Key Changes effected by the Fin (No.2) Act, 2014 in Direct Tax Laws

Sec 2(13A): [W.E.F 1st Oct 2014] [Business Trust defined as 'Invit' or 'REIT']

"Business Trust" means A Trust registered as **an Infrastructure Investment Trust or a Real Estate Investment Trust,** the units of which are required to be **listed** on a Recognized Stock Exchange in accordance with the regulations made under the SEBI Act, 1992 and **notified** by the Central Government in this behalf.

[Sec 2(14)]: [Security held by FII shall be treated as 'Capital Asset'][W.E.F A.Y 2015-16]:

Sec 2(14) has been amended from the AY 2015-16. Under the amended definition, **any security held by a Foreign Institutional Investor** (which has invested in such security in accordance with the regulations made under the SEBI Act, 1992) **will be treated as 'Capital Asset'.** After this amendment, such a security cannot be treated as 'Stock-in-Trade'.

Amendment to Sec 2(15A); Sec 2(16); Sec 2(21) [w.r.e.f 1st June 2013]
[Now the words CIT / CCIT / DIT / DGIT includes 'Principal CIT / Principal CCIT / Principal DIT / Principal DGIT respectively.]

Sec 2(15A): 'Chief Commissioner means a person appointed to be a CCIT or a Principal CCIT U/S 117(1)': **[w.r.e.f 1st June 2013]**

Sec 2(16): 'Commissioner' means a person appointed to be a CIT or a DIT or a Principal CIT or a Principal DIT U/S 117(1).' **[w.r.e.f 1st June 2013]**

Sec 2(21): "Director General or Director" means a person appointed to be a Director General of Income Tax (DGIT) or a Principal DGIT or, as the case may be, a DIT or a Principal DIT, U/S 117(1), and includes a person appointed under that subsection to be an Addl Director of Income Tax or a Joint Director of Income Tax or an Asst Director or Deputy Director of Income Tax.

Sec 2(24): Income definition is so amended to include 'Any sum of money referred to Sec 56(2)(ix)' [w.e.f A Y 2015-16]

Sec 2(42A): [Definition of Short Term Capital Asset]: [Concessional period of 12 months is withdrawn for 'Unlisted Equity / Unlisted Preference Shares' and 'Debt Oriented Funds' where the transfer takes place after 10th July 2014]

As per Sec 2(42A), 'Short Term Capital Asset' means a capital asset held by an assessee for not more than 36 months immediately prior to its date of transfer. However, in a few cases, an asset held for not more than 12 months is treated as short term capital asset. The table given below gives the list of capital assets (before and after amendment) which are treated as short term capital assets if the period of holding is not more than **12 months –**

If Transfer Takes place on or before 10th July 2014	**If Transfer Takes place after 10th July 2014**
Equity or preference shares in a company **(Whether Shares are quoted or not).**	Equity or preference shares in a company **(listed in recognized stock exchange in India).**
Securities (like Debentures, Bonds, Government Securities, Derivatives, etc,.) **listed** in a recognized stock exchange in India.	Same [i.e There is no amendment with regard to this category]

Units of UTI (Whether quoted or not)	Same [i.e There is no amendment with regard to this category]
Units of **Mutual Funds specified U/S 10(23D)** (Whether quoted or not).	Units of **an Equity Oriented Fund** (Whether Quoted or not).
Zero Coupon Bonds (Whether Quoted or Not)	Same [i.e There is no amendment with regard to this category]

Assets other than short term capital assets are long term capital assets. After the aforesaid amendment (in case transfer takes place after 10th July 2014), unlisted equity or unlisted preference shares will become long term capital assets only if period of holding is more than 36 months. Similarly, units of debt oriented fund will be treated as long term capital assets only if period of holding is more than 36 months prior to the date of transfer.

Sec 2(42A)(hc):Period of holding in the case of Units of a Business Trust shall be counted from the date of acquisition of shares [1st Oct 2014]:

In the case of a capital asset, being a unit of a Business Trust, allotted pursuant to transfer of share or shares as referred to in Sec 47(xvii), there shall be included the period for which the share / shares were held by the assessee.

Amendment to Sec 10(23C):

The following amendments have been made from the AY 2015-16:

Area # 1: The words "Substantially Financed By the Government" has been assigned a meaning: [Applicable for the institutions covered U/S 10(23C) (iiiab / iiiac)]

The existing provisions of Sec 10(23C)(iiiab)/(iiiac) provide exemption, subject to various conditions, in respect of income of certain educational institutions, universities and hospitals which exist solely for educational purposes or solely for philanthropic purposes and not for purposes of profit and which are wholly or substantially financed by the Government. The phrase "Substantially Financed by the Government" has not been defined in the Act. Moreover, judicial rulings do not give any firm view which can be adopted in different circumstances. [See ITO Vs Deeshiya Vidya Shala Samithi] [2007] [12 SOT 617] [Bangalore]; [CIT Vs IIM] [2011][196 Taxman 276] [Karnataka].

Therefore, Sec 10(23C) has been amended to provide that if the Government Grant to a University or other Educational Institution, Hospital or Other Institution during the relevant previous year exceeds a percentage (to be specified) of total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for the previous year.

Area # 2: Exemption under other clauses of Sec 10 other than Sec 10(1) is not available [Applicable for the institutions covered U/S 10(23C) (iv/v/vi/via); Sec 12A or 12AA Trusts] [Insertion of Sec 11(7)]

Entities which have been approved or notified for claiming benefit of exemption U/S 10(23C) would not be entitled to claim any benefit of exemption under ***other provisions of Sec 10*** **(except the exemption in respect of agricultural income.)**

Consequently, these institutions will not be entitled to claim exemption pertaining to 'Dividends, Mutual Fund Interest, Long Term Capital Gains, etc,.'

Entities which have been approved or notified for claiming benefit of exemption U/S 11 would not be entitled to claim any benefit of exemption under other provisions of Sec 10 **(except the exemption in respect of agricultural income and except 10(23C))**. Consequently, these institutions will not be entitled to claim exemption pertaining to 'Dividends, Mutual Fund Interest, Long Term Capital Gains, etc,.'

Area # 3: If acquisition of an asset is treated as application, then depreciation shall not be treated as 'Application of income' [Applicable for Sec 10(23C) as well as the trusts covered U/S 11] [Insertion of Sec 11(6)]

Where any income is required to be **applied (or accumulated)**, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation (or otherwise) in respect of any asset, acquisition of which has been claimed as an application of income U/S 10(23C) in the same or any other previous year. Similar amendment is made to the trusts covered U/S 11 also.

Where any income is required to **be applied (or accumulated or set apart for application)**, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation (or otherwise) in respect of any asset, acquisition of which has been claimed as an application of income U/S 11 in the same or any other previous year. Similar amendment is made to the trusts covered U/S 10(23C) also.

Sec 10(23FC): Any Income of a Business Trust by way of Interest received or receivable from a Special Purpose Vehicle: [Fin (No.2) Act 2014]

Any income of a business trust by way of interest received or receivable from a 'Special Purpose Vehicle' is exempt from tax. ***[Sec 10(23FC)] [Fin (No.2) Act 2014] [W.E.F AY 2015-16]***

Explanation: For the purposes of this clause, the expression 'SPV' means 'An Indian Company in which the Business Trust holds controlling interest and any specific percentage of share holding or interest, as may be required by the Regulations under which such trust is granted registration.

Sec 10(23FD): Any distributed income, referred to in Sec 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in Sec 10(23FC) [Fin (No.2) Act 2014]

Any distributed income, referred to in Sec 115UA, received by a unit holder from the business trust, not being that proportion of income which is of the same nature as the income referred to in Sec 10(23FC) is exempt. ***[Sec 10(23FD)] [Fin (No.2) Act 2014] [W.E.F AY 2015-16]***

[Amendment of Sec 10(38)] [A.Y 2015-16]

The words 'A Unit of a Business Trust' have been inserted in Sec 10(38). [i.e Any income arising from the transfer of a Long Term Capital Asset, being an Equity Share in a company or Unit of an Equity Oriented Fund or a *Unit of a Business Trust* is exempt from tax if such transaction is chargeable to Securities Transaction Tax.]

It is further provided that the provisions of this clause [i.e Sec 10(38) benefit] shall not be available in respect of any income arising from transfer of units of a Business Trust which were acquired in consideration of a Transfer referred to in Sec 47(xvii).

Amendment to Sec 10AA: [No multiple deductions U/S 35AD and Sec 10AA]: [W.E.F AY 2015-16]

If a deduction is claimed and allowed in respect of profits of a Specified Business [as referred to in Sec 35AD(8)(c)] U/S 10AA for any assessment year, no deduction in respect of that specified business will be available U/S 35AD for the same or any other assessment year.

Amendment to Sec 11, 12A and 12AA: [w.e.f 1st Oct 2014]

If a Trust applies for registration after 31st May 2007, the registration shall be effective only prospectively (i.e after registration, exemption U/S 11 will be available only from the previous year in which application is made.)

Non application of registration for the period prior to the year of registration causes genuine hardship to charitable organizations. Due to absence of registration, tax liability gets attached even though they may otherwise be eligible for exemption and fulfill other substantive conditions. The Power of Condonation of delay in seeking registration is not available under the section.

In order to provide a relief to such trusts and remove hardship in genuine cases, Sec 12A has been amended w.e.f **1st Oct 2014.** Under the amended provisions, the benefit of Sec 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the AO as on the date of such registration, if the objects and activities of such trusts / institutions in the relevant earlier asst year are the same as those on the basis of which such registration had been granted.

Further, no action for re-opening of an assessment U/S 147 shall be taken by the AO in the case of such trusts / institutions for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust / institution had not obtained the registration U/S 12AA for the said Asst Year. However, the above benefits would not be available in case of any trust / institution which at any time had applied for registration and the same was refused U/S 12AA or a registration once granted was cancelled.

If after registration, the activities of the trust / institution are being carried out in a manner that the provisions of Sec 11 and 12 do not apply to exclude either whole / any part of the income due to operation of Sec 13(1) ***(i.e Income does not enure for the benefit of general public, it is for the benefit of particular religious community / caste, income / property is utilized for the benefit of specified persons, like author of the trust, trustee, etc,. or funds are invested in prohibited modes), then the CIT / Prin CIT may by order in writing cancel the registration of trust or institution. However, the registration shall not be cancelled if the assessee proves that there was a reasonable cause for the activities to be carried out in the said manner.*** **[Applicable from 1st Oct 2014.] [Prior to the amendment the CIT can cancel only for two purposes viz (a) The activities of the trust are not genuine; (b) the activities are not being carried out in accordance with the objects of the trust.] [Post amendment, the list is made rather wider.]**

Interest on loan taken to acquire a residential house for self occupation [Sec 24(b)]:[AY 2015-16]

Interest on borrowed capital is increased from Rs 150,000 to Rs 200,000 with regard to self occupied house property or in respect of a house property which is deemed to have been self occupied. [i.e The amendment does not have any impact in the case of Let Out Properties as entire interest is deductible in such cases U/S 24(b).]

Investment Allowance to manufacturing companies [Sec 32AC]:

Sub sections (1A) and (1B) have been inserted have been inserted in Sec 32AC by the Finance (No.2) Act, 2014, w.e.f 1st April 2015:

Sec 32AC (1A): Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired and installed during any previous year **exceeds Rs 25 Crores,** then, there shall be allowed a deduction of **a sum equal to fifteen percent of the actual cost of such new assets** for the assessment year relevant to the previous year:

Provided that no deduction U/S 32AC(1A) shall be allowed for the Asst Year 2015-16 to the assessee, which is eligible to claim deduction U/S 32AC(1) for the said Asst Year.

Sec 32AC (1B): No deduction U/S 32AC(1A) shall be allowed for any assessment year commencing on or after 1st April 2018. [The deduction under this sub section is available only up to Asst Year 2017-18.]

Amendment to Sec 35AD:

The following amendments have been made to Sec 35AD w.e.f AY 2015-16:

Extension of Sec 35AD to two more sectors:

- **i** Laying and Operating a **'Slurry Pipeline'** for the transportation of **'Iron Ore';**
- **ii** Setting up and operating a **'Semi Conductor Wafer Fabrication'** manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.

Restriction on use of the asset:

Sub section (7A) has been inserted in Sec 35AD to provide that any asset in respect of which a deduction is claimed and allowed U/S 35AD, **shall be used only for the specified business** for a period of 8 years beginning with the previous year in which such asset is acquired or constructed.

What will happen if such asset is used for any other purpose?

If such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset (as reduced by the amount of depreciation allowable in accordance with the provisions of Sec 32, as if no deduction had been allowed U/S 35AD), shall be deemed to be the income of the assessee chargeable under the head 'Profits and Gains From Business or Profession' of the previous year in which the asset is so used. **[Sec 35AD(7B)]**

Relaxation to 'SICK' companies:

It is further provided that the above restriction is not applicable for a company which had become a sick industrial company U/S 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 within the time period of 8 years as stated above. **[Sec 35AD(7C)]**

Double Deduction not possible:

Where any deduction U/S 35AD has been availed of by the assessee in respect of the specified business for any assessment year, no deduction **U/S 10AA and Chapter VI-A** under the heading "C-Deductions in respect of certain incomes" [i.e 80-H to 80-TT] in relation to such specified business for the same or any other assessment year.

Explanation 2 to Sec 37(1): Corporate Social Responsibility: [W.E.F AY 2015-16]

Under the Companies Act, 2013, certain companies (which have net worth of Rs 500 crores or more, or turnover of Rs 1000 Crores or more, or a net profit of Rs 5 Crores or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR).

A new *Explanation* 2 has been inserted in Sec 37(1) so as to clarify that for the purposes of Sec 37(1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in Sec 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession from the Asst Year 2015-16.

It may be noted that, if deduction is available under any other section, then the same can be claimed under that section.

TDS Defaults – Amendment to Sec 40(a)(i)/(ia): [W.E.F AY 2015-16]

Amendment to Sec 40(a)(i): *[Due date for remittance of TDS has been shifted to the due date of filing of return of income U/S 139(1)]*

~~Disallowance of taxable sums (other than salary) payable to Non-Residents, etc,. is attracted where the TDS is not remitted before the due date for filing return of income.~~

~~*[Due date for remittance of TDS has been shifted to the date of filing of return of income.]*~~

What are covered U/S 40(a)(i)?

Sec 40(a)(i) covers any amount (other than salary) which is taxable in the hands of recipient and is

- Payable outside India or
- Payable in India to a non-resident non corporate assessee / a foreign company;

When is the disallowance U/S 40(a)(i) attracted?

Disallowance under this clause is attracted in the following two cases post amendment brought in by the Finance (No.2) Act, 2014.

- Tax is deductible but not deducted;
- After deduction of Tax at Source, it has not been remitted on or before the due date for filing return of income U/S 139(1).

Sec 40(a)(ia):

Under the existing provisions of Sec 40(a)(ia) sums payable to a resident U/S 193; 194A; 194C; 194H; 194-I; 194-J are covered.

Following amendments have been brought in Sec 40a(ia):

- **Post amendment, disallowance U/S 40a(ia) will cover any sum payable to a resident which is subject to TDS.**
- **It is further provided that 30% of the expenditure shall be disallowed instead of disallowing the entire amount.**

Sec 43(5): Sec 43(5) has been amended w.r.e.f AY 2014-15 so as to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognized association and **chargeable to commodities transaction tax** shall not be considered to be a speculative transaction. [For instance, Commodity Transaction Tax is not leviable on 'Commodity Derivatives' in respect of 'Agricultural Commodities'. Hence, derivatives in 'Agricultural Commodities' is covered within the ambit of 'Speculative Transactions' unless they are entered into for Hedging purposes where they can claim relaxation under other sub clauses.]

Sec 44AE: Uniform limit of Rs 7500/- per month or part of a month has been prescribed during which the goods carriage is owned by the tax payer instead of Rs 5,000 for heavy goods vehicles and Rs 4500 for Light Goods Vehicles. **[Finance (No.2) Act, 2014] w.e.f Asst Year 2015-16.**

Sec 45(5): Capital Gains from transfer of an asset by way of compulsory acquisition in pursuance of 'Interim Orders' shall be taxable only in the year in which 'Final Orders' are made:[W.E.F Asst Year 2015-16]

In the case of compulsory acquisition of a capital asset, capital gains is chargeable to tax in the previous year in which initial compensation (or part thereof) is first received. Likewise, any enhanced compensation is chargeable to tax in the year in which such enhanced compensation is received.

Sec 45(5) has been amended w.e.f AY 2015-16 to provide that the amount of compensation received in pursuance of **an interim order** of the Court, Tribunal or other Authority shall be deemed to be the income chargeable under the head 'Capital Gains' in the previous year in which **the final order of such** Court, Tribunal or other authority is made. However, no amendment has been made in the provisions of Sec 54H.

Sec 47: The following amendments have been made in Sec 47 w.e.f AY 2015-16:

- *Transfer among non-residents of Certain Government Securities is not taxable for Capital Gains:[Sec 47(viib)]*

  Clause (viib) has been inserted to provide that any transfer of a capital asset, **being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities,** by a non-resident to another non-resident shall not be considered as 'Transfer' for the purposes of charging 'Capital Gains.'
- *Exchange of a Share of a SPV for Units in a Business Trust is not taxable for Capital Gains:[Sec 47(xvii)]*

  Clause (xvii) has been inserted to provide that any transfer of a capital asset, being share of a Special Purpose Vehicle, to a business trust in exchange of units allotted by that trust to the transferor shall not be regarded as 'Transfer' for the purposes of Sec 45.

Sec 48: Basis of calculating the index numbers has been shifted from 'CPI for Urban Non Manual Employees' to 'CPI (Urban): [W.E.F Asst Year 2016-17]

For the purposes of computing Long Term Capital Gains, Cost Inflation Index is notified by the Government having regard to 75% of the average rise in the Consumer Price Index (CPI) for Urban Non Manual Employees (UNME) for the immediately preceding previous year to such previous year. The release of CPI for UNME has been discontinued. Accordingly, Sec 48 has been amended from the AY 2016-17. After the amendment, the Central Government will notify Cost Inflation Index having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

Amendment to Sec 49: [Consequential Amendment to Sec 47(xvii)][Asst Year 2015-16]
COA of units of Business Trust shall be the COA of the shares in the SPV:

Sec 49 provides notional provisions for determining cost of acquisition with reference to certain modes of acquisition. It has been amended from the AY 2015-16 so as to provide that where the capital asset, being a unit of a business trust, became the property of the assessee in consideration of a transfer as referred to in Sec 47(xvii), the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share referred to in the said section.

Taxation of Advance Money Forfeited [Sec 51 read with Sec 56]: Advance money forfeited shall be taxable in the year of forfeiture U/S 56 and the same need not be reduced from the Cost of Acquisition, etc, while computing capital gains in such cases [W.E.F Asst Year 2015-16]

Amendment of Sec 56(2) read with Sec 51:

Sec 56(2) has been amended by inserting a new clause (ix) with effect from the AY 2015-16.

Under the new clause, any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset will be taxable under the head "Income From Other Sources" if the following conditions are satisfied –

i The negotiations do not result in the transfer of capital asset; and

ii Advance Money is forfeited.

In order to avoid double taxation of the advance received or retained, **Sec 51 is also amended** to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with the provisions of Sec 56(2)(ix), such amount shall not be deducted from the cost for which the asset was **acquired or the written down value or the fair market value, as the case may be,** in computing the cost of acquisition.

Sec 54: Assessee can purchase only 'One Residential House in India' to claim the benefit of Sec 54 from the AY 2015-16 onwards:

Amendment: Sec 54 has been amended with effect from the AY 2015-16. Under the amended version, ***the assessee can purchase only one residential house in India*** to get the benefit of exemption. Thus, the judgments given in the cases like *'[CIT Vs D.Ananda Basappa] [2009] [180 Taxman 4] [Karnataka]' had been nullified.*

If a person purchases / constructs more than one residential house, investment in only one house would be considered for the purpose of exemption U/S 54. Likewise, investment in a property outside India will not be eligible for the purposes of claiming exemption U/S 54. Thus, the judgments given in the cases like *'[Mrs. Prema P. Shah Vs ITO] [2006] [100 ITD 60] [Mumbai]'* had been nullified.

Sec 54EC: Investment limit cannot exceed Rs 50 lakhs [w.e.f Asst Year 2015-16]

Sec 54EC has been amended by inserting Second proviso to Sec 54EC (1) w.e.f AY 2015-16. The amended provisions provide that the investment made by the assessee in the long term specified asset, out of the capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs 50 lakhs.

Sec 54F: One Residential House in India is eligible [W.E.F Asst Year 2015-16]

The following amendments have been made in Sec 54F from the AY 2015-16.

- Only one residential house can be purchased or constructed within the specified time limit.
- The Residential House should be situated in India.

Amendment to Sec 73 w.e.f Asst Year 2015-16: [Companies whose principal business is the business of trading in shares shall not amount to 'Speculative' business.]

Explanation to Sec 73 had been amended so as to provide that purchase and sale of shares of other companies will not be treated as 'Speculative Business' where the principal business of the company is the business of trading in shares.

Amendment to Sec 80CCE: The aggregate limit of Rs 100,000 for the purposes of Sec 80C; 80CCC and 80CCD(1) has been increased to Rs 150,000/-.[W.E.F Asst Year 2015-16]

The monetary limit of Rs 100,000 U/S 80CCE [in respect of aggregate deduction under Sec 80C, 80CCC and 80CCD(1)] has been increased from Rs 100,000/- to Rs 150,000/- with effect from the Asst Year 2015-16.

However, the internal limits are as per the table given under.

Sec 80C	Maximum of Rs 150,000/-
Sec 80CCC	Maximum of Rs 100,000/-
Sec 80CCD(1) [Employee's contribution to New Pension Trust]	10% of GTI for self employed person or Rs 100,000 whichever is less; 10% of salary for salaried employee or Rs 100,000 whichever is less.

A Clarificatory amendment has been added to provide that **a non government employee** can claim deduction U/S 80CCD even if his date of joining is prior to 1st Jan 2004.

Amendment to Sec 80IA(4)(iv): Extension of sunset clause from 31st March 2014 to 31st March 2017 w.r.t Power Units:

Under the existing provisions of section 80-IA(4)*(iv)*, a deduction of profits and gains is allowed to an undertaking which is set-up as follows –

Nature of undertaking	*Commencement of operation*
For the generation and distribution of power	At any time during the period beginning on April 1, 1993 and ending on **March 31, 2014**
Transmission or distribution of power by laying a network of new transmission or distribution lines	At any time during the period beginning on April 1, 1999 and ending on **March 31, 2014**
Substantial renovation and modernization of existing network of transmission or distribution lines	At any time during the period beginning on April 1, 2004 and ending on **March 31, 2014**

The aforesaid provisions have been amended to extend the terminal date up to March 31, 2017.

Amendment to Sec 92B dealing with 'International Transaction' w.e.f Asst Year 2015-16.

Post amendment, Sec 92B (2) provides that transactions between an enterprise and another person (who is not an associated enterprise) are deemed as ~~transactions~~ *International Transactions [Fin (No.2) Act, 2014 w.e.f Asst Year 2015-16]* entered into between two associated enterprises if either of the following exists

- There is a prior agreement in relation to the RELEVANT TRANSACTION between **such other person** and **the associated enterprise; or**
- The terms of the relevant transaction are determined **in substance between such other person and the associated enterprise**

where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not. [Fin (No.2) Act w.e.f Asst Year 2015-16] [i.e By adding these wordings, it is clarified that the other enterprise need not be non-resident in order to constitute the International Transaction.]

Insertion of 3rd Proviso to Sec 92C(2) w.e.f Asst Year 2015-16:

Where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April 2014, shall be computed in such manner as may be prescribed and accordingly the first and second provisos to Sec 92C(2) shall not apply.

[i.e Now the ALP shall be determined in such manner as may be specified rather than by taking the Arithmetical Mean of those multiple prices; And also it is provided that permissible deviation will not be allowed.]

Sec 92CC(9A): Roll Back provision in Advance Pricing Agreement (APA) Scheme up to 4 years preceding the first of the previous years for which the APA was entered into: [w.e.f 1st Oct 2014]

The agreement referred to in Sec 92CC (1)[i.e APA], may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the ALP or specify the manner in which ALP shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in 92CC(4), and the ALP of such international transaction shall be determined in accordance with the said agreement. **[Fin (No.2) Act, 2014 w.e.f 1st Oct 2014]**

Sec 111A: The concessional tax rate of 15% is extended to 'Units of a Business Trust' [w.e.f Asst Year 2015-16]: The concessional rate of tax of 15% in the case of short term capital gains shall also apply to the transfer of a unit of a business trust as it applies in case of a unit of an equity oriented fund. Provisions of Sec 111A shall not apply in respect of any income arising from transfer of units of a business trust which were acquired by the assessee in consideration of a transfer referred to in Sec 47(xvii).

[i.e Where the units of Business Trust have been acquired in exchange of shares in a SPV as referred to in Sec 47(xvii), then this concessional rate of 15% is not applicable. On the other hand, if an investor who purchased units of a Business Trust is selling later, and if other conditions of Sec 111A are satisfied, then such transaction is taxable at a concessional tax rate of 15% assuming that it is a short term capital asset.]

Sec 112: Amendment relating to Transfer of Units of Debt Oriented Mutual Funds [w.e.f AY 2015-16 for transfers those took place after 10th July 2014]

Under the existing provisions, long term capital gains are taxable at the rate of 20% (+SC+EC+SHEC). However, a concessional rate of 10% (+SC+EC+SHEC) is applicable in a few cases if the long term capital gain is calculated without taking into consideration the benefit of indexation. The concessional rate is **presently** available in the following cases.

i Listed Securities (i.e Shares, Bonds, Debentures, Govt Securities **which are listed**);
ii Units of UTI or a Mutual Fund (Listed or Not);
iii Zero Coupon Bonds.

If transfer takes place after 10th July 2014, the above concessional rate of **10% will not be** available in the case of **long term capital gains which arises on transfer of units.** As long term capital gains on transfer of units of equity oriented mutual fund is exempt U/S 10(38) (if securities transaction tax is applicable) the amendment will increase the tax liability only in the case of long term capital gains on transfer of units of debt oriented mutual fund.

Amendment to Sec 115A read with Sec 194LBA: Interest payable by a Business Trust to the non-resident non corporate assesses or foreign companies shall attract tax @ 5% (Plus Surcharge + EC + SHEC) [W.E.F A.Y 2015-16]

Sec 115A has been amended w.e.f A.Y 2015-16. A new sub clause (iiac) has been inserted in clause (a) of sub section (1) so as to provide that interest referred to in Sec 194LBA(2) will be taxable @ 5% (plus Surcharge + EC + SHEC).

Sec 194LBA(2) covers interest payable by a business trust to the unit holders (being a Foreign Company or Non-Resident Non Corporate assesses.)

Amendment to Sec 115BBC dealing with 'Anonymous Donations' w.e.f A Y 2015-16:

Anonymous Donations are taxable at the rate of 30% plus (SC if applicable +EC+SHEC)U/S 115BBC in case of certain assesses. However, the rate of 30% is applicable only in respect of anonymous donations in excess of 5% of total donations or Rs 1 lakh whichever is higher. Total income of these assesses (after deducting anonymous donations) is taxable at the regular rate or applicable rate. These provisions have been amended w.e.f 1st April 2015. After the amendment, the regular rate / applicable rate will apply on Total income (after deducting that portion of anonymous donations which is subjected to 30% tax rate.)

Amendment to Sec 115BBD w.e.f A Y 2015-16:

The concessional tax rate of 15% is applicable with regard to dividends received by Indian company from a specified foreign company. The sunset clause of receiving dividend up to AY 2014-15 had been omitted.

Sec 115JC: New Procedure for calculating 'Adjusted Total Income' for the purposes of AMT: [W.E.F AY 2015-16] [Discussed in Tax Rates.]

Table indicating the manner of calculating AMT:

Total Income (i.e Income from all heads)	xxx
Add: Deductions under Chapter VI-A falling under the heading "C" except 80-P [i.e From 80-H to 80-TT other than 80-P]	xxx
Add: Deduction claimed as per Sec 10AA	xxx
Add: *Deduction claimed U/S 35AD* **[Fin (No.2) Act, 2014]**	xxx
Less: *Depreciation allowable on assets on which deduction is claimed U/S 35AD*	xxx
Adjusted Total Income	**xxx**

Sec 115JEE: AMT provisions have been extended to the assesses claiming deduction U/S 35AD also. Also, it is provided that AMT Credit shall be calculated in accordance with the provisions given in Sec 115JD. [W.E.F AY 2015-16] [Discussed in Tax Rates.]

Sec 115-O: Grossing Up Provisions have been introduced for Dividend Distribution Tax w.e.f 1st Oct 2014. [Discussed in Tax Rates.]

Sec 115-R: Grossing Up Provisions have been introduced for Income Distribution Tax w.e.f 1st Oct 2014. Furnishing of Form 63 and 63A had been done away with W.E.F AY 2015-16. [Discussed in Tax Rates.]

Sec 115-TA: Furnishing of Form No 63AA had been done away with in the case of 'Securitization Trusts' w.e.f AY 2015-16.

Sec 115-UA: Scheme of taxation of Business Trusts is introduced W.E.F AY 2015-16:

Sec 115UA(1): Notwithstanding anything contained to the contrary in any other provisions of this Act, any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holders as it had been received by, or accrued to, the business trust.

Sec 115UA(2): Subject to the provisions of Sec 111A and Sec 112, the total income of a business trust shall be charged to tax at the Maximum Marginal Rate. [i.e 30% + Surcharge + E.C + SHEC.]

Sec 115UA(3): If in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in Sec 10(23FC), then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year. [Sec 10(23FC) covers income received by a business trust by way of interest from a Special Purpose Vehicle. As this interest income is exempt in the hands of the Business Trust, it is taxable in the hands of the investors.]

Sec 115UA(4): Any person responsible for making payment of the income distributed on behalf of a business trust to a unit holder shall furnish a statement to the unit holder and the prescribed authority, within such time and in such form and manner as may be prescribed, giving the details of the nature of the income paid during the previous year and such other details as may be prescribed.

Sec 119(2): The Board's power to issue special / general orders had been extended to the cases covered U/S 234E also. **[W.E.F 1st Oct 2014]**

Amendment made by the Fin (No.2) Act, 2014 with regard to Survey U/S 133A w.e.f 1st Oct 2014:

Sec 133A(3)(ia)(b): Power to impound books has been extended from 10 working days to 15 working days. Also, power to grant approval for retaining beyond the aforesaid period is given to CIT / DIT also.

Powers U/S 133A(3)(ia)(b) up to 30th Sep 2014	*Powers U/S 133A(3)(ia)(b) after 30th Sep 2014*
An income tax authority shall not retain in his custody any such books of account or other documents for a period **exceeding 10 working days without obtaining the approval of CCIT / DGIT.**	An income tax authority shall not retain in his custody any such books of account or other documents for a period **exceeding 15 working days without obtaining the approval of CCIT / Principal CCIT / DGIT / Principal DGIT / CIT / Principal CIT / DIT / Principal DIT.**

Sec 133A (2A): Extension of survey provisions w.r.t TDS / TCS matters: [W.E.F 1st Oct 2014]

However, he does not have any power to impound books of account / documents nor he has any power to make inventory of any cash, stock or other valuable article / thing checked or verified by him.

Sub section (2A) had been inserted in Sec 133A (with effect from 1st Oct 2014.)

U/S 133A(2A) an income tax authority may for the purposes of verifying that the tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or any such place in respect of which he is authorized for the purposes of this section by such income tax authority who is assigned the area within which such place is situated where books of account or documents are kept. The IT authority may for this purpose enter an office, or a place where business or profession is carried **on after sunrise and before sunset.** Further, such income tax authority may require the deductor or collector or any other person who may at the time and place of survey be attending to such work, -

i To afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

ii To furnish such information as he may require in relation to such matter.

It is also provided that an income tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceedings under the Act. ***However, while acting U/S 133A(2A), he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable articles.***

Insertion of Sec 133C w.e.f 1st Oct 2014: *With a view to enable prescribed income tax authority to **verify the information** in its possession relating to any person, Sec 133C has been inserted w.e.f 1st Oct, 2014. It provides that the prescribed income tax authority, may for the purpose of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents (verified in the manner specified therein), which may be useful for, or relevant to, any inquiry or proceedings under the Act. [Prescribed IT Authority = Principal DGIT / DGIT / Principal DIT / DIT] [Notification 48/2014 dated 30th Sep 2014.]*

Amendment to Sec 139(4C) w.e.f Asst Year 2015-16 [Now Mutual Funds; Securitization Trusts; VCCs and VCFs are required to file return if their total income before exemption U/S 10 exceeds the first slab of income.

The following have been added in Sec 139(4C) and hence they need to file return of income where the taxable income without giving effect to the provisions of Sec 10 exceeds the maximum amount which is not chargeable to tax.

i. *Mutual Fund referred to in Sec 10(23D) of the IT Act, 1961; [Fin (No. 2) Act, 2014]*
ii. *Securitization Trust referred to in Sec 10(23DA) of the IT Act, 1961; [Fin (No. 2) Act, 2014]*
iii. *Venture Capital Company / Venture Capital Fund referred to in Sec 10(23FB). [Fin (No. 2) Act, 2014]*

Insertion of Sec 139(4E) w.e.f Asst Year 2015-16: Business Trusts are always required to file return irrespective of their income.

Sec 139(4E): Every Business Trust, which is not required to furnish return of income / loss under any other provisions of Sec 139, shall furnish the return of its income in respect of its income / loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished U/S 139(1). [Fin No (2) Act, 2014]

Sec 140 is amended w.e.f 1st Oct 2014: Prior to amendment of Sec 140, *'Signing and Verification' of return was required.* Sec 140 is so amended to omit the word 'Signing' and hence, only the condition of verifying of income tax return will apply.

Substituted version of Sec 142A [w.e.f 1st Oct 2014]

The newly substituted Section 142A provides that the AO may, for the purposes of assessment or re-assessment, require the assistance of a valuation officer **to estimate the value, including fair market value, of any asset, property or investment** and submit the report to him. [i.e As per the newly substituted Sec 142A, reference can also be made in other cases other than covered in Sec 69/69A/69B.] [Thus, the judgment given in '**[CIT Vs Behari Cold Storage (P) Ltd] [2013] [31 Taxmann.com 75]' had been nullified.**

The AO may make a reference **whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.** [i.e As per the newly substituted sec 142A, rejection of books is not mandatory before invoking the provisions of Sec 142A.][Thus, the judgments given in **[CIT Vs Raghuraji Agro Industries (P) Ltd] [2013] [38 Taxmann.com 318] [Sargam Cinema Vs CIT] [2010] [328 ITR 513][SC]** had been nullified.

Sec 145: The word 'Accounting Standards' had been substituted by ***'Income Computation and Disclosure Standards.'*** **[w.e.f Asst Year 2015-16]**

Sec 153 and Sec 153B have been amended w.e.f 1st Oct 2014 to exclude the time taken by the Valuation Officer while counting the period of limitation:

The period commencing from the date on which the AO makes a reference to the Valuation Officer U/S 142A(1) and ending with the date on which the report of the valuation officer is received by the Assessing Officer.

Amendment to Sec 153C (1) w.e.f 1st Oct 2014:

Where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisition belongs to person other than the person referred to in Sec 153A, then the seized or requisitioned records and assets shall be handed over to the AO having jurisdiction over such other person.

Provisions applicable up to 30th Sep 2014	**Provisions applicable from 1st Oct 2014**
Thereafter, such AO shall proceed against each such other person and issue notice to each such other person and assess or reassess his income in accordance with provisions of Sec 153A.	*Thereafter, such AO shall proceed to against each such other person and issue notice to each such other person and assess or reassess his income in accordance with the provisions of Sec 153A, if, that AO is satisfied that the books of account or documents or assets seized or requisitioned* ***have a bearing on the determination of the total income of such other person*** *for the relevant assessment year or years referred to in Sec 153A(1).*

Sec 194A(3)(xi): Interest payable by a SPV to a Business Trust: [w.e.f 1st Oct 2014]:

A new clause (xi) has been inserted in Sec 194A(3) w.e.f 1st Oct 2014 ***so as to exempt from*** *deduction of tax at source, the interest income payable by a special purpose vehicle to a business trust as referred to in Sec 10(23FC).*

Insertion of Sec 194DA: Sums received under a taxable insurance policy [i.e other than those exempted U/S 10(10D)] are liable for TDS @ 2% at the time of payment.] [w.e.f 1st Oct 2014]:

Sec 194DA has been inserted w.e.f 1st Oct 2014. It provides that any person responsible for paying to a resident any sum under a life insurance policy (including bonus) shall deduct income tax thereon @ 2% at the time of payment. However, no TDS is required if the amount payable during the financial year is less than Rs 100,000/-.

Sec 194LBA: TDS from income from units of Business Trust [Fin (No.2) Act, 2014 w.e.f 1st Oct 2014]: Sec 194LBA has been inserted w.e.f 1st Oct 2014. Provisions of this section are given below.

Time of deduction: Tax Deduction is applicable if a business trust distributes any income referred to in Sec 115UA [being the nature referred to in Sec 10(23FC)] to its unit holder. Tax is deductible at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, **whichever is earlier.**

Rate: If the recipient unit holder is resident in India, tax is deductible at the rate of 10%. Conversely, if the recipient unit holder is a non-resident or a foreign company, tax is deductible at the rate of 5%. If the recipient does not have PAN, tax is deductible at the rate of 20%.

Sec 194LC: The beneficial provisions of Sec 194LC have been extended to 'Payers being Business Trusts.' Also, 'Long Term Bonds' are also notified under this clause [w.e.f 1st Oct 2014];

Section 194LC has been inserted with effect from July 1, 2012.

Who is responsible for tax deduction?

Specified Company (i.e, an Indian company) / **w.e.f 1st Oct 2014 'Business Trust'** is responsible for tax deduction U/S 194LC in respect of interest paid or payable to a non-resident / foreign company. This section is applicable if interest is paid or payable at **approved rate**. Interest should pertain to money borrowed (during July 1, 2012 June 30, 2015) in foreign currency from a source outside India –

a. Under a loan agreement (at any time on or after July 1,2012 but before July 1,2017); Or

b. By way of issue of ***long-term infrastructure bonds*** (at any time on or after July 1,2012 but before October 1,2014); Or

c. ***By way of issue of Long Term Bonds including Long Term Infrastructure Bonds (at any time on or after 1st Oct 2014 but before 1st July 2017).***

as **approved** by the Central Government.

Time of deduction: Tax shall be deducted at the time of payment or at the time of giving credit to the other party, whichever is earlier.

Rate of tax deduction*:*

Tax is deductible at the rate of 5 per cent of interest. Surcharge and Relevant Education Cess are also applicable.

Even if the recipient does not furnish his PAN to the deductor, tax will be deducted at the rate of 5% per cent only. **[Fin Act, 2013]; As Long Term Bonds are also eligible for this concessional tax rate, the word 'Infrastructure' had been omitted in Sec 206AA w.e.f 1st Oct 2014.**

Amendment made by the Fin (No.2) Act, 2014 w.e.f 1st Oct 2014 in Sec 200 and Sec 200A:

Correction statement for rectification in quarterly TDS returns and Processing the same [Sec 200 and 200A]

Currently, a deductor is allowed to file correction statement for rectification / updation of the information furnished in the original TDS statement as per the centralized processing of statements of tax Deducted at source scheme, 2013 notified vide Notification No.03/2013,dated January 15,2013. There is however, no express provision in the Act for enabling a deductor to file correction statement.

In order to bring clarity in the matter relating to filing of correction statement, Section 200 has been amended to allow a deductor to file correction statements. Consequently, Section 200A is also amended for enabling processing of correction statement so filed.

Amendment to Sec 201(3) w.e.f 1st Oct 2014:

This sub section provides for the time limit for passing an order U/S 201(1) by the AO treating the assessee as 'Assessee in Default' w.r.t failures to deduct the whole or part of the tax in relation to ***resident deductees.***

Such order can be passed only within

- ~~Two years from the end of the financial year in which the quarterly return has been filed where quarterly return is filed~~ **[This is deleted w.e.f 1st Oct 2014]**
- **Six** years **[W.E.F 1st Oct 2014 onwards to be read as 7 Years]** from end of the financial year in which payment is made or credit is given. ~~in any other case.~~

Amendment of Sec 220: Introduction of Sub Section (1A) in Sec 220 and 2nd Proviso to Sec 220(2) w.e.f 1st Oct 2014:

Sec 220(1A): *"Where any notice of demand has been served upon an assessee and any appeal or other proceedings, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in Section 3 of Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964."*

Thus, the judgment given by the Apex Court in 'Vikrant Tyres Ltd Vs 1st ITO' [2001] [115 Taxman 202] had been nullified.

2nd proviso to Sec 220(2): *"Provided further that where as a result of an order under sections specified in the 1st proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under such sections or Sec 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest U/S 220(2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to Sec 220(1) and ending with the day on which the amount is paid." [i.e. The amount of demand is decreased in the first instance under any of the sections viz Sec 154; 155; 250; 254; 260; 262; 264 or 245D(4); And at a later point of time, on account of any order passed under those sections or U/S 263, the amount of demand and consequently the interest U/S 220 is increased, such interest shall be paid for the following period. [Start Date = The date commencing after the permitted time in notice of demand mentioned in Sec 156; End Date = Date of payment of the demanded sum.]*

Example clarifying the impact of Sec 220(1A)

Stages	Particulars of the events
Stage # 1	Self Asst Tax of Rs 3 lakhs was paid;
Stage # 2	Scrutiny Assessment: Additional Tax Liability of Rs 3 lakhs was raised;
Stage # 3	Assessee goes in appeal but paid extra tax of Rs 3 lakhs on 30th June 2013;
Stage # 4	CIT(A) deleted the addition and the department refunded Rs 3 lakhs (on 1st March 2014) but went in appeal to ITAT and later on to the High Court;
Stage # 5	H.C restores the order of the AO on 1st June 2015, department now wants tax of Rs 3 lakhs and interest for the period: 1st March 2014 to 1st June 2015.

Legal Position Prior to the 'Amendment': The assessee can take the shelter of the Apex Court's judgment in 'Vikrant Tyres' supra and interest for the period commencing from 1st March 2014 to 1st June 2015 need not be paid.
Legal Position Post Amendment: The assessee will have to pay interest for the period commencing from 1st Oct 2014 and ending 1st June 2015. [He should pay interest from 1st March 2014 to 1st June 2015 and as the amendment is w.e.f 1st Oct 2014, the period is reckoned from 1st Oct 2014 to 1st June 2015.]

Sec 245A: Amendment to the provisions of Settlement of Cases [W.E.F 1st Oct 2014]

Post amendment one can approach the Settlement Commission even in *'Income Escaping Assessment Cases'* as well as *'Proceedings for making a fresh assessment in pursuance of orders U/S 254 or U/S 263 or U/S 264'*.]

Analysis and Background:

An assessee can make an application to the Settlement Commission at any stage of a **'Case'** relating to him at any time **on or after the first day of the assessment year but before the date of making assessment.**

Meaning of 'Case': A 'Case' means any proceeding for assessment under the Act in respect of any assessment year which may be pending before the AO on the date on which an application U/S 245C(1) is made. Currently, in all pending cases (except the following) one can have recourse to the Settlement Commission –

Not to be taken as pending proceeding and, consequently, settlement is not possible in the cases given below-	Date of commencement of proceedings given in column 1 (i.e on or after the dates given below settlement application cannot be filed) -
Income escaping assessment: A proceeding for assessment or reassessment or re-computation U/S 147.	From the date on which a notice U/S 148 is issued.
Fresh assessment: A proceeding for making fresh assessment in pursuance of an order U/S 254 or section 263 or section 264, setting aside or cancelling as assessment.	From the date on which order U/S 254 or 263 or 264, setting aside or cancelling the assessment was passed.

In the above cases, settlement is not possible.

Amendment – The definition of "case" under section 245A(b) has been amended with effect from October 1,2014.On or after October 1,2014,one can have recourse to the 'Settlement Commission' for settlement in all pending cases (including the two cases given above).

Parallel amendment is made in the Wealth Tax Act, 1957 also w.e.f 1st Oct 2014 by amending Sec 22A.

Amendment to Sec 245N dealing with 'Advance rulings': [w.e.f 1st Oct 2014]

w.e.f 1st Oct 2014, 'A resident applicant falling within any such class or category of persons as the central government may, by notification in the official gazette, specify' can also approach the AAR for 'determination by the authority in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant.

Authority for advance rulings [Sec 245-O] [w.e.f 1st Oct 2014]

Section 245-O has been amended with effect from October 1,2014. The amended provisions are given below –

Sec 245-O(1): The Central Government shall constitute an Authority for Giving Advance Rulings, to be known as **'Authority for Advance Rulings.'**

Sec 245-O(2): The Authority shall consist of a chairman and such number of Vice-chairmen, Revenue Members and Law Members as the central Government may by notifications appoint.

Sec 245-O(3): A person shall be qualified for appointment as-

Chairman	Who has been a judge of the Supreme Court;
Vice – chairman	Who has been a judge of the High Court;
Revenue Member	From the Indian Revenue service, who is a Principal CCIT; Principal DGIT; CCIT / DGIT;
Law Member	From the Indian legal service, Who is an additional secretary to the Government of India.

Sec 245-O(4): The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

Sec 245-O(5): The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act.

Sec 245-O(6): The powers and functions of the Authority may be discharged by its Benches as may be constituted by the chairman from amongst the Members thereof.

Sec 245-O(7): A Bench shall consist of the chairman or the Vice-chairman and one revenue Member and one law Member.

Sec 245-O(8): The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the central Government may, by notification specify.

Amendment to Sec 269SS and 269T w.e.f AY 2015-16: The amended version provides that any acceptance or repayment of any loan or deposit by use of ***'Electronic Clearing System through a Bank Account'*** shall not be prohibited under the said sections if the other conditions regarding the quantum etc. are satisfied.

Insertion of Sec 271FAA w.e.f A Y 2015-16: Rs 50,000 penalty for inaccurate information in the 'Statement of Financial Transaction or Reportable Account filed U/S 285BA':

271FAA. *If a person referred to in clause (*k*) of sub-section (1) of section 285BA, who is required to furnish a statement under that section, provides inaccurate information in the statement, and where—*

(*a*) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section (7) of section 285BA or **is deliberate on the part of that person**; or

(*b*) the person **knows** of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, **but does not inform** the prescribed income-tax authority or such other authority or agency; or

(*c*) the person **discovers the inaccuracy** after the statement of financial transaction or reportable account is furnished and **fails to inform** and furnish correct information within the time specified under sub-section (6) of section 285BA,

then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

Sec 271G: Now TPO is also authorized to levy penalty U/S 271G for failure to furnish information or documents as required U/S 92D(3). [w.e.f 1st Oct 2014] [92D deals with TP / SDT documents.] [Earlier this power was vested only with AO and CIT(A)]

Sec 271H: Now AO is the specified authority to levy penalty U/S 271H w.e.f 1st Oct 2014.
Earlier the law is silent regarding the authority who can levy penalty for failure to deliver / cause to be delivered E-TDS returns U/S 200(3) within time; for failure deliver / cause to be delivered a statement as per the proviso to 206C(3) [i.e E-TCS Returns] within the time; or For furnishing incorrect information with regard to the above two.

Sec 276D: The existing provisions of Section 276D provide that if a person willfully fails to produce accounts and documents as required in any notice issued U/S 142(1) or willfully fails to comply with a direction issued to him U/S 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than Rs. 4 or more than Rs. 10 for every day during which the default continues, or with both.

The above provisions have been amended **w.e.f 1st October, 2014**, so as to provide that if a person willfully fails to produce accounts and documents as stated above or willfully fails to comply with the direction given above, he shall be punishable with rigorous imprisonment for a term which may **extend to one year and with fine (Quantum of fine has not been specified).**

Provisional attachment U/S 281B: The existing provisions of Section 281B(1) provide that the AO, during the pendency of any proceeding for assessment or reassessment, in order to protect the interest of the revenue may attach provisionally any property belonging to the assessee in the manner provided in the second schedule. **Sub section (2) provides that the provisional attachment shall cease to have effect after the expiry of six months from the date of attachment order.**

However, this limit can be extended by the CCIT / Principal CCIT, DGIT / Principal DGIT, CIT / Principal CIT, DIT / Principal DIT (total period of extension cannot exceed two years).

Amendment: Sub section 2 has been amended w.e.f. 1st October, 2014. The amended version provides that CCIT / Principal CCIT, DGIT / Principal DGIT, CIT / Principal CIT, DIT / Principal DIT **may extend the period of provisional attachment so that the total period of extension does not exceed two years or up to sixty days after the date of assessment or reassessment, whichever is later.** In view of this, the second and third proviso to section 281B(2) have been omitted.

Sec 285BA: The following section 285BA shall be substituted for the existing Section 285BA by the Finance (No. 2) Act, 2014 w.e.f 1st April 2015.

Sec 285BA: Obligation to furnish statement of financial transaction or reportable account:

Sec 285BA(1): Any person, being—

(a) An Assessee; Or
(b) The prescribed person in the case of an office of Government; Or
(c) A local authority or other public body or association; Or
(d) The Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); Or
(e) The registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); Or
(f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); Or
(g) the Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); Or
(h) The recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); Or
(i) An officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); Or
(j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); Or
(k) a prescribed reporting financial institution,

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed under any law for the time being in force, shall furnish a statement in respect of such specified financial transaction or such reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act, to the income-tax authority or such other authority or agency as may be prescribed.

Sec 285BA(2): The statement referred to in sub-section (1) shall be furnished for such period, within such time and in the form and manner, as may be prescribed.

Sec 285BA(3): For the purposes of sub-section (1), "specified financial transaction" means any—

(a) Transaction of purchase, sale or exchange of goods or property or right or interest in a property; Or
(b) Transaction for rendering any service; Or
(c) Transaction under a works contract; Or
(d) Transaction by way of an investment made or an expenditure incurred; or
(e) Transaction for taking or accepting any loan or deposit,

which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction:

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed **shall not be less than fifty thousand rupees.**

Sec 285BA(4): Where the prescribed income-tax authority considers that the statement furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said income-tax authority may, in his discretion, allow; **and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed,** then, notwithstanding anything contained in any other provision of this Act, such statement shall be treated **as an invalid statement** and the provisions of this Act shall apply as if such person had failed to furnish the statement.

Sec 285BA(5): Where a person who is required to furnish a statement under sub-section (1) has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding thirty days from the date of service of such notice and he shall furnish the statement within the time specified in the notice.

Sec 285BA(6): If any person, having furnished a statement under sub-section (1), or in pursuance of a notice issued under sub-section (5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall within a period of **ten days** inform the income-tax authority or other authority or agency referred to in sub-section (1), the inaccuracy in such statement and furnish the correct information in such manner as may be prescribed.

Sec 285BA(7): The Central Government may, by rules made under this section, specify—

(a) The persons referred to in sub-section (1) to be registered with the prescribed income-tax authority;
(b) The nature of information and the manner in which such information shall be maintained by the persons referred to in clause (a); and
(c) The due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in sub-section (1).

End of the Amendments in Direct Tax Laws made by the Fin (No.2) Act, 2014

Schedule for the Up coming Batches for CA Final Direct Tax Laws and Indirect Tax Laws

At Vidyanagar	At Ameerpet
DT for CA Final May & Nov 2016 **25th Nov 2015 to 25th Jan 2016** **Morning : 6.00 AM to 9.15 AM** **IDT for CA Final May & Nov 2016** **1st Feb 2016 to 20th March 2016** **Morning : 6.00 AM to 9.15 AM**	**DT for CA Final May & Nov 2016** **20th January 2016 to 20th March 2016** **Evening: 6.00 PM to 9.15 PM**
Venue for Vidyanagar Class Room No. 14, First Floor, Hindi Mahavidyalaya. O.U. Road, Vidya Nagar, Adj. Durgabhai Deshmikh Hospital (Andhra Mahila Sabha Hospital); Hyd - 500 044	**Venue for Ameerpet** Ground Floor, Sreemedha Campus, Building adjacent to Vasan Eye Care Hospital, Lane Opp: R.S.Brothers, Ameerpet, Hyderabad.

Contact: Rajendra Prasad: 9849 579 413; 9963 250 500
(Think Taxes – Think RP Sir)
Email id: askrpsir@gmail.com;
For Latest Updates visit us at 'www.rpdynamic.blogspot.com' **Or**
Join us in Facebook on 'www.facebook.com/rajendraprasad.talluri'

The provisions of Direct and Indirect Tax Laws, as amended by the Finance (No.2) Act, 2014, including notifications and circulars issued up to 30th April 2015, are applicable for Nov 2015 examination. The Relevant A Y is AY 2015-16.
The Wealth Tax Act, 1957 and the Rules thereunder are not applicable for Nov 2015 examination.

Significant Notifications and Ciruclars issued between 1st May 2014 and 30th April 2015:

Notifications

Notification 31/2014: CII for the F Y 2014-15 = 1024

Notification G.S.R 588(E), dated 13th Aug 2014: Annual ceiling limit for deposit in PPF A/C has been increased from Rs 1 lakh to Rs 1.50 lakhs;

Notification 43/2014: The following Renewable Energy Devices would be eligible for depreciation @ 80% from the A.Y 2015-16, if they are installed on or after 1st April 2014 –

- Windmills and Any Specially Designed Devices which run on windmills;
- Any Special Devices including Electric Generators and pumps running on Wind Energy.

Notification 73/2014: Class of Resident Applicants who can approach the AAR.

'A resident, in relation to his tax liability arising out of one or more transactions valuing Rs 100 Crores or more in total which has been undertaken or proposed to be undertaken, being such class of persons, as the applicants for the purposes of chapter XIX-B of the IT Act, 1961.'

Notifications 75/2014 and 76/2014: CIT (Exemptions) is the Prescribed Authority for the purposes of Sec 10(23C)(iv) / (v) / (vi) / (via) [w.e.f 15th Nov 2014]

Sec 10(23C)(iv) & (v) = Fund or Institution established for charitable purposes etc,.

Sec 10(23C)(vi) and (via) = University / Educational Institution, existing solely for educational purposes and not for the purposes of profit and Hospital / Other Institution, existing solely for philanthropic purposes and not for profit motive.

Notification 79/2014: Percentage of Government Grant for determining whether a university / other educational institution, hospital or other institution referred U/S 10(23C)(iiiab) / (iiiac) is substantially financed by the government is prescribed.

University / Other Educational Institution referred U/S 10(23C)(iiiab) and Hospital / Other Institution referred U/S 10(23C)(iiiac) shall be considered as being substantially financed by the government for any previous year, if the Government Grant to such University or Other Educational Institution, Hospital etc,. exceeds 50% of the total receipts including voluntary contributions of such university etc during the relevant previous year.

Notification 9/2015: Deposit in 'Sukanya Samriddhi Account' eligible for deduction U/S 80C(2)(viii).

Notification 11/2015: Safe Harbour Rules notified for SDTs in respect of a Government Company engaged in the business of Generation, Transmission or Distribution of Electricity. [New Rules 10 TH, 10THA, 10THB, 10THC, 10THD were notified.]

- **Eligible Assessee: Government company engaged in the business of Generation, Transmission or Distribution of Electricity;**

- **Eligible Transaction: It is an SDT which comprises of:**
  - **Supply of electricity by a Generating Company; Or**
  - **Transmission of Electricity; Or**
  - **Wheeling of Electricity.**

- **Circumstance when the transaction is deemed to be at Arm's Length Price: [i.e Meaning of Safe Harbour]**
  Where the Tariff in respect of
  - **Supply of Electricity,**
  - **Transmission of Electricity,**
  - **Wheeling of Electricity, as the case may be**

  is determined by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003. [Appropriate Commission = Central Regulatory Commission / State Regulatory Commission / Joint Commission]

Notification 23/2015 dated 14th March 2015: Rules for Roll Back of an APA (Intl Transactions) notified.

Rules 10H and 10-I were also amended. Post amendment, 'Pre Filing Consultation' became optional before entering into APA.

Conditions for applying Roll Back Provisions [Rule 10MA]

- **The Intl Transaction is same as the Intl Transaction to which the agreement (Other than the Roll back provision) applies;**
- **Return for the relevant Roll Back Year is filed on or before the due date given U/S 139(1);**
- **The Audit Report in respect of the Intl Transaction had been furnished in accordance with Sec 92E;**
- **The applicability of roll back provision, in respect of an international transaction, has been requested by the applicant for <u>All the Roll Back Years</u> in which the said international transaction has been undertaken by the applicant; and**
- **The Applicant has made an application seeking Roll Back in Form No 3CEDA in accordance with Rule 10MA(5).**

Non Applicability of Roll Back Provisions: Roll Back Provision shall not be provided in respect of an international transaction for a Roll Back Year, if, -

- **The determination of ALP of the said Intl Transaction for the said year has been the subject matter of an appeal before the ITAT and the ITAT has passed an order disposing of such appeal <u>at any time before signing of the agreement;</u> Or**
- **The application of Roll back provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of the said year.**

Circulars

Circular 10/2014 dated 16th May 2014: Transfer of O&M of the SEZ by the developer of the SEZ – Computation of deduction U/S 80-IA:

Where the developer of SEZ / developer of an Industrial Park / Developer of Infrastructure facility transfers the **operation and maintenance** of the SEZ / Industrial park / Infrastructure Facility, **the transferee can claim deduction** in respect of the balance period. Further, it may be noted that the transferee can claim for the balance period **only if the transfer is not by way of amalgamation / demerger as there is a restriction in relation to amalgamation and demerger in relation to Sec 80-IA undertakings.**

Circular 13/2014 dated 28th July 2014:

Whether pass through effect is given to the AIFs being non-charitable trusts where the investors name and beneficial interest are not explicitly known on the date of its creation: [Circular 13/2014 dated 28th July 2014]

It may be noted that the AIFs, being VCFs making investment in the VCUs have been accorded 'Tax Pass Through' status U/S 10(23FB) read with Sec 115U of the IT Act, 1961 (whereby income arising in the hands of such fund would be treated as tax-exempt), while investors of such funds would become liable to tax liability as if investors have made the investments directly in the VCU.

In this context, clarification has been sought about the tax treatment in cases of AIFs being non-charitable trusts where the investors name and beneficial interest are not explicitly known on the date of its creation – such information becoming available only when the funds starts accepting contributions from the investors. The Board has been requested to clarify whether the income of such funds would be taxable in the hands of the Trustees of the AIF in the capacity of a 'Representative Assessee' or in the hands of the investors (i.e contributors of funds). The clarifications given by the Board are as under. **[Para No 4 and 5 of the circular 13/2014]**

In the situations where the trust deed either **does not name the investor or does not specify their beneficial interests,** provisions of Sec 164(1) would come into play and the entire income of the fund shall become liable to be taxed at the Maximum Marginal Rate in the hands of the trustees of such AIFs in their capacity as 'Representative Assessee.' In such cases the provisions of Sec 166 need not be invoked in the hands of the investor, as corresponding income has already been taxed in the hands of the 'Representative Assessee' as per Sec 164(1). **[i.e Trustees are liable U/S 164(1)]**

However, in the cases of funds **where names of the beneficiaries and their interests in the Fund are determined i.e stated in the trust deed,** the tax on whole of the income of the fund i.e consisting of or including profits and gains of business would be leviable upon the Trustees of such AIFs, being 'Representative Assessee' at MMR in accordance with Sec 161(1A) of the Act. **[i.e Trustees are liable U/S 161(1A)]**

[Also, it is clarified that the tax treatment given above will not be operative in the area falling in the jurisdiction of a High Court which has taken or takes a contrary decision on the issue.]

Circular 14/2014 dated 8th Oct 2014:

Whether Transfer / Re-deployment of Technical Manpower from Existing Units to a New Unit located in SEZ, in the first year of commencement of business, shall be treated as 'Splitting Up / Reconstruction of an existing business?'
It is clarified vide circular 14/2014 (which superseded the earlier circular 12/2014) that in the following cases it won't amount to ''**Splitting Up / Reconstruction of an existing business':**

Case # 1: Where the number of technical manpower so transferred as at the end of the financial year does not exceed 50% of the 'Total Technical Manpower' actually engaged in development of 'Software / IT Enabled Products' in the new unit.

Case # 2: The net addition of the new technical manpower in all units of the assessee is at least equal to the ~~number that represents~~ 50% of the total technical manpower of the new SEZ.

Circular 15/2014 dated 17th Oct 2014 [Sec 194LC]

Section 194LC has been inserted with effect from July 1, 2012.

Principle # 1: Who is responsible for tax deduction? Specified Company (i.e, an Indian company) / **w.e.f 1st Oct 2014 'Business Trust'** is responsible for tax deduction U/S 194LC in respect of interest paid or payable to a non-resident / foreign company. This section is applicable if interest is paid or payable at **approved rate**. Interest should pertain to money borrowed (during July 1, 2012 and June 30, 2015) in foreign currency from a source outside India –

a. Under a loan agreement (at any time on or after July 1,2012 but before July 1,2017); Or
b. By way of issue of ***long-term infrastructure bonds*** (at any time on or after July 1,2012 but before October 1,2014); Or
c. ***By way of issue of Long Term Bonds including Long Term Infrastructure Bonds (at any time on or after 1st Oct 2014 but before 1st July 2017).***

as **approved** by the Central Government.

Principle # 2: Time of deduction: Tax shall be deducted at the time of payment or at the time of giving credit to the other party, whichever is earlier.

***Principle # 3: Rate of tax deduction**:* Tax is deductible at the rate of 5 per cent of interest. Surcharge and Relevant Education Cess are also applicable.

Even if the recipient does not furnish his PAN to the deductor, tax will be deducted at the rate of 5% per cent only. **[Fin Act, 2013]**

- **Which Loan Agreements / Infrastructure Bonds are eligible for this concessional tax rate?**

The Central Government vide press release dated 21st Sep 2012 had clarified that "Borrowings under a Loan Agreement / By way of Issue of Long Term Infrastructure Bonds" **that comply with ECB [External Commercial Borrowings] regulations as administered by the RBI** would be **automatically** eligible for availing the benefit of this concessional tax regime.

- ***What will happen if the loans / Infra Bonds are not issued as per the ECB regulations?***

In such cases, this concessional tax and TDS regimes are available if **specific approval** is obtained by the issuer.

- **The above section provides that the interest payable shall be at the 'Approved Rate'. In this context what is the 'Approved Rate'?**

Vide circular 7/2012, it is clarified that such approved rate is 'Any Rate of interest **which is within the All-in-Cost Ceilings** specified by the RBI under ECB Regulations.'

Conditions specified with regard to 'Loan Agreement' [Circular 7/2012]	**Conditions specified with regard to 'Issue of Bonds' [Circular 7/2012 read with 15/2014]**
The 'Monies' borrowed under the loan agreement by the Indian company shall be in accordance with 'ECB Regulations' either under the Automatic Route / under Approval Route.	The 'Bonds' issued by the Indian company shall be in accordance with 'ECB Regulations' either under the Automatic Route / under Approval Route.
The Borrowing Company should have obtained a 'Loan Registration Number' issued by RBI.	The Bond Issue should have a 'Loan Registration Number' issued by RBI.
It is further provided that no part of the borrowing should have taken place before 1st July 2012. Also, the agreement **should not be restructuring of an existing agreement for borrowing in foreign currency** solely for the purposes of taking the benefit of reduced TDS rates.	It is provided that the 'Bond' should have a maturity period of 3 years or more. Vide Circular 15/2014 dated 17th Oct 2014 it is clarified that the same conditions are applicable for any **'Long Term Bond including Long Term Infrastructure Bond.' Earlier the section covers only 'LT Infra Bonds' and now 'LT Bonds including LT Infra Bonds' are covered.**

Circular 2/2015 dated 10th Feb 2015:

Interest U/S 234-A is not chargeable on self assessment tax paid before the due date of filing of return of income. [Through this circular, the Apex Court's judgement in 'CIT Vs Prannoy Roy' (2009) (309 ITR 231) has been reiterated.]

Circular 3/2015 dated 12th Feb 2015:

Clarification regarding other sum chargeable U/S 40(a)(i) [Sums payable to Non-Residents etc,.]

Disallowance is attracted only to the extent of the sum chargeable to income tax under this Act but not the total amount for failures to comply with the TDS Provisions with regard to the sums payable to non-resident non corporate assesses or foreign companies.

Circular 4/2015 dated 26th March 2015:

Dividend declared and paid by a foreign company outside India in respect of shares which derive its value substantially from the assets located in India is not deemed to accrue or arise in India even in terms of Explanation 5 to Sec 9(1)(i).

Circular 6/2015 dated 9th April 2015:

It is clarified that Roll over in accordance with the Fixed Maturity Plan guidelines where by the lock in period is extended from 12 months to 36 months to make it long term mutual fund unit is not treated as transfer for the purposes of the Capital Gains Tax.

Circular 7/2015 dated 23rd April 2015:

The benefit of circular 4/2002 has been extended to the institutions covered U/S 10(26BBB). Thus, where a sum is payable to a corporations established by a Central, State or Provincial Act for the welfare and economic up-liftment of ex-servicemen being Indian Citizens, TDS is not required to be done. [It is so because the institutions covered U/S 10(26BBB) satisfy the two conditions of the circular 4/2002 viz (a) The income of the institution U/S 10(26BBB) is unconditionally exempt; (b) Such corporations are statutorily not required to file return of income as per Sec 139 as their income is unconditionally exempt from tax.]

Schedule for the Regular and Special Batches for CA Final Direct Tax Laws and Indirect Tax Laws

At Vidyanagar	At Ameerpet
DT for CA Final May & Nov 2016 **25th Nov 2015 to 25th Jan 2016** **Morning : 6.00 AM to 9.15 AM** **IDT for CA Final May & Nov 2016** **1st Feb 2016 to 20th March 2016** **Morning : 6.00 AM to 9.15 AM**	**DT for CA Final May & Nov 2016** **20th January 2016 to 20th March 2016** **Evening: 6.00 PM to 9.15 PM**
Venue for Vidyanagar Class Room No. 14, First Floor, Hindi Mahavidyalaya. O.U. Road, Vidya Nagar, Adj. Durgabhai Deshmikh Hospital (Andhra Mahila Sabha Hospital); Hyd - 500 044	**Venue for Ameerpet** Ground Floor, Sreemedha Campus, Building adjacent to Vasan Eye Care Hospital, Lane Opp: R.S.Brothers, Ameerpet, Hyderabad.

Contact: Rajendra Prasad: 9849 579 413; 9963 250 500
(Think Taxes – Think RP Sir)
Email id: askrpsir@gmail.com;
For Latest Updates visit us at 'www.rpdynamic.blogspot.com' **Or**
Join us in Facebook on 'www.facebook.com/rajendraprasad.talluri'

The provisions of Direct and Indirect Tax Laws, as amended by the Finance (No.2) Act, 2014, including notifications and circulars issued up to 30th April 2015, are applicable for Nov 2015 examination. The Relevant A Y is AY 2015-16.
The Wealth Tax Act, 1957 and the Rules thereunder are not applicable for Nov 2015 examination.

All the best