMENT) RULES, 2015

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 Bank", (H) "non-public fund of the armed forces", (I) "Employees' State Insurance Fund", (J) "gratuity fund" 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 Sates 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. 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 DATED12TH 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."

NOTIFICATION NO. 83/2015 DATED 19TH OCTOBER, 2015- THE INCOME-TAX (16TH AMENDMENT), RULES, 2015

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 10 B 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- LNCOME-TAX (17TH AMENDMENT) RULES, 2015

The Central Board of Direct Taxes has made the lncome-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 assesse, 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:

For transactions	Furnish the following
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	the information in Part A of Form No.15CA
For any sum chargeable under the provisions of the Act, for payments exceeding Rs. 5,00,000	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-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

(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:

Sl.No.	Nature of transaction	Value of transaction
1.	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.	All such transactions.
2.	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).	All such transactions.
3.	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.	All such transactions.
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	Amount exceeding one lakh

	listed in a recognised stock exchange.	rupees per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding ten lakh rupees or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ten lakh rupees.
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.

INTERNATIONAL TAXATION

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.

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.

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.

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:

Status of the declarant	Declaration to be signed by:
Individual	• 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
HUF	• *Karta*; • Any other adult member of the HUF, where the *karta* is absent from 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:

Asset	**Fair Market Value**
Bullion, jewellery or precious stone	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 bullion, jewellery or precious stone under any regulation or law
Archaeological collections, drawings, paintings, sculptures or any work of art	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

(hereinafter referred to as artistic work)	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
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 on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market;
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;

Unquoted share and security other than equity share in a company	the higher of,- (i) its cost of acquisition; and (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;
An immovable property	the higher of,- (I) its cost of acquisition; and (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;
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 liability partnership of which he is a member	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 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:

Asset	**Fair Market Value**
Where an asset (other than a bank account) was transferred before the valuation date	the higher of: (i) its cost of acquisition; and (ii) the sale price
where such asset was transferred without consideration or inadequate consideration before the valuation date	the higher of: (i) its cost of acquisition; and (ii) the fair market value on the date of transfer

(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	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***.

Various Forms under the Act

Form	**Purpose**
Form 1- Notice of Demand	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.
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.

CIRCULAR NO. 13 OF 2015 DATED 6TH OF JULY, 2015 - FAQS ON THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

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: Can a person against whom a search/ survey operation has been initiated file voluntary declaration under Chapter VI of the Act?

Answer: (a) The person is not eligible to make a declaration under Chapter VI 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 foreign asset acquired in any previous year in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under Chapter VI in respect of an undisclosed asset acquired in the previous year in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed asset acquired in any other previous year.

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 31th 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.

SERVICE TAX

Definitions and Explanations

Section 65 and 65B of the Finance Act, 1994 contains various definitions and explanations with regard to service tax. Section 65B of the Finance Act, 1994 has been amended *vide* section 107 of the Finance Act, 2015. It provides that:

(a)Following has been omitted with effect from 1st June, 2015:

- Clause (9) relating to "amusement facility"
- Clause (24) relating to "entertainment event"
- Clause (49) relating to "support services"

(b) Following have been amended:

- Clause (40) has been amended to "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force; i.e. the words "alcoholic liquors for human consumption," has been omitted. This change came into effect from 1st June, 2015.

- In clause (44) relating to "service", for Explanation 2, the following Explanation has been substituted, namely:—

Explanation 2.—For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include—

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.';

(c) Following have been inserted:

- Clause (23A) "foreman of chit fund" shall have the same meaning as is assigned to the term "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982 (40 of 1982);';
- Clause (26A) "Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;';
- Clause (31A) "lottery distributor or selling agent" means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any

kind, in any manner, organised by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998);';

Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. Following illustration has been incorporated in this section *vide* section 110 of Finance Act, 2015 to exemplify the scope of this provision:

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.

Section 67 prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for service shall include:

(i) any amount that is payable for the taxable services provided or to be provided;
(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

Rate of Tax

Section 66B of the Finance Act, 1994 prescribes the service tax rate. It has been amended by Section 108 of the Finance Act, 2015**.** Further, section 95 of the Finance (No.2) Act, 2004 and section 140 of the Finance Act, 2007 relating to levy of Education cess and Secondary and higher Education cess on service Tax has been omitted *vide* Sections 153 and 159 of the Finance Act, 2015.

Thus, the rate of Service tax has been increased from 12.36% (including Education Cess and Secondary and Higher Education Cess) to flat 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' have been subsumed in the new Service tax rate. The revised rate came into effect from 1st June, 2015 as notified *vide* Notification No.14/2015-Service Tax, dated 19th May, 2015.
Section 117 (Chapter VI) has been inserted *vide* Finance Act, 2015. It provides an enabling provision that empowers the Central Government to impose a Swachh Bharat Cess on all or certain taxable services at a rate of 2% on the value of such taxable services. The proceeds from this Cess would be utilized for Swachh Bharat initiatives. This cess shall be levied on such services at such rate from such date as may be notified by the Central Government. The date from which this amendment would come into effect will be notified in due course.

Review of the Negative List of services

Section 66D of the Finance Act, 1994 covers the negative list of services, following amendments have been made to it *vide* Finance Act, 2015:

In clause (a) relating to services by Government or a local authority excluding the following services to the extent they are not covered elsewhere, sub-clause (iv) has been amended and would be read as "any service, other than services covered under clauses (i) to (iii) above, provided to business entities" i.e for the words "support services", the words "any service" has been substituted;

Clause (f) has been amended to exclude "process amounting to manufacture or production of alcoholic liquor for human consumption"; Thus, it shall now be read as: "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;"

In clause (i) relating to 'betting, gambling or lottery', the following Explanation has been inserted, namely:—
'Explanation.- For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B'

clause (j) relating to 'admission to entertainment events or access to amusement facilities' has been omitted. The implication of this change is that Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.

Recovery and Penal Provisions

***Vide* section 112 of the Finance act, 2015, in section 73 of the 1994 Act, related to "Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded"—**

- after sub-section (1A), the following sub-section has been inserted, namely:—

"(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1).";

- sub-section (4A) has been omitted.

For section 76 of the 1994 Act, related to "Penalty for failure to pay service tax", the following section has been substituted, *vide* section 113 of the Finance Act, 2015:

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:

Provided that where service tax and interest is paid within a period of thirty days of—

(i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;
(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

(2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.".

For the existing section 78 namely "Penalty for suppressing value of taxable service", a new section namely "Penalty for failure to pay service tax for reason of fraud, etc" has been substituted *vide* section 114 of the Finance Act, 2015. The provisions of section 78 are:
(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent of the amount of such service tax:
Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the service tax so determined:
Provided further that where service tax and interest is paid within a period of thirty days of --

(i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined:
Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period:

Explanation.—For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.

(3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

***Vide* Section 115 of the Finance act, 2015, following transitory provisions has been inserted after section 78A of the Finance Act, 1994**

78B. Transitory provision –

(1) Where, in any case,-

(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,

then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.

(2) In cases where show cause notice has been issued under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73 before the date on which the Finance Bill, 2015 receives the assent of the President, the period of thirty days for the purpose of closure of proceedings on the payment of service tax and interest under clause (i) of the proviso to sub-section (1) of section 76 or on the payment of service tax, interest and penalty under clause (i) of the second proviso to sub-section (1) of section 78, shall be counted from the date on which the Finance Bill, 2015 receives the assent of the President.

Section 80 of the Finance Act, 2015 related to "Penalty not to be imposed in certain cases" has been omitted *vide* Section 117 of the Finance Act, 2015

Appeals and Appellate Tribunal

Vide Section 117 of the Finance Act, 2015, in section 86 of the 1994 (1 of 1994) Act, in sub-section (1),—

(a) for the words "Any assessee", the words "Save as otherwise provided herein, an assessee" has been substituted;

(b)the following provisos has been inserted, namely:—
"Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944):

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012 (23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944).".

Powers to Make Rules

Clause (aa) of sub-section (2) of Section 94 has been substituted with the following clause:
"(aa) determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under section 67"

Notification No.17/2014 - Service Tax dated 20th August, 2014

In the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20thJune, 2012 (i.e. Mega Exemption Notification)–

(i) in the opening paragraph, after entry 5,the following entry has been inserted, namely:-

"5A. Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement;";

(ii) in paragraph 2 relating to definitions, after clause (zf),the following clause has been inserted, namely:-

'(zfa) "specified organisation" shall mean,-

(a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or

(b) 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002 (35 of 2002);'

Notification No. 19 /2014-Service Tax dated 25th August, 2014

The Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:—

After rule 10, the following rules has been inserted, namely:-

"11. Determination of rate of exchange.– The rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

12. Power to issue supplementary instructions.– The Board or the Chief Commissioners of Central Excise may issue instructions for any incidental or supplemental matters for the implementation of the provisions of the Act.".

Notification No. 21/2014-Service Tax dated 16th September, 2014

With effect from 15th October, 2014The Central Government delegated the powers of the Central Board of Excise and Customs under rule 3 of the Service Tax Rules, 1994, to the Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise or the Chief Commissioner of Service Tax, as the case may be, to specify within his jurisdiction, the jurisdiction of a Commissioner of Service Tax (Appeals) or a Commissioner of Central Excise (Appeals) or a Commissioner of Service Tax (Audit) or a Commissioner of Central Excise (Audit) and the jurisdiction of such Commissioner of Service Tax (Appeals) or Commissioner of Central Excise (Appeals) or Commissioner of Service Tax (Audit) or Commissioner of Central Excise (Audit) shall be limited to the jurisdiction so specified.

Notification No. 23/2014-Service Tax dated 5th December, 2014

The Central Government made the following rules further to amend the Service Tax Rules, 1994, namely:-

In the Service Tax Rules, 1994, in rule 5A, for sub-rule (2), the following sub-rule has been substituted, namely:-

"(2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-

(i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;

(ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and

(iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),

for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be."

Notification No.02/2015-Service Tax dated 10th February, 2015

The Central Board of Excise and Customs specified that the Principal Director General of Central Excise Intelligence shall have jurisdiction over the Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be, for the purpose of assigning show cause notices issued by the Directorate General of Central Excise Intelligence, for adjudication, by such Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be.

Notification No. 3/2015-Service Tax, dated 1st March, 2015

The Central Government, being satisfied that it is necessary in the public interest so to do rescinded the notification No. 42/2012-Service Tax, dated 29th June 2012, except as respects things done or omitted to be done before such recession.

Notification No. 4/2015-Service Tax, dated 1st March, 2015

The Central Government, being satisfied that it is necessary in the public interest so to do, made the following further amendment in the Notification No.31/2012- Service Tax, dated the 20th June, 2012 with effect from 1st April, 2015:-

In the said notification, in the Table, against Sl.No. 1, in column (2), for the words "port or airport", at both the places where they occur, the words "port, airport or land customs station" has been substituted.

Notification No.5/2015-Service Tax, dated 1st March, 2015

The Central Government made the following rules further to amend the Service Tax Rules, 1994, namely Service Tax (Amendment) Rules, 2015, with effect from 1st March, 2015 save as otherwise

- **In Rule 2, In Sub-Rule (1)-**

  (i) Clause (aa), has been inserted, namely:-

  '(aa) "aggregator" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;';

  (ii) Clause (bca), has been inserted, namely:-

  '(bca) "brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;';

  (iii) in clause (d), in sub-clause (i),-

  - after item (AA),the item (AAA) has been inserted, namely:-

  '(AAA)in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service: Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax; Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.';

  - in item(E), from such date as the Central Government may, by a notification in the Official Gazette, appoint, the word "support" has been omitted;

- after item (EE), the following items has been inserted with effect from the 1st day of April 2015, namely:- "(EEA)in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service; (EEB) in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service;";

- **In Rule 4-**
  - sub-rule (1A) has been omitted.
  - after sub-rule (8), the following sub-rule has been inserted, namely:-

"(9) The registration granted under this rule shall be subject to such conditions, safeguards and procedure as may be specified by an order issued by the Board.";

- **After Rule 4B-**

Rule 4C has been Inserted:-

"4C. Authentication by digital signature-
(1) Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature.

(2)The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices.";

- **In Rule 5-**

after Sub-Rule (3), following Sub-Rules has been inserted:-

"(4) Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.
(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records. Explanation – For the purposes of rule 4C and sub-rule (4) and (5) of this rule,-
(i) The expression "authenticate" shall have the same meaning as assigned in the Information Technology Act, 2000 (21 of 2000).
(ii) The expression "digital signature" shall have the meaning as defined in the Information Technology Act, 2000 (21 of 2000) and the expression "digitally signed" shall be construed accordingly."

- **In Rule 6-**
  - sub-rule (6A) has been omitted, with effect from the date on which the Finance Bill, 2015, receives the assent of the President;

  - from such dates as the Central Government may, by a notification in the Official Gazette, appoint,-

(a) in sub-rule (7),for the figures“0.6%” and “1.2 %”,the figures and words “0.7%”and “1.4 %” shall respectively be substituted;

(b) in sub-rule (7A),in clause(ii), for the figures and words“3 %” and “1.5 %”, the figures and words“3.5 %” and “1.75%” shall respectively be substituted;”;

(c) in sub-rule (7B),- (i) in item (a), for the figures and words“0.12 %”and “rupees 30”,the figures and words“0.14 %” and “rupees 35” shall respectively be substituted;
(ii) in item (b), for the figures and words“120 and 0.06 %”,the figures and words “140 and 0.07 %” has been substituted; (iii) in item (c), for the figures and words “660 and 0.012 per cent” and “rupees 6,000”, the figures and words“770 and 0.014 per cent” and “rupees 7,000” shall respectively be substituted;

(d) in sub-rule (7C),- (A)in the Table, in column (2),- (i)against Sl. No. 1, for the figures “7000”, the figures “8200” has been substituted; (ii) against Sl. No. 2, for the figures “11000”, the figures “12800” has been substituted;

- In the Explanation, item (i) has been omitted, with effect from the date on which the Finance Bill, 2015, receives the assent of the President.

Notification No.6/2015-Service Tax, dated 1st March, 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 No.25/2012- Service Tax, dated the 20th June, 2012, with effect from 1st of April, 2015, save as otherwise provided in this notification namely:-

1. In the said Notification-

- for entry 2, the following entry has been substituted, namely,- “2. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
- Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;”;
- in entry 12, items (a), (c) and (f) has been omitted;
- in entry 14, in item (a), the words “an airport, port or” has been omitted;
- for entry 16, the following entry has been substituted, namely:- “16. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii)dance, or (iii)theatre, if the consideration charged for such performance is not more than one lakh rupees:

  Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.”;
- in entry 20, for item (i), the following item has been substituted, namely:-"(i) milk, salt and food grain including flours, pulses and rice;";

- in entry 21, for item (d), the following item has been substituted, namely:- "(d) milk, salt and food grain including flours, pulses and rice;";
- in entry 26A, after item (c), the following item has been inserted, namely- "(d) Varishtha Pension Bima Yojana;";
- in entry 29, items (c), (d) and (e) has been omitted;
- in entry 30, in item (c), for the words "any goods", the words "any goods excluding alcoholic liquors for human consumption," has been substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint;
- entry 32 has been omitted;
- after entry 42, the following entries has been inserted, namely,-
    - 43. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;
    - 44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;
    - 45. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;
    - 46. Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;";
- after entry 46 so inserted, the following entry has been inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-

"47.Services by way of right to admission to,- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet; (ii) recognised sporting event; (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person.".

2. In the said notification, in paragraph 2 relating to Definitions

- The following clause has been inserted, namely:-
    - (xaa) 'national park' has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);';
    - (zab) "recognised sporting event" means any sporting event,- (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country; (ii) covered under entry 11.';
- for the clause (zi), the following clauses has been substituted, namely:-

- ‘(zi) “tiger reserve” has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);
- (zj) “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926);
- (zk) “wildlife sanctuary” means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);
- (zl) “zoo”has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972).’.

Notification No.7/2015-Service Tax, dated 1st March, 2015

The Central Government, made the following further amendments in the notification No. 30/2012-Service Tax, dated the 20thJune, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 472 (E), dated the 20th June, 201 with effect from 1st day of April, 2015 Save as otherwise provided:-

- **In Paragraph I, In Clause (A),-**
  - after sub-clause (ia), the following sub-clauses has been inserted, namely:- "(ib) provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company”; “(ic)provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent;”;
  - in sub-clause(iv), in item (C),with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the words “by way of support services” has been omitted;
  - after the sub-clause (v), with effect from the 1st day of March, 2015, the following subclause has been inserted, namely:- “(vi) provided or agreed to be provided by a personinvolving an aggregator in any manner;”;
- **In paragraph (II)-**
  - for the portion beginning with brackets, letters and words “(II) The extent of service tax payable” and ending with words “namely:-”, the following has been substituted with effect from 1stMarch, 2015, namely:- “II. The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I has been as specified in the following Table, namely:-
  - in the Table,-
    (i) in column (4), for the column heading, the following column heading has been substituted with effect from 1st March, 2015, namely:- “Percentage of service tax payable by any person liable for paying service tax other than the service provider”;

(ii) after Sl. No. 1A and the entries relating thereto, the following Sl Nos. and entries has been inserted, namely:-

"1B.	in respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company	Nil	100%
1C.	in respect of service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent	Nil	100%";

(iii) against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted;

(iv) after Sl. No. 10 and the entries relating thereto, with effect from 1stMarch, 2015, the following Sl. No. and entries has been inserted, namely:-

" 11.	in respect of any service provided or agreed to be provided by a person involving an aggregator in any manner	Nil	100% ".

Notification No. 8/2015-Service Tax, dated 1st March, 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 No.26/2012- Service Tax, dated the 20th June, 2012, with effect from 1st day of April, 2015.namely:-

In the said notification, in the Table,-

- against Sl. No. 2, in column (4), for the entry, the following entry has been substituted, namely:- "CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";
- against Sl. No. 3, in column (4), for the entry " Nil", the entry "Same as above" has been substituted;
- for Sl. No. 5 and the entries relating thereto, the following serial number and entries has been substituted, namely:-

(1)	*(2)*	*(3)*	*(4)*
"5	Transport of passengers by air, with or without accompanied belongings in (i) economy class (ii) other than economy class	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.";

		60	

- against Sl. No. 7, in column (3), for the entry "25", the entry "30" has been substituted;
- Sl. No. 8 and entries relating thereto has been omitted;
- against Sl. No. 10, in column (3), for the entry "40", the entry "30" has been substituted.

Notification No. 9/2015 - Service Tax, dated 1st March, 2015

In exercise of the powers conferred by sub-clause (iii) of clause (b) of section 96A of the Finance Act, 1994 (32 of 1994), the Central Government specified "resident firm" as class of persons for the purposes of the said sub-clause.

Explanation - For the purposes of this notification,-

- "firm" shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 (9 of 1932) , and includes-

  (i) the limited liability partnership as defined in clause (n) of sub-section (1) of the section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or

  (ii) limited liability partnership which has no company as its partner; or

  (iii) the sole proprietorship; or

  (iv) One Person Company.

- "sole proprietorship" means an individual who engages himself in an activity as defined in sub-clause (a) of section 96A of the Finance Act, 1994.
- "One Person Company" means as defined in clause (62) of section 2 of the Companies Act, 2013 (18 of 2013).
- "resident" shall have the meaning assigned to it in clause (42) of section 2 of the Income-tax Act, 1961 (43 of 1961) in so far as it applies to a resident firm.

Notification No. 10/ 2015 – Service dated the 8thApril, 2015

The Central Government, on being satisfied that it is necessary in the public interest to do so, exempted the taxable services provided or agreed to be provided against scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

Applicability: This notification shall be applicable to the Merchandise Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.04 read with paragraph 3.05 of the Foreign Trade Policy.

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

(1) that the conditions (1) to (3) specified in paragraph 2 of the Notification No. 24/2015-Customs, dated the 8th April, 2015 are complied and the said scrip has been registered with the Customs Authority at the port of registration specified on the said scrip (hereinafter referred as the said Customs Authority);

(2) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(3) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(4) that the said Customs Authority, taking into account the debits already made under notification number 24/2015-Customs, dated the 8th April, 2015, notification No 20/2015-Central Excise, dated the 8th April, 2015 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(5) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(6) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;

(7) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, he shall pay such service tax along with applicable interest;

(8) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(9) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(10) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

Explanation - For the purposes of this notification-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2015-2020, published by the Government of India in the Ministry of Commerce and Industry notification number 01/2015-2020, dated the 1st April 2015 as amended from time to time;

(B) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011;

(D) "Regional Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorised by him to grant an authorisation including a duty credit scrip under the said Act;

(E) "Scrip" means Merchandise Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.04 read with paragraph 3.05 of the Foreign Trade Policy.

Notification No. 11 / 2015 – Service Tax dated the 8th April, 2015

The Central Government, on being satisfied that it is necessary in the public interest so to do, exempted the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

Application – This notification shall be applicable to the Service Exports from India Scheme duty credit scrip issued by the Regional Authority in accordance with paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy.

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

(1) that the conditions (1) and (2) specified in paragraph 2 of the Notification No. 25/2015-Customs, dated the 8th April, 2015 are complied and the said scrip has been registered with the Customs Authority at the port of registration specified on the said scrip (hereinafter referred as the said Customs Authority);

(2) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(3) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(4) that the said Customs Authority, taking into account the debits already made under notification number 25/2015-Customs, dated the 8th April, 2015, notification No. 21/2015-Central Excise, dated the 8th April, 2015 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(5) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(6) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;

(7) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, he shall pay such service tax along with applicable interest;

(8) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(9) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(10) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

Explanation- For the purposes of this notification,-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2015-2020, published by the Government of India in the Ministry of Commerce and Industry notification number 01/2015-2020, dated the 1st April 2015 as amended from time to time;

(B) “Point of taxation” shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011.

(C) “Regional Authority” means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorised by him to grant an authorisation including a duty credit scrip under the said Act.

(D) “Scrip” means Service Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy.

Notification No. 12/2015-Service Tax, dated the 30th April, 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 No.25/2012-Service Tax, dated the 20th June, 2012,

- in entry 26, after item (o), the following items has been inserted, namely:- "(p) Pradhan Mantri Suraksha Bima Yojna;"
- in entry 26A, after item (d), the following items has been inserted, namely:- "(e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yogana;";
- after entry 26A, the following entry has been inserted, namely:- "26B Services by way of collection of contribution under Atal Pension Yojana (APY)."

Notification No. 13/2015-Service Tax, dated the 19th May, 2015

The Central Government, being satisfied that it is necessary in the public interest so to do, omitted clause 'a' in the paragraph 2 relating to definitions, of the Notification No.26/2012- Service Tax, dated the 20th June, 2012

Notification No. 14/2015-Service Tax, dated the 19th May, 2015

In exercise of the powers conferred by clauses (a), (c) and (f) of section 107, section 108, sub-sections (2), (3) and (4) of section 109, section 153 and section 159 of the Finance Act, 2015 (No. 20 of 2015), the Central Government appointed the 1st day of June, 2015 as the date on which the provisions of clauses (a), (c) and (f) of section 107, section 108, sub-sections (2), (3) and (4) of section 109, section 153 and section 159 of the said Act came into force.

Notification No. 15/2015-Service Tax, dated the 19th May, 2015

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 appointed the 1st day of June, 2015 as the date on which the provisions of sub-clauses (a), (b) and (c) and item (A) of sub-clause (d) of clause (ii) of sub-paragraph (e) of paragraph 2 of the Notification No. 05/2015 – Service Tax, dated 1st March, 2015, came into force.

Notification No. 16/2015-Service Tax dated, the 19th May, 2015

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, appointed the 1st day of June, 2015 as the date on which the provisions of sub-paragraphs (ix) and (xii) of paragraph 1 and subparagraph (b) of paragraph 2 of the notification No. 06/2015 – Service Tax, dated the 1st March, 2015 came into force.

Notification No. 17/2015-Service Tax dated, the 19th May, 2015

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, the Central Government, being satisfied that it is necessary in the public interest so to do, exempted taxable services provided under the Power System Development Fund Scheme of the Ministry of Power (hereinafter referred to as the Scheme), from the whole of the service tax leviable thereon under section 66B of the said Act:- by way of,-

(A) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL);

(B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (ebid RLNG) to the power generating companies or plants as specified in the Annexure-I and Annexure -II to this notification,

subject to the following conditions, namely:-

(a) GAIL is appointed as the 'e-bid RLNG Operator' for the gas based plants outside Gujarat and Gujarat State Petroleum Corporation Limited (GSPCL) will be 'e-bid RLNG Operator' for the gas based plants within Gujarat and GAIL will be the only agency for the procurement of e-bid RLNG under the Scheme;

(b) supply of imported spot RLNG 'e-bid RLNG' to the Stranded gas based plants as well as the plants receiving domestic gas, will be upto the target Plant Load Factor (PLF) selected through a reverse e-bidding;

(c) the eligible gas based power plants under the Scheme shall be the Stranded gas based power plants and those plants receiving domestic gas whose actual average PLF achieved during April-January 2014-15 was below the target PLF;

(d) in case of plants receiving domestic gas (Annexure-II), Power System Development Fund Scheme (PSDF) support being made available only for incremental generation of electricity during the relevant period over and above the PLF achieved during April-January 2014-15, for example, if the PLF actually achieved during April-January 2014- 15 is 20%, and if during the relevant period the PLF is 25% from all sources including that from e-bid RLNG, then PSDF support will be made available for the electricity corresponding to 25- 20 = 5% PLF, but limited to the actual generation from e-bid RLNG during that relevant period;

(e) the person liable to pay service tax produces the following certificates as verified by the Empowered Pool Management Committee (EPMC) constituted by Ministry of Power *vide* Office Memorandum No. 4/2/2015-Th-1 dated 27th March, 2015, within a period of three months, or such extended period not exceeding a further period of six months as the Assistant Commissioner or Deputy Commissioner of Central Excise or Service Tax, may allow, before the jurisdictional Central Excise officer:-

(i) certification by Central Electricity Authority (CEA) for each participating gas based plant regarding the quantum of electricity to be generated per unit of gas based on the technical parameters of that plant;

(ii) certification by GAIL regarding quantity of e-bid RLNG gas supplied during the relevant period;

(iii) self-certification by the participating gas based plant regarding the quantity of e-bid RLNG gas actually utilised during the relevant period for generation of electricity, and Discom-wise supply of such electricity; and

(iv) certification by participating Discoms regarding the quantum of e-bid RLNG based electricity purchased during the relevant period from participating gas based plants;

(f) the person, failing to produce the aforesaid certificates before Central Excise Officer within the stipulated period, would pay the duty leviable on such services along with the applicable interest thereon; Provided that the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and

Liquefied Natural Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in clause (8) of section 2 of the Electricity Act, 2003 (36 of 2003):

Provided further that nothing contained in this notification shall apply on or after the 1st day of April, 2017.

Order No. 1/2015-Service Tax, dated 28th February, 2015

The legal provisions for registration in service tax are contained in section 69 of the Finance Act, 1994, rule 4 of the Service Tax Rules, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005. Paragraph 2 of Circular 97/8/2007-Service Tax dated 23-8-2007 and Order No. 2/2011-Service Tax dated 13-12-2011 also explain some of the procedural aspects of registration in service tax.

In supersession of Order No. 2/2011-Service Tax dated 13-12-2011, the Central Board of Excise and Customs specifies the following documentation, time limits and procedure with respect to filing of registration applications for single premises, which shall come into effect from 1-3-2015.

General procedure

(i) Applicants seeking registration for a single premises in service tax shall file the application online in the Automation of Central Excise and Service Tax (ACES) website www.aces.gov.in in Form ST-1.

(ii) Registration shall mandatorily require that the Permanent Account Number (PAN) of the proprietor or the legal entity being registered be quoted in the application with the exception of Government Departments for whom this requirement shall be non-mandatory. Applicants, who are not Government Departments shall not be granted registration in the absence of PAN. Existing registrants, except Government departments not having PAN shall obtain PAN and apply online for conversion of temporary registration to PAN based registration within three months of this order coming into effect, failing which the temporary registration shall be cancelled after giving the assessee an opportunity to represent against the proposed cancellation and taking into consideration the reply received, if any.

(iii) **E-mail and mobile number mandatory:** The applicant shall quote the email address and mobile number in the requisite column of the application form for communication with the department. Existing registrants who have not submitted this information are required to file an amendment application by 30-4-2015.

(iv) Once the completed application form is filed in ACES, registration would be granted online within 2 days, thus initiating trust-based registration. On grant of registration, the applicant would also be enabled to electronically pay service tax.

(v) Further, the applicant would not need a signed copy of the Registration Certificate as proof of registration. Registration Certificate downloaded from the ACES web site would be accepted as proof of registration dispensing with the need for a signed copy.

Documentation required

The applicant is required to submit a self attested copy of the following documents by registered post/ Speed Post to the concerned Division, within 7 days of filing the Form ST-1 online, for the purposes of verification:-

(i) Copy of the PAN Card of the proprietor or the legal entity registered.

(ii) Photograph and proof of identity of the person filing the application namely PAN card, Passport, Voter Identity card, Aadhar Card, Driving license, or any other Photo-identity card issued by the Central Government, State Government or Public Sector Undertaking.

(iii) Document to establish possession of the premises to be registered such as proof of ownership, lease or rent agreement, allotment letter from Government, No Objection Certificate from the legal owner.

(iv) Details of the main Bank Account.

(v) Memorandum/Articles of Association/List of Directors.

(vi) Authorisation by the Board of Directors/Partners/Proprietor for the person filing the application.

(vii) Business transaction numbers obtained from other Government departments or agencies such as Customs Registration No. (BIN No), Import Export Code (IEC) number, State Sales Tax Number (VAT), Central Sales Tax Number, Company Index Number (CIN) which have been issued prior to the filing of the service tax registration application.

Where the need for the verification of premises arises, the same will have to be authorised by an officer not below the rank of Additional /Joint Commissioner.

The registration certificate may be revoked by the Deputy/Assistant Commissioner in any of the following situations, after giving the assessee an opportunity to represent against the proposed revocation and taking into consideration the reply received, if any:

(i) the premises are found to be nonexistent or not in possession of the assessee.

(ii) no documents are received within 15 days of the date of filing the registration application.

(iii) the documents are found to be incomplete or incorrect in any respect.

The provisions of sub-rules (5A) and (6) of rule 4 of the Service Tax Rules, 1994 may be referred to regarding change in any information or details furnished by an assessee and transfer of business to another person, respectively. Similarly, sub rule (7) of the Service Tax Rules, 1994 may be referred to in case a registered person ceases to provide the service for which he has been granted registration.

Paragraph 2.0 of Circular 97/8/2007-Service Tax dated 23-8-2007 consisting of subparagraphs 2.1 to 2.7 may be treated as withdrawn since there have been changes in the relevant legal provisions since the issuance of that Circular. The current legal provisions in the Service Tax Rules, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 may also be referred to.

Circular No. 183 / 02 / 2015-ST, dated 10th April, 2015

The circular clarifies the doubts regarding the increase in the rate of service tax from 12.36% (including education cesses) to 14% on the value of taxable service. It clarifies that:

- The changes proposed in the Budget have/are coming into effect on various dates as indicated in JS (TRU-II) D.O. letter dated 28th February, 2015.

- Further, certain amendments made in the Finance Act, 1994, including the change in service tax rate, come into effect from a date to be notified by the Government after the enactment of the Finance Bill, 2015. In this regard your attention is invited to clause 106 of the Finance Bill, 2015 and paragraph 3 of JS (TRU-II) D.O. letter, which is reproduced below:-

  "3. Service Tax Rate:

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

  3.2 In this context, an amendment is being made in section 66B of the Finance Act, 1994. Further, it has been provided *vide* clauses 179 and 187 respectively of the Finance Bill, 2015 that sections 95 of the Finance Act, 2004 and 140 of the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect from a date to be notified by the Government.

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

  3.4 Till the time the revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax."

- Similarly, certain doubts have been raised with regard to abatement on value of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. Valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess is determined as provided in rule 2C of the Service Tax (Determination of Value) Rules, 2006. In the Union Budget, 2015, no change has been made in these rules; therefore, any confusion is unwarranted. Further, as explained above, the rate of service tax on the specified portion of the amount charged for such supply which continues to be 40% of the rate of prevailing service tax.

Note: The revised rate came into effect from 1st June, 2015 as notified.

Circular No. 184/3/2015-ST, dated 3rd June, 2015

Clarification on rate of service tax on restaurant service:

- The Service Tax rate has been increased to 14% with effect from 1st June, 2015. Certain doubts have been raised in regard to abatement on value of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

- Matter has been examined. Valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air conditioning or central air-heating in any part of the establishment, is determined as provided in rule 2C of the Service Tax (Determination of Value) Rules, 2006. In the said rule, service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant has been specified as 40 percentage of the total amount charged for such supply.

- In Budget, 2015, no change has been made in abatement and the rate of service tax on the abated value has been increased to 14% with effect from 1st June, 2015. Therefore, effective service tax rate would be 5.6% (14% of 40%) of the total amount charged.

- Hence, with the increase in the applicable rate of service tax from 12.36% (including education cesses) to 14%, the effective rate on such establishments has increased from 4.9% to 5.6% of the total amount charged.

- It is further clarified that exemption from service tax still continues to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

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.

NOTIFICATION NO. 25/2015-SERVICE TAX DATED 12TH NOVEMBER, 2015- THE SERVICE TAX (SECOND AMENDMENT) RULES, 2015

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.

NOTIFICATION NO. 26/2015-SERVICE TAX DATED 9TH DECEMBER, 2015- THE SERVICE TAX (THIRD AMENDMENT) RULES, 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 assessee 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"

NOTIFICATION NO. 27/2015-SERVICE TAX DATED 18TH DECEMBER, 2015-THE SERVICE TAX (FOURTH AMENDMENT) RULES, 2015

The Central Government has made the Service Tax (Fourth Amendment) Rules, 2015 to substiitute 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.

SWACHH BHARAT CESS (SBC) FREQUENTLY ASKED QUESTIONS (FAQ)

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 is14.5%. 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:

Swachh Bharat Cess (Minor Head)	**Tax Collection**	**Other Receipts**	**Penalties**	**Deduct Refunds**
0044-00-506	00441493	00441494	00441496	00441495

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.

CIRCULAR NO.189/8/2015-SERVICE TAX DATED 26TH NOVEMBER, 2015- CLARIFICATION REGARDING LEVIABILITY OF SERVICE TAX IN RESPECT OF SEED TESTING WITH EFFECT FROM 01.07.2012

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 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 DATED15TH 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.

CIRCULAR NO. 1009/16/2015-CX DATED THE 23RD OCTOBER, 2015 - CENTRAL EXCISE – GUIDELINES FOR LAUNCHING OF PROSECUTION UNDER THE CENTRAL EXCISE ACT, 1944 AND FINANCE ACT, 1994 REGARDING SERVICE TAX

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:

1. Circular No. 15/90-CX.6 dated 09.08.1990 issued from F. No. 218/7/89-CX.6.
2. Circular No. 30/30/94-CX dated 04.04.1994 issued from F. No. 208/20/93/CX.6.
3. Letter F. No. 208/31/97-CX.6 dated 04.04.1994 regarding enhancement of monetary limit.
4. Circular No. 35/35/94-CX dated 29.04.1994 issued from F. No. 208/22/93-CX.6.
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.
6. Letter F. No. 208/05/98-CX.6 dated 20.10.1998.
7. Letter F. No. 208/21/2007-CX.6 dated 15.06.2007.
8. Circular no 140/9/2011-Service Tax dated 12-5-2011.

Guidelines

Person liable to be prosecuted

- 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 Commissionerate 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.

GOODS AND SERVICE TAX

"GST is expected to play a transformative role in the way our economy functions. It will add buoyancy to our economy by developing a common Indian market and reducing the cascading effect on the cost of goods and services. We are moving in various fronts to implement GST from the next year"

-Arun Jaitley, Budget Speech, 2015

The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley. The Bill seeks to amend the Constitution to introduce the goods and services tax (GST) and subsume state value added tax, octroi and entry tax, luxury tax, etc. The Bill proposes to insert a new Article in the Constitution to give the Central and State governments the concurrent power to make laws on the taxation of goods and services. It also proposes compensations to states and provides that Parliament may, by law, provide for compensation to states for revenue losses arising out of the implementation of the GST, on the GST Council's recommendations.

On 28th February, 2015, the Finance Minister reaffirmed the introduction of this landmark reform with effect from 1st April, 2016.

HIGHLIGHTS OF GST BILL, 2014

- The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley.
- Amendment of Constitution: The Bill seeks to amend the Constitution to introduce the goods and services tax (GST). Consequently, the GST subsumes various central indirect taxes including the Central Excise Duty, Countervailing Duty, Service Tax, etc. It also subsumes state value added tax, octroi and entry tax, luxury tax, etc.
- Concurrent powers for GST: The Bill inserts a new Article in the Constitution to give the central and state governments the concurrent power to make laws on the taxation of goods and services.
- Integrated GST (IGST): Only the centre may levy and collect GST on supplies in the course of inter-state trade or commerce. The tax collected would be di*vide*d between the centre and the states in a manner to be provided by Parliament, by law, on the recommendations of the GST Council.
- GST Council: The President must constitute a Goods and Services Tax Council within sixty days of this Act coming into force. The GST Council aim to develop a harmonized national market of goods and services.
- Composition of the GST Council: The GST Council is to consist of the following three members: (i) the Union Finance Minister (as Chairman), (ii) the Union Minister of State in charge of Revenue or Finance, and (iii) the Minister in charge of Finance or Taxation or any other, nominated by each state government.

- Functions of the GST Council: These include making recommendations on: (i) taxes, cesses, and surcharges levied by the centre, states and local bodies which may be subsumed in the GST; (ii) goods and services which may be subjected to or exempted from GST; (iii) model GST laws, principles of levy, apportionment of IGST and principles that govern the place of supply; (iv) the threshold limit of turnover below which goods and services may be exempted from GST; (v) rates including floor rates with bands of GST; (vi) special rates to raise additional resources during any natural calamity; (vii) special provision with respect to Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and (viii) any other matters.

- Resolution of disputes: The GST Council may decide upon the modalities for the resolution of disputes arising out of its recommendations.

- Restrictions on imposition of tax: The Constitution imposes certain restrictions on states on the imposition of tax on the sale or purchase of goods. The Bill amends this provision to restrict the imposition of tax on the supply of goods and services and not on its sale.

- Additional Tax on supply of goods: An additional tax (not to exceed 1%) on the supply of goods in the course of inter-state trade or commerce would be levied and collected by the centre. Such additional tax shall be assigned to the states for two years, or as recommended by the GST Council.

- Compensation to states: Parliament may, by law, provide for compensation to states for revenue losses arising out of the implementation of the GST, on the GST Council's recommendations. This would be up to a five year period.

- Goods exempt: Alcoholic liquor for human consumption is exempted from the purview of the GST. Further, the GST Council is to decide when GST would be levied on: (i) petroleum crude, (ii) high speed diesel, (iii) motor spirit (petrol), (iv) natural gas, and (v) aviation turbine fuel.

Note : The GST Bill, 2014 was passed in Lok Sabha on 6th May, 2015. However, it is still pending in Rajya Sabha.

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