INTEGRATED PROFESSIONAL COMPETENCE COURSE (IPCC)

SUPPLEMENTARY STUDY PAPER - 2012

TAXATION

[Covers amendments made by the Finance Act, 2012]

(Relevant for students appearing for May, 2013 and November, 2013 examinations)

BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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A WORD ABOUT SUPPLEMENTARY

Taxation is one of the dynamic subjects of the chartered accountancy course. The level of knowledge prescribed at the IPCC level for the subject is 'working knowledge'. For attaining such a level of knowledge, the students have to be thorough with the basic provisions of the relevant laws and in addition, constantly update their knowledge regarding statutory developments.

The Board of Studies has been instrumental in imparting theoretical education for the students of Chartered Accountancy Course. The distinctive characteristic of the course i.e., distance education, has emphasized the need for bridging the gap between the students and the Institute and for this purpose, the Board of Studies has been providing a variety of educational inputs for the students.

One of the important inputs of the Board relating to IPCC Paper 4: Taxation is the "Supplementary Study Paper". The Supplementary Study Paper is an annual publication containing a discussion of the amendments made by the Annual Finance Act and significant notifications and circulars relating to income-tax and service tax. This publication is very important to the students for updating their knowledge regarding the latest statutory developments in these areas. A lot of emphasis is being placed on these latest amendments in the examination.

The amendments made by the Finance Act, 2012 in income-tax and service tax and important notifications relating to income-tax issued between 1st May, 2011 and 30th April, 2012 have been explained in this Supplementary Study Paper – 2012, which is relevant for students appearing for May 2013 and November 2013 examinations. It may be noted that the notifications and circulars relating to service-tax would be hosted separately at the BOS Knowledge Portal on the Institute's website www.icai.org and would also be published in the students' journal "The Chartered Accountant Student". These notifications and circulars in service tax would also be relevant for the May 2013 and November 2013 examinations. In case you need any further clarification/guidance with regard to this publication, please send your queries relating to income-tax at priya@icai.org or agarwalnidhi@icai.org and queries relating to service tax at shefali.jain@icai.in or swati.bos@icai.org.

Happy Reading and Best Wishes for the forthcoming examinations!

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TAXATION

PART - I : INCOME-TAX

AMENDMENTS BY THE FINANCE ACT, 2012

1. RATES OF TAX

Section 2 of the Finance Act, 2012 read with Part I of the First Schedule to the Finance Act, 2012, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2012-13. Part II lays down the rate at which tax is to be deducted at source during the financial year 2012-13 i.e., A.Y. 2013-14 from income subject to such deduction under the Income-tax Act, 1961; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2012-13 i.e. A.Y.2013-14. Part III of the First Schedule to the Finance Act, 2012 will become Part I of the First Schedule to the Finance Act, 2013 and so on.

Rates for deduction of tax at source for the F.Y.2012-13 from income other than salaries

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source during the financial year 2012-13 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the F.Y.2011-12. However, it has been clarified that the rate of tax deduction at source @ 20% on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency would not be applicable in respect of interest payable by a notified infrastructure debt fund to a non-resident/foreign company under section 194LB and interest payable by a specified Indian company to a non-resident/foreign company under new section 194LC, for which the rate of TDS would be 5%. Further, tax would be deductible@10% (instead of 20%) on long-term capital gains arising from transfer of a capital asset, being unlisted securities, arising to a person who is not resident in India.

No surcharge would be levied on income-tax deducted at source except in the case of foreign companies. If the recipient is a foreign company, surcharge @ 2% would be levied on such income-tax if the income or aggregate of income paid or likely to be paid and subject to deduction exceeds ₹ 1 crore. Levy of surcharge has been withdrawn on deductions in all other cases. Also, education cess and secondary and higher education cess would not be added to tax deducted or collected at source in the case of a domestic company or a resident non-corporate assessee. However, education cess @2% and secondary and higher education cess @ 1% of income tax including surcharge, wherever applicable, would be added to tax deducted or collected at source in cases of persons not resident in India and foreign companies.

Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2012-13

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be

computed and income-tax is to be calculated or charged in certain cases for the financial year 2012-13 i.e. A.Y. 2013-14.

It may be noted that education cess @2% and secondary and higher education cess @ 1% would continue to apply on tax deducted at source in respect of salary payments.

The general basic exemption limit for individuals/HUFs/AOPs/BOIs and artificial juridical persons has been increased from ₹ 1,80,000 to ₹ 2,00,000. The basic exemption limit for women residents has also been increased from ₹ 1,90,000 to ₹ 2,00,000. Hence, the basic exemption limit for both resident men and women would be ₹ 2,00,000. There is no change in the basic exemption limit of ₹ 2,50,000 for senior citizens, being resident individuals of the age of 60 years or more but less than 80 years. Also, resident individuals of the age of 80 years or more at any time during the previous year would be eligible for a higher basic exemption limit of ₹ 5,00,000. The revised tax slabs are shown hereunder -

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 2,00,000	Nil
Where the total income exceeds ₹ 2,00,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,00,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 30,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,30,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 2,50,000	Nil
Where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	10% of the amount by which the total income exceeds ₹ 2,50,000
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 25,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,25,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(c) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed ₹ 5,00,000	Nil
Where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000
Where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2012-13.

	Level of total income	Rate of income-tax
(1)	Where the total income does not exceed ₹ 10,000	10% of the total income
(2)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000
(3)	Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm for A.Y.2013-14 is the same as that for A.Y.2012-13 i.e. 30% on the whole of the total income of the firm. This rate would apply to an LLP also.

(iv) Local authority

The rate of tax for a local authority for A.Y.2013-14 is the same as that for A.Y.2012-13 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2013-14 are the same as that for A.Y.2012-13.

(1)	In the case of a domestic company	30% of the total income
(2)	In the case of a company other than a domestic company	40% on the total income However, specified royalties and fees for rendering technical services (FTS) received from

		Government or an Indian concern in pursuance of an approved agreement made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS) would be chargeable to tax @50%.

Surcharge

The rates of surcharge applicable for A.Y.2013-14 are as follows -

(i) Individual/HUF/AOP/BOI/Artificial juridical person

No surcharge would be leviable in case of such persons.

(ii) Co-operative societies/Local authorities

No surcharge would be leviable on co-operative societies and local authorities.

(iii) Firms/LLPs

No surcharge would be leviable on firms and LLPs.

(iv) Domestic company

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding ₹ 1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

Example

Compute the tax liability of X Ltd., assuming that the total income of X Ltd. is ₹ 1,01,00,000 and the total income does not include any income in the nature of capital gains.

The tax payable on total income of ₹ 1,01,00,000 of X Ltd. computed@ 31.5% (including surcharge) is ₹ 31,81,500. However, the tax cannot exceed the tax of ₹ 30,00,000 payable on total income of ₹ 1 crore by more than the ₹ 1,00,000, being the amount of total income exceeding ₹ 1 crore. Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 31,00,000 (₹ 30,00,000 + ₹ 1,00,000). The marginal relief is ₹ 81,500 (i.e., ₹ 31,81,500 - ₹ 31,00,000).

(v) Foreign company

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 2% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such

companies having a total income exceeding ₹ 1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over ₹ 1 crore should not be more than the amount of income exceeding ₹ 1 crore.

Note – Marginal relief would also be available to those companies which are subject to minimum alternate tax under section 115JB, in cases where the book profit (i.e. deemed total income) exceeds ₹ 1 crore.

Education cess / Secondary and higher education cess on income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an "Education cess on income-tax", calculated at the rate of 2% of such income-tax and surcharge. Education cess is leviable in the case of all assessees i.e. individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. Further, "Secondary and higher education cess on income-tax" @1% of income-tax and surcharge is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. No marginal relief would be available in respect of such cess.

2. BASIC CONCEPTS

(a) Unexplained share capital, share premium etc. credited in the books of account of a closely held company to be treated as income of such company [Section 68]

(i) Section 68 brings to tax any sum found credited in the books of an assessee, in respect of which the assessee does not offer any explanation about the nature and source of money so credited or the explanation offered by the assessee is not found to be satisfactory by the Assessing Officer.

(ii) In order to prevent the practice of conversion of unaccounted money as investment in the share capital of a closely held company, additional onus is required to be placed on such companies to prove the source of money in the hands of the shareholder or persons making payment towards the issue of shares.

(iii) Accordingly, a proviso has been inserted in section 68 to provide that any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or such amount, by whatever name called, in the accounts of such company shall be deemed to be not satisfactory unless the person, being a resident, in whose name such credit is recorded in the books of such company also explains, to the satisfaction of the Assessing Officer, the source of sum so credited as share application money, share capital, etc. in his hands. Otherwise, the explanation offered by the assessee-company shall be deemed as not satisfactory, consequent to which the sum shall be treated as income of the company.

(iv) However, this proviso would not apply if the person in whose name such sum is recorded in the books of the closely held company is a Venture Capital Fund (VCF) or a Venture Capital Company (VCC) registered with SEBI.

(Effective from A.Y.2013-14)

(b) Unexplained money, investments etc. to attract maximum marginal rate of tax @30% [New section 115BBE]

(i) At present, the unexplained money, investments, expenditure etc. which are deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D, are subject to the normal rates of tax applicable to the assessee.

(ii) In case of individuals, HUFs etc., there is a benefit given by way of basic exemption limit, and slab rate of tax. Therefore, there were cases where the unexplained money, though deemed as income, was not subject to tax on account of the amount being lower than the basic exemption limit or subject to tax at a lower slab rate of, say, 10%.

(iii) In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would now be taxed at the maximum marginal rate of 30% (plus surcharge and cesses) with effect from A.Y.2013-14.

(iv) No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.

(Effective from A.Y.2013-14)

3. RESIDENCE AND SCOPE OF TOTAL INCOME

(a) Gains from offshore transactions to be taxed if underlying assets are located in India [Sections 9(1)(i), 2(14), 2(47) & 195(1)]

Clarificatory amendments have been made in sections 2(14), 2(47), 9(1)(i) and 195(1), in the context of judicial decisions, to tax gains from off-shore transactions where the value is attributable to the underlying assets located in India. These amendments reassert the source rule of taxation wherein the state where the actual economic nexus of income is situated has a right to tax the income irrespective of the place of residence of the entity deriving income. These provisions have been introduced retrospectively with effect from 1st April, 1962.

Certain judicial pronouncements have created apprehension about the scope and purpose of sections 9 and 195. Further, there are certain issues in respect of income deemed to accrue or arise where there are conflicting decisions of various judicial authorities.

Therefore, there is a need to provide clarificatory retrospective amendment to reinstate the real legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law.

(i) Under section 9, certain incomes are deemed to accrue or arise in India. This is a legal fiction created to tax income, which may or may not arise in India and would not have been taxable but for the deeming provision created by this section. Section 9(1)(i) provides that all income accruing or arising, directly or indirectly, through or from any business connection in India, or through or from any property in India or through or from any asset or source of income in India or through the transfer of a capital asset situated in India is taxable in India.

The legislative intent of this clause is to cover incomes, which are accruing or arising, directly or indirectly from a source in India. The section codifies the source rule of taxation, which signifies that where a corporate structure is created to route funds, the actual gain or income arises only *in consequence of* the investment made in the activity to which such gains are attributable and not the mode through which such gains are realized. This principle which supports the source country's right to tax the gains derived from offshore transactions where the value is attributable to the underlying assets, is recognized internationally by several countries.

Consequently, *Explanation 4* has been inserted to clarify that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

Further, *Explanation 5* has been inserted to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

(ii) Section 2(14) defines a "capital asset" to mean property of any kind held by an assessee, whether or not connected with his business or profession.

An *Explanation* has been inserted to clarify that 'property' includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

(iii) Section 2(47) provides an inclusive definition of "transfer", in relation to a capital asset. *Explanation 2* has been inserted below section 2(47) to clarify that 'transfer' includes and shall be deemed to have always included –

(1)	disposing of or parting with an asset or any interest therein, or	- directly or indirectly, - absolutely or conditionally,
(2)	creating any interest in any asset in any manner whatsoever	- voluntarily or involuntarily

by way of an agreement (whether entered into in India or outside India) or otherwise.

The above transactions would be deemed as a transfer notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

(iv) Under section 195(1), the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on "any person responsible for paying to a non-resident or to a foreign company". The words "any person" used in section 195(1) is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

Explanation 2 has been inserted to clarify that the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has :-

(a) a residence or place of business or business connection in India; or

(b) any other presence in any manner whatsoever in India.

(Effective retrospectively from 1st April, 1962)

(b) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term "royalty" means consideration for transfer of all or any right in respect of certain rights, property or information. There have been conflicting court rulings on the interpretation of the definition of royalty, on account of which there was a need to resolve the following issues –

(i) Does consideration for use of computer software constitute royalty?

(ii) Is it necessary that the right, property or information has to be used directly by the payer?

(iii) Is it necessary that the right, property or information has to be located in India or control or possession of it has to be with the payer?

(iv) What is the meaning of the term "process"?

In order to resolve the above issues arising on account of conflicting judicial decisions and to clarify the true legislative intent, *Explanations 4, 5 & 6* have been inserted with retrospective effect from 1st June, 1976.

Explanation 4 clarifies that the consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J and section 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

Note - The Central Government has, vide Notification No.21/2012 dated 13.6.2012 to be effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if -

(1) the software is acquired in a subsequent transfer without any modification by the transferor;

(2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and

(3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

Explanation 5 clarifies that royalty includes and has always included consideration in respect of any right, property or information, whether or not,

(a) the possession or control of such right, property or information is with the payer;

(b) such right, property or information is used directly by the payer;

(c) the location of such right, property or information is in India.

Explanation 6 clarifies that the term "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

(Effective retrospectively from 1st June, 1976)

(c) Specified class or classes of persons, making payment to the non-resident, to mandatorily make application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax [Section 195(7)]

(i) Under section 195(1), any person responsible for paying to a non-corporate non-resident or to a foreign company, any interest or any other sum chargeable under the provisions of the Act (other than salary), has to deduct tax at source at the rates in force.

(ii) Under section 195(2), where the person responsible for paying any such sum chargeable to tax under the Act (other than salary) to a non-resident, considers that the whole of such sum would not be income chargeable in the hands of the recipient, he *may* make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. When the Assessing Officer so determines the appropriate proportion, tax shall be deducted under section 195(1) only on that proportion of the sum which is so chargeable.

(iii) Consequent to introduction of retrospective amendments in section 2(47), section 2(14) and section 9(1), new sub-section (7) has been inserted in section 195 to provide that, notwithstanding anything contained in sections 195(1) and 195(2), the CBDT may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-corporate non-resident or to a foreign company, any sum, *whether or not chargeable under the provisions of this Act, shall* make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable to tax. Where the Assessing Officer determines the appropriate proportion of the sum chargeable, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

Consequently, as per new sub-section (7), where the CBDT specifies a class of persons or cases, the person responsible for making payment to a non-corporate non-resident or a foreign company in such cases has to mandatorily make an application to the Assessing Officer, whether or not such payment is chargeable under the provisions of the Act.

(Effective from 1st July, 2012)

4. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Exemption of income of Prasar Bharati (Broadcasting Corporation of India) [Section 10(23BBH)]

Clause (23BBH) has been inserted in section 10 with effect from A.Y.2013-14 to exempt any income of the Prasar Bharati (Broadcasting Corporation of India) established under section 3(1) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

(Effective from A.Y.2013-14)

(b) Removal of sectoral restrictions on VCUs [Sections 10(23FB)]

(i) Under section 10(23FB), income of a SEBI regulated Venture Capital Fund (VCF) or Venture Capital Company (VCC), derived from investment in a Venture Capital Undertaking (VCU), is exempt from taxation, provided the VCU is engaged in only nine specified businesses.

(ii) Since the SEBI regulates the working of VCF, VCC and VCU, there is no necessity of having separate conditions under the Income-tax Act, 1961

imposing sectoral restrictions on the business of a VCU. Therefore, in order to avoid multiplicity of conditions in different regulations for the same entities, the restriction that VCU should be engaged in only nine specified businesses has now been removed so that the VCU is allowed to be governed by the conditions imposed by its regulator, namely, SEBI.

(iii) Therefore, the definition of VCU under section 10(23FB) has been amended. Accordingly, a VCU means a VCU referred to in the SEBI (VCF) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992.

(Effective from A.Y.2013-14)

(c) Exemption in respect of income received by certain foreign companies in India in Indian currency from sale of crude oil to any person in India [Section 10(48)]

(i) A mechanism has been devised, in the national interest, to make payment to certain foreign companies in India in Indian currency for import of crude oil.

(ii) In order to provide exemption in respect of such income in the hands of the foreign company, especially since the payment is made in the interest of the nation, new clause (48) has been inserted in section 10 to exempt any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India.

(iii) The following conditions have to be fulfilled for claim of such exemption –

(a) The money has been received under an agreement or arrangement which is either entered into, or approved by, the Central Government;

(b) The foreign company, as well as the arrangement or agreement, are notified by the Central Government having regard to the national interest.

(c) The foreign company is not engaged in any other activity in India, except receipt of income under such arrangement or agreement.

(Effective from A.Y.2012-13)

(d) Exemption to be denied to a charitable trust having its main object as "advancement of any other object of general public utility" if its trading receipts exceed the specified threshold irrespective of withdrawal of approval or cancellation of registration or rescindment of notification [Section 10(23C) & 13]

(i) Under sections 11 and 12, income of any charitable trust or institution is exempt if such income is applied for charitable purposes in India and such institution is registered under section 12AA. Likewise, under section 10(23C) also, exemption is provided in respect of approved or notified charitable funds or institutions.

(ii) The definition of "charitable purpose" under section 2(15) includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

(iii) However, as per the second proviso to section 2(15), "advancement of any other object of general public utility" would continue to be a "charitable purpose" in the relevant previous year even if it carries on a trading activity, if the total receipts from 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 does not exceed ₹ 25 lakhs in that year. However, if such receipts exceed ₹ 25 lakhs in the next year, then the trust will lose its charitable status for that year.

(iv) Thus, a charitable trust or institution pursuing "advancement of object of general public utility" may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

(v) Therefore, no exemption would be available to a trust or institution for the previous year in which the receipts from commercial activities exceed ₹ 25 lakhs. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

(vi) Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable in a previous year on account of the commercial receipts exceeding the specified threshold of ₹ 25 lakhs, then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year in which the commercial receipts exceed the specified threshold. The denial of exemption would be compulsory by operation of law and would not be dependent on any approval being withdrawn or registration being cancelled or a notification being rescinded.

(vii) Accordingly, sections 10(23C) and 13 have been amended to ensure that such trust and institution does not get benefit of tax exemption under section 10(23C) or 11 or 12 in the year in which its receipts from commercial activities exceed the specified threshold of ₹ 25 lakhs, whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded in respect of such trust or institution.

(Effective retrospectively from A.Y. 2009-10)

Example

An institution having its main object as "advancement of object of general public utility" received ₹ 30 lakhs in aggregate during the P.Y.2011-12 from an activity in the nature of trade. It applied 85% of its receipt from such activity during the same year for its main object i.e. advancement of object of general public utility.

(i) What would be the tax consequence of such receipt and application thereof by the institution for the P.Y.2011-12?

(ii) If the institution receives ₹ 23 lakhs in aggregate during the P.Y.2012-13 from an activity in the nature of trade, what would be the tax consequence?

Answer

(i) As the main object of the institution is "advancement of object of general public utility", the institution will lose its "charitable" status for the P.Y.2011-12, since it has received ₹ 30 lakhs from an activity in the nature of trade. The application of 85% of such receipt for its main object during the year would not help in retaining its "charitable" status for that year. The institution will lose its charitable status and consequently, the benefit of exemption of income for the P.Y.2011-12, irrespective of the fact that its approval is not withdrawn or its registration is not cancelled.

(ii) However, if the institution receives only ₹ 23 lakhs in aggregate from an activity in the nature of trade during the P.Y.2012-13, then, it will not lose its "charitable" status for the P.Y.2012-13, since receipt of upto ₹ 25 lakhs in a year from such activity is permissible. The institution can claim exemption for P.Y.2012-13 subject to fulfillment of other conditions under sections 11 to 13.

5. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) Benefit of additional depreciation@20% extended to new plant and machinery acquired and installed in power sector undertakings [Section 32(1)(iia)]

(i) Under section 32(1)(iia), additional depreciation at the rate of 20% of the actual cost of new machinery or plant (other than ships and aircraft) is allowable to an assessee engaged in the business of manufacture or production of any article or thing in the year of acquisition and installation. This is in addition to the normal depreciation allowable under section 32(1) at the prescribed rates.

(ii) With a view to encourage investment in plant or machinery by assessees engaged in the business of generation or generation and distribution of power, the benefit of additional depreciation has now been extended to such assessees.

(iii) Consequently, assessees engaged in manufacture or production of any article or thing as well as assessees engaged in the business of generation or generation and distribution of power can claim an additional depreciation at 20% of the cost of new plant or machinery (other than ships and aircraft) acquired and installed during the previous year.

(Effective from A.Y. 2013-14)

Example

Lights and Power Ltd. engaged in the business of generation of power, furnishes the following particulars pertaining to P.Y. 2012-13. Compute the depreciation allowable under section 32 for A.Y.2013-14, while computing its income under the head "Profits and gains of business or profession". The company has opted for the depreciation allowance on the basis of written down value.

	Particulars	*₹*
1.	*Opening Written down value of Plant and Machinery (15% block) as on 01.04.2012 (Purchase value ₹ 8,00,000)*	*5,78,000*
2.	*Purchase of second hand machinery (15% block) on 29.12.2012 for business purpose*	*2,00,000*
3.	*Machinery Y (15% block) purchased and installed on 12.07.2012 for the purpose of power generation*	*8,00,000*
4.	*Acquired and installed for use a new air pollution control equipment on 31.07.2012*	*2,50,000*
5.	*New air conditioner purchased and installed in office premises on 08.09.2012*	*3,00,000*
6.	*New machinery Z (15% block) acquired and installed on 23.11.2012 for the purpose of generation of power*	*3,25,000*
7.	*Sale value of an old machinery X, sold during the year (Purchase value ₹ 4,80,000, WDV as on 01.04.2012 ₹ 3,46,800)*	*3,10,000*

Answer

Computation of depreciation allowance under section 32 for the A.Y. 2013-14

Particulars		Plant and Machinery (15%) (₹)	Plant and Machinery (100%) (₹)
Opening WDV as on 01.04.2012		5,78,000	-
Add: Plant and Machinery acquired during the year			
- Second hand machinery	2,00,000		
- Machinery Y	8,00,000		
- Air conditioner for office	3,00,000		
- Machinery Z	3,25,000	16,25,000	
- Air pollution control equipment		-	2,50,000
		22,03,000	2,50,000
Less: Asset sold during the year		3,10,000	Nil
Written down value before charging depreciation		18,93,000	2,50,000
Normal depreciation			
100% on air pollution control equipment		-	2,50,000

Depreciation on plant and machinery put to use for less than 180 days@ 7.5% (i.e., 50% of 15%)			
- Second hand machinery (₹ 2,00,000 × 7.5%)	15,000		
- Machinery Z (₹ 3,25,000 × 7.5%)	24,375	39,375	
15% on the balance WDV being put to use for more than 180 days (₹ 13,68,000 × 15%)		2,05,200	
Additional depreciation			
- Machinery Y (₹ 8,00,000 × 20%)	1,60,000		
- Machinery Z (₹ 3,25,000 × 10%)	32,500	1,92,500	Nil
Total depreciation		4,37,075	2,50,000

Notes:

(1) Power generation equipments qualify for claiming additional depreciation in respect of new plant and machinery from A.Y. 2013-14.

(2) Additional depreciation is not allowed in respect of second hand machinery.

(3) No additional depreciation is allowed in respect of office appliances. Hence, no depreciation is allowed in respect of air conditioner installed in office premises.

(4) Additional depreciation is not allowed in respect of an asset whose actual cost is allowed as deduction in computing the income chargeable under the head "Profit and Gains of business or profession". It is presumed that the new air pollution control equipment installed is eligible for 100% depreciation. Therefore, no additional depreciation is allowed in respect of the same.

(b) Extension of sunset clause for claiming weighted deduction @ 200% of expenditure on in-house scientific research and development incurred by a company [Section 35(2AB)]

(i) Under section 35(2AB), a weighted deduction of 200% of expenditure incurred on in-house research and development facility as approved by the prescribed authority (not being expenditure in the nature of cost of any land or building) is allowed to a company which is engaged in the business of bio-technology or in any business of manufacture or production of any article or thing. However, the deduction was restricted to such expenditure incurred on or before 31st March, 2012.

(ii) In order to encourage the corporate sector to continue to spend on in-house research and development, the benefit of weighted deduction has been extended by a further period of 5 years i.e. up to 31st March, 2017.

(Effective from A.Y. 2013-14)

(c) Expansion of scope of "specified business" for provision of "investment-linked tax deduction" under section 35AD

(i) At present, investment-linked tax deduction is available in respect of the following specified businesses, namely, –

- setting-up and operating 'cold chain' facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- building and operating a hotel of two-star or above category, anywhere in India;
- building and operating a hospital, anywhere in India, with at least 100 beds for patients;
- developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the CBDT in accordance with the prescribed guidelines.
- developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government; and
- production of fertilizer in India.

(ii) 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

(iii) Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business provided that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

(iv) The Finance Act, 2012 has extended the investment-linked tax deduction under section 35AD to three new businesses, namely –

(1) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;

(2) bee-keeping and production of honey and beeswax; and

(3) setting up and operating a warehousing facility for storage of sugar.

(v) Deduction under section 35AD is allowed to the above mentioned new "Specified businesses" only if the date of commencement of operations of such business is on or after 1st April, 2012.

(Effective from A.Y.2013-14)

(d) Weighted "investment-linked" tax deduction for certain specified businesses [Section 35AD(1A)]

The following "specified businesses" would be eligible for weighted deduction@150% of the capital expenditure (including capital expenditure incurred before commencement of operations and capitalized in the books of account on the date of commencement of operations) under section 35AD(1A), if they commence operations on or after 1st April, 2012 –

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) building and operating, anywhere in India, a hospital with at least 100 beds for patients;

(iv) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government. Such scheme should be notified by the CBDT in accordance with the prescribed guidelines; and

(v) production of fertilizer in India.

(Effective from A.Y.2013-14)

(e) Owner of a hotel eligible for "investment-linked" tax deduction even if he transfers the operation of the hotel to another person [Section 35AD(6A)]

(i) As per section 35AD, as it stands at present, an assessee engaged in the business of building and operating a hotel, of 2-star or above category in India, becomes eligible for deduction under section 35AD only if he owns and operates the hotel himself.

(ii) However, on account of the franchisee business structure which is prevalent in hotel industry, the owner of the hotel generally outsources the operation of the hotel to another person.

(iii) Therefore, in order to clarify that the hotel owner would continue to be eligible for the investment-linked tax deduction in such cases, sub-section (6A) has been inserted in section 35AD.

(iv) New sub-section (6A) provides that where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation of the said hotel to another person, the assessee shall be deemed to be carrying

on the specified business of building and operating a hotel. Therefore, he would be eligible to claim investment-linked tax deduction under section 35AD.

(v) Therefore, sub-section (6A), in effect, provides that the assessee shall be deemed to be carrying on the specified business of building and operating hotel if -

(1) The assessee builds a hotel of two-star or above category;

(2) Thereafter, he transfers the operation of the hotel to another person;

(3) He, however, should continue to own the hotel.

(Effective retrospectively from A.Y.2011-12)

Example

Mr. A commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2012. He incurred capital expenditure of ₹ 80 lakh, ₹ 60 lakh and ₹ 50 lakh, respectively, on purchase of land and building during the period January, 2012 to March, 2012 exclusively for the above businesses, and capitalized the same in its books of account as on 1st April, 2012. The cost of land included in the above figures are ₹ 50 lakh, ₹ 40 lakh and ₹ 30 lakh, respectively. Further, during the P.Y.2012-13, it incurred capital expenditure of ₹ 20 lakh, ₹ 15 lakh & ₹ 10 lakh, respectively, for extension/ reconstruction of the building purchased and used exclusively for the above businesses. Compute the income under the head "Profits and gains of business or profession" for the A.Y.2013-14 and the loss to be carried forward, assuming that Mr. A has fulfilled all the conditions specified for claim of deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes". The profits from the business of setting up a warehousing facility (before claiming deduction under section 35AD and section 32) for the A.Y.2013-14 is ₹ 16 lakhs, ₹ 14 lakhs and ₹ 31 lakhs, respectively.

Answer

Computation of profits and gains of business or profession for A.Y.2013-14	
Particulars	₹ (in lakhs)
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	31
Less: Depreciation under section 32	
10% of ₹ 30 lakh, being (₹ 50 lakh – ₹ 30 lakh + ₹ 10 lakh)	3
Income chargeable under "Profits and gains from business or profession"	28

Computation of income/loss from specified business under section 35AD				
	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	16	14	30
	Less: Deduction under section 35AD			
(B)	Capital expenditure incurred prior to 1.4.2012 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2012 (excluding the expenditure incurred on acquisition of land) = ₹ 30 lakh (₹ 80 lakh – ₹ 50 lakh) and ₹ 20 lakh (₹ 60 lakh – ₹ 40 lakh)	30	20	50
(C)	Capital expenditure incurred during the P.Y.2012-13	20	15	35
(D)	Total capital expenditure (B + C)	50	35	85
(E)	Deduction under section 35AD			
	150% of capital expenditure (food grains)	75		
	100% of capital expenditure (sugar)		35	
	Total deduction u/s 35AD for A.Y.2013-14	75	35	110
(F)	Loss from the specified business of setting up and operating a warehousing facility (after providing for deduction under section 35AD) to be carried forward as per section 73A (A-E)	(59)	(21)	(80)

Notes:

(1) Weighted deduction@150% of the capital expenditure is available under section 35AD for A.Y.2013-14 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce which commences operation on or after 01.04.2012. Food grains constitute agricultural produce and therefore, the capital expenditure incurred for setting up a warehousing facility for storage of food grains is eligible for weighted deduction@150% under section 35AD.

(2) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2013-14 in respect of specified business of setting up and operating a warehousing facility for storage of sugar, where operations are commenced on or after 01.04.2012.

(3) However, since setting up and operating a warehousing facility for storage of edible oils is not a specified business, Mr. A is not eligible for deduction under

section 35AD in respect of capital expenditure incurred in respect of such business.

(4) However, Mr. A can claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y.2012-13.

(5) Loss from a specified business can be set-off only against profits from another specified business. Therefore, the loss of ₹ 80 lakh from the specified businesses of setting up and operating a warehousing facility for storage of food grains and sugar cannot be set-off against the profits of ₹ 28 lakh from the business of setting and operating a warehousing facility for storage of edible oils, since the same is not a specified business. Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business.

(f) Weighted deduction in respect of expenditure incurred on notified agricultural extension project [Section 35CCC]

(i) In order to incentivize the business entities to provide better and effective agriculture extensive services, new section 35CCC has been inserted to provide a weighted deduction of a sum equal to 150% of expenditure incurred by an assessee on agricultural extension project in accordance with the prescribed guidelines.

(ii) The agricultural extension project eligible for this weighted deduction shall be notified by the Board.

(iii) In case deduction in respect of such expenditure is allowed under this section then, no deduction in respect of such expenditure shall be allowed under any other provisions of the Act in the same or any other assessment year.

(Effective from A.Y. 2013-14)

(g) Weighted deduction in respect of expenditure incurred by companies on notified skill development project [Section 35CCD]

(i) The National Manufacturing Policy (NMP) has been notified by the Department of Industrial Policy & Promotion (DIPP) vide *Press Note dated 4th November, 2011*. As per the notified NMP, the government will provide weighted standard deduction of 150% of the expenditure (other than land or building) incurred on Public Private Partnership (PPP) project for skill development in the ITIs in manufacturing sector. This is to encourage private sector to set up their own institution in coordination with National Skill Development Corporation.

(ii) In order to encourage companies to invest on skill development projects in the manufacturing sector, a new section 35CCD has been inserted to provide for a weighted deduction of a sum equal to 150% of the expenditure (not being expenditure in the nature of cost of any land or building) on skill development project incurred by the company in accordance with the prescribed guidelines.

(iii) The skill development project eligible for this weighted deduction shall be notified by the Board.

(iv) In case deduction in respect of such expenditure is allowed under this section then, no deduction of such expenditure shall be allowed under any other provisions of the Act in the same or any other assessment year.

(Effective from A.Y. 2013-14)

Example

Isac limited is a company engaged in the business of biotechnology. The net profit of the company for the financial year ended 31.03.2013 is ₹ 15,25,890 after debiting the following items:

S.No.	*Particulars*	*₹*
1.	*Purchase price of raw material used for the purpose of in-house research and development*	*1,80,000*
2.	*Purchase price of asset used for in-house research and development wrongly debited to profit and loss account:*	
	(1) Land	*5,00,000*
	(2) Building	*3,00,000*
3.	*Expenditure incurred on notified agricultural extension project*	*1,50,000*
4.	*Expenditure on notified skill development project:*	
	(1) Purchase of land	*2,00,000*
	(2) Expenditure on training for skill development	*2,50,000*
5.	*Expenditure incurred on advertisement in the souvenir published by a political party*	*75,000*

Compute the income under the head "Profits and gains of business or profession" for the A.Y. 2013-14 of Isac Ltd.

Answer

Computation of income under the head "Profits and gains of business or profession" for the A.Y.2013-14

Particulars		₹	₹
Net profit as per profit and loss account			15,25,890
Add:	Items debited to profit and loss account, but to be disallowed		
	Purchase price of Land used in in-house research and development - being capital expenditure not allowable as deduction under section 35	5,00,000	

	Purchase price of building used in in-house research and development - being capital expenditure, 100% of which is allowable as deduction under section 35(1)(iv) read with section 35(2)	-	
	Expenditure incurred on notified agricultural extension project (to be treated separately)	1,50,000	
	Expenditure incurred on notified skill development project - Purchase of land - being capital expenditure not qualifying for deduction under section 35CCD	2,00,000	
	Expenditure incurred on notified skill development project - Expenditure on training for skill development (to be treated separately)	2,50,000	
	Expenditure incurred on advertisement in the souvenir published by a political party not allowed as deduction as per section 37(2B)	75,000	11,75,000
			27,00,890
Less:	Purchase price of raw material used for in-house research and development qualifies for 200% deduction under section 35(2AB). Since, it is already debited to profit and loss account balance 100% is allowed.	1,80,000	
Less:	Expenditure incurred on notified agricultural extension project qualifies for 150% deduction under section 35CCC.	2,25,000	
Less:	Expenditure incurred on training for skill development in a notified skill development project qualifies for 150% deduction under section 35CCD.	3,75,000	7,80,000
	Profit and gains from business		19,20,890

Note : The expenditure incurred on advertisement in the souvenir published by a political party is disallowed as per section 37(2B) while computing income under the head "Profit and Gains of Business or Profession" but the same would be allowed as deduction under section 80GGB from the gross total income of the company.

(h) Increase in threshold limits of total sales / turnover / gross receipts for applicability of tax audit [Section 44AB]

Related amendment in Section: 44AD

(i) As per section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceed ₹ 60 lakh. Similarly, a person carrying on a profession is required

to get his accounts audited if the gross receipts from the profession in the previous year exceed ₹ 15 lakh.

(ii) In order to reduce the compliance burden of small businesses and professionals, the limits of total sales, turnover and gross receipts for tax audit under section 44AB has been increased as follows:

	Particulars	Existing limit (A.Y. 2012-13)	New limit (from A.Y. 2013-14)
Business	Total sales, turnover or gross receipts	> ₹ 60 lakhs	> ₹ 1 crore
Profession	Gross receipts	> ₹ 15 lakhs	> ₹ 25 lakhs

(iii) Accordingly, every person carrying on business would now be required to get his accounts audited if the total sales, turnover or gross receipts in business exceed ₹ 1 crore in the previous year. Similarly, a person carrying on a profession would be required to get his accounts audited if the gross receipts in profession exceed ₹ 25 lakh in the previous year.

(iv) Consequently, the threshold limit of turnover/gross receipts for the purpose of applicability of presumptive taxation scheme under section 44AD has been increased from ₹ 60 lakh to ₹ 1 crore. This scheme would now include within its scope, businesses (other than businesses specifically excluded as per sub-section (6) therein) with total turnover/gross receipts up to ₹ 1 crore. 8% of total turnover/gross receipts would be deemed to be the business income of the assessee.

(Effective from A.Y. 2013-14)

(i) Presumptive taxation provisions not to apply to profession, brokerage or commission income or agency business [Section 44AD(6)]

(i) As per the provisions of section 44AD, an assessee carrying on a business other than the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose turnover or gross receipts in the previous year does not exceed ₹ 1 crore, can declare a sum equal to 8% of the total turnover or gross receipts as the profit and gains of such business to be chargeable to tax. Such an assessee is not required to maintain books of account under section 44AA or get its accounts audited under section 44AB.

(ii) Sub-section (6) has been inserted in section 44AD to specifically exclude the applicability of the presumptive provisions of section 44AD in respect of -

(a) a person carrying on profession as referred to in section 44AA(1) i.e., legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board (namely, authorized

representatives, film artists, company secretaries and profession of information technology have been notified by the Board for this purpose);

(b) a person earning income in the nature of commission or brokerage; or

(c) a person carrying on any agency business.

(Effective retrospectively from A.Y. 2011-12)

6. CAPITAL GAINS

(a) Modification in the conditions to be satisfied in case of amalgamation and demerger for not being regarded as transfer [Section 47(vii) & 2(19AA)]

(i) As per section 47(vii), any transfer by a shareholder in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company is not regarded as a transfer if,

(a) any transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and

(b) the amalgamated company is an Indian company.

(ii) However, in a case where a subsidiary company amalgamates with the holding company, it is not possible to satisfy the condition mentioned in (a) above, i.e., the requirement of the amalgamated company (the holding company) to issue shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself.

(iii) Therefore, section 47(vii) has been amended so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company. However, the amalgamated company will continue to be required to issue shares to the other shareholders of the amalgamating company.

For example, let us take a case where A Ltd. holds 60% of shares in B Ltd. B Ltd. amalgamates with A Ltd. Since A Ltd. itself is the shareholder of B Ltd., A Ltd., being the amalgamated company, cannot issue shares to itself. However, A Ltd. has to issue shares to the other shareholders of B Ltd.

(iv) Likewise, in the case of a demerger, there is a requirement under section 2(19AA)(iv) that the resulting company has to issue its shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.

Therefore, section 2(19AA) has been amended to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. However, the resulting company would still have to issue shares to the other share holders of the demerged company.

(Effective from A.Y. 2013-14)

(b) Cost of acquisition of the capital asset transferred by a sole proprietorship or firm to a company on succession, to be taken as cost to the previous owner i.e. the predecessor proprietor or firm, where such succession is not regarded as transfer under section 47 [Section 49]

(i) As per the provisions of section 49, the cost of acquisition of the asset in the hands of the successor owner is deemed to be the cost of the asset to the previous owner in the cases mentioned therein, where the transfer of asset from one person to another is not treated as transfer under section 47.

(ii) Under section 47, in case a sole proprietorship concern or a firm is succeeded by a company in the business carried on by it, as a result of which the sole proprietorship or the firm sells or otherwise transfers any capital asset to the company, subject to fulfilling certain conditions, the same shall not be regarded as transfer and the capital gain tax shall not be applicable on such transaction. However, section 49 which enlists cases where cost to previous owner is taken as cost of acquisition in the hands of the transferee (for example, in the case of transfer by way of gift, inheritance etc.) does not cover a situation where a sole proprietorship or firm is succeeded by a company.

(iii) Therefore, in such cases, there was an ambiguity as to what should be taken as cost of acquisition of the capital asset in the hands of the successor-company, when the asset is subsequently transferred by the company.

(iv) In order to remove the ambiguity, section 49 has been amended to provide that the cost of acquisition of the various capital assets in the hands of the successor company in such cases shall be taken to be the cost of acquisition of the respective asset in the hands of the sole proprietorship or the firm, as the case may be.

(v) Further, as per the provisions of *Explanation 1* to section 2(42A) defining short term capital asset, for determining the period for which the capital asset is held by the transferee, the period of holding of the asset by the previous owner shall also be considered in circumstances mentioned in section 49(1).

(vi) Therefore, in case the asset becomes the property of the company on account of succession of a sole proprietorship concern or firm by the company, then, in order to determine the period of holding of such asset in the hands of the company, the period for which such asset was held by the sole proprietorship concern or the firm, as the case may be, shall also be considered.

(vii) Therefore, when the capital asset is sold or transferred by the successor company, for computing capital gains on such transfer –

Cost of acquisition to company	=	Cost of the asset to the predecessor firm or sole proprietorship concern		
Period of holding (for determining whether capital gains is LTCG or STCG)	=	Period of holding of the predecessor firm or sole proprietorship concern	+	Period of holding of the company

(Effective from 1st April, 1999)

Example

Neerja was carrying on the textile business under a proprietorship concern, Neerja Textiles. On 21.07.2012 the business of Neerja Textiles was succeeded by New Look Textile Private Limited and all the assets and liabilities of Neerja Textiles on that date became the assets and liabilities of New Look Textile Private Limited and Neerja was given 52% share in the share capital of the company. No other consideration was given to Neerja on account of this succession.

The assets and liabilities of Neerja Textiles transferred to the company included an urban land which was acquired by Neerja on 19.7.2009 for ₹ 9,80,000. The company sold the same on 30.03.2013 for ₹15,00,000.

Discuss the tax implication of the above mentioned transaction and compute the income chargeable to tax in such case(s).

Answer

Taxability in case of succession of Neerja Textiles by New Look Textile Private Limited

As per provisions of section 47(xiv), in case a proprietorship concern is succeeded by a company in the business carried by it and as a result of which any capital asset is transferred to the company, then the same shall not be treated as transfer and will not be chargeable to capital gain tax in case the following conditions are satisfied:

1. all the assets and liabilities of sole proprietory concern becomes the assets and liabilities of the company.
2. the shareholding of the sole proprietor in the company is not less than 50% of the total voting power of the company and continues to so remain as such for a period of 5 years from the date of succession.
3. the sole proprietor does not receive any consideration or benefit in any form from the company other than by way of allotment of shares in the company.

In the present case, all the conditions mentioned above are satisfied therefore, the transfer of capital asset by Neerja Textiles to New Look Textiles Private Limited shall not attract capital gain tax provided Neerja continues to hold 50% or more of voting power of New Look Textiles Private Limited for a minimum period of 5 years.

Taxability in case of transfer of land by New Look Textiles Private Limited

As per the provisions of section 49(1) and *Explanation 1* to section 2(42A), in case a capital asset is transferred in the circumstances mentioned in section 47(xiv), the cost of the asset in the hands of the company shall be the cost of the asset in the hands of the sole proprietor. Consequently, for the determining the period of holding of the asset, the period for which the asset is held by the sole proprietor shall also be considered.

Therefore, in the present case, the urban land shall be a long-term capital asset since it is held for more than 36 months by New Look Textile Private Limited and Neerja Textiles taken together. Cost of acquisition of land in the hands of the company shall be ₹ 9,80,000 i.e., the purchase cost of the land in the hands of Neerja.

Computation of capital gain chargeable to tax in the hands of New Look Textile Private Limited

Particulars	₹
Net Sale Consideration	15,00,000
Less: Indexed cost of acquisition $9{,}80{,}000 \times \frac{\text{CII of F.Y.2012-13}}{\text{CII of F.Y.2012-13}}$	9,80,000
Long-term capital gain	5,20,000

Note: The year of transfer and the year in which the company first held the asset are the same in this case, which is the reason why the numerator and the denominator for calculating the indexed cost of acquisition would remain the same. Therefore, in effect, there is no benefit of indexation in this case. However, as per the view expressed by Bombay High Court in *CIT v. Manjula J. Shah 16 Taxman 42,* in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by taking the CII of F.Y.2009-10, being the year in which the capital asset was acquired by the previous owner, Neerja, as the denominator, in which case, the capital gains chargeable to tax would undergo a change.

(c) Fair market value of the capital asset on the date of transfer to be taken as sale consideration, in cases where the consideration is not determinable [Section 50D]

(i) Recently, some of the courts have ruled that, in case of transfer of a capital asset for which the sale consideration is not determinable, the gain arising from transfer of such asset shall not be taxable, due to failure of the machinery provision.

(ii) Consequently, a new section 50D has been inserted by the Finance Act, 2012 providing that, in case where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

(Effective from A.Y. 2013-14)

(d) Extension of capital gain exemption under section 54B to a HUF [Section 54B]

(i) Under section 54B, the capital gain arising on the transfer of land which was used for agricultural purposes by an individual or his parents during the 2 years immediately preceding the date of transfer shall not be charged to tax to the extent of cost of acquisition of new agricultural land acquired within a period of 2 years after the date of transfer.

(ii) The aforesaid exemption was so far available only to an individual assessee. Section 54B is now amended to extend the benefit of such an exemption to a Hindu Undivided Family also.

(iii) Therefore, the capital gain arising on the transfer of land used for agricultural purposes, for 2 years immediately preceding the date of transfer by an assessee, *being an individual or his parent, or a Hindu Undivided Family* shall not be charged to tax if such assessee purchases a new agricultural land within a period of 2 years after the date of transfer. The capital gain would be exempt to the extent of cost of acquisition of new agricultural land acquired.

(Effective from A.Y. 2013-14)

(e) Exemption of long-term capital gains on transfer of residential property if the sale consideration is used for subscription in equity of a new start-up manufacturing SME company to be used for purchase of new plant and machinery [New Section 54GB]

(i) The National Manufacturing Policy (NMP) was announced by the Government in 2011 to encourage investment in the SME segment (Small and Medium Enterprises) in the manufacturing sector.

(ii) Section 54GB has been inserted to exempt long term capital gains on sale of a residential property (house or plot of land) owned by an individual or a HUF in case of re-investment of sale consideration in the equity shares of an eligible company being a newly incorporated SME company engaged in the manufacturing sector, which is utilized by the company for the purchase of new plant and machinery.

(iii) In order to qualify as an "eligible company" under section 54GB the company should be –

(1) incorporated in the financial year in which the capital gain arises or in the following year on or before the due date of filing return of income by the individual or HUF;

(2) engaged in the business of manufacture of an article or thing;

(3) a company in which the individual or HUF holds more than 50% of the share capital or 50% of the voting rights, after the subscription in shares by the individual or HUF; and

(4) a company which qualifies to be a Small or Medium Enterprise (SME) under the Micro, Small and Medium Enterprises Development Act, 2006 i.e., investment in the equipment is more than ₹ 25 lakhs but less than ₹ 10 crore.

(iv) The following conditions should be satisfied for claim of exemption of long-term capital gains under this section -

(1) The amount of net consideration should be used by the individual or HUF before the due date of furnishing of return of income under section 139(1), for subscription in equity shares of the eligible company.

(2) The amount of subscription as share capital is to be utilized by the eligible company for the purchase of new plant and machinery within a period of one year from the date of subscription in the equity shares.

(3) If the amount of net consideration subscribed as equity shares in the eligible company is not utilized by the company for the purchase of plant and machinery before the due date of filing of return by the individual or HUF, the unutilized amount shall be deposited in an account with any specified bank or institution before such due date of filing return of income. The return of income furnished by the assessee, should be accompanied by the proof of such deposit.

(4) The said amount is to be utilized in accordance with any scheme which may be notified by the Central Government in the Official Gazette.

(v) The amount of net consideration utilized by the company for purchase of new plant and machinery and the amount deposited as mentioned in (iv) above, will be deemed to be the cost of new plant and machinery for the purpose of computation of capital gains in the hands of individual or HUF.

(vi) New plant and machinery does not include -

(1) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;

(2) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(3) any office appliances including computers or computer software;

(4) any vehicle; or

(5) any machinery or plant, the whole of the actual cost of which is allowed as a deduction, whether by way of depreciation or otherwise, in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

(vii) Quantum of exemption under section 54GB

¨ If cost of new plant and machinery ≥ Net consideration of residential house, entire capital gains is exempt.

¨ If cost of new plant and machinery < Net consideration of residential house, only proportionate capital gains is exempt i.e.

$$LTCG' \frac{\text{Amount invested in new plant and machinery}}{\text{Net consideration}}$$

(viii) The exemption under this section would not be available in respect of transfer of residential property made after 31st March, 2017.

(ix) If the amount deposited by the company as mentioned in point (iv) above, is not utilized wholly or partly for the purchase of new plant and machinery within the period specified, then, the amount of capital gains not charged to tax under

section 45 on account of such deposit by the company shall be charged to tax under section 45 as income of the assessee for the previous year in which the period of 1 year from the date of subscription in the equity shares by the assessee expires.

(x) If the equity shares of the company acquired by the individual or HUF or the new plant and machinery acquired by the company are sold or transferred within a period of five years from the date of acquisition, the amount of capital gains earlier exempt under section 54GB shall be deemed to be the income of the individual or HUF chargeable under the head "Capital Gains" of the previous year in which such equity shares or such new plant and machinery are sold or otherwise transferred. This would be in addition to the capital gains arising on transfer of shares by the individual or HUF or capital gains arising on transfer of new plant and machinery by the company, as the case may be. These are safeguards to restrict the transfer of the shares of the company and of the plant and machinery for a period of 5 years to prevent diversion of these funds.

(Effective from A.Y. 2013-14)

Example

Mr. Akash sold his residential property on 2nd February, 2013 for ₹ 90 lakh and paid brokerage@1% of sale price. He had purchased the said property in May 2000 for ₹ 24,36,000. In June, 2013, he invested ₹ 75 lakh in equity of A (P) Ltd., a newly incorporated SME manufacturing company, which constituted 63% of share capital of the said company. A (P) Ltd. utilized the said sum for the following purposes –

(a) Purchase of new plant and machinery during July 2013 – ₹ 65 lakh

(b) Included in (a) above are ₹ 6 lakh for purchase of computers and ₹ 8 lakh for purchase of cars.

(c) Air-conditioners purchased for ₹ 1 lakh, included in the (a) above, were installed at the residence of Mr. Akash.

(d) Amount deposited in specified bank on 28.9.2013 – ₹ 10 lakh

Compute the chargeable capital gain for the A.Y.2013-14. Assume that Mr. Akash is liable to file his return of income on or before 30th September, 2013 and he files his return on 29.09.2013.

Answer

Computation of taxable capital gains for A.Y.2013-14

Particulars	₹
Gross consideration	90,00,000
Less: Expenses on transfer (1% of the gross consideration)	90,000
Net consideration	89,10,000

Less: Indexed cost of acquisition (₹ 24,36,000 × CII of F.Y.2012-13[1]/406)	A
	B
Less: Exemption under section 54GB (₹ 60,00,000 × B /₹ 89,10,000)	C
Taxable capital gains	B-C

Deemed cost of new plant and machinery for exemption under section 54GB

	Particulars	₹	₹
(1)	Purchase cost of new plant and machinery acquired in July, 2013		65,00,000
	Less: Cost of office appliances, i.e., computers	6,00,000	
	Cost of vehicles, i.e., cars	8,00,000	
	Cost of air-conditioners installed at the residence of Mr. Akash	1,00,000	15,00,000
			50,00,000
(2)	Amount deposited in the specified bank before the due date of filing of return		10,00,000
Deemed cost of new plant and machinery for exemption under section 54GB			60,00,000

(f) Assessing Officer enabled to make a reference to the Valuation Officer in case the assessee has taken the fair market value as the cost of acquisition of the asset in accordance with the estimate made by the Registered Valuer [Section 55A]

(i) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, the Assessing Officer may refer to the Valuation Officer under section 55A if he is of the opinion that the value of asset claimed by the assessee is less than the fair market value of the asset i.e., in cases where the fair market value is taken to be the sale consideration of the asset. However, so far, under the existing provisions, where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, the Assessing Officer could not refer a case to the Valuation Officer where the fair market

[1] Since the CII of F.Y.2012-13 is yet to be notified on the date of publication of this Supplementary Study Paper, it is not possible to calculate the indexed cost of acquisition and capital gains. When the CII is notified, the same can be applied to calculate the indexed cost of acquisition to arrive at the amount of taxable capital gains.

value is taken as the cost of acquisition of the asset. For example, let us take a case where the asset is acquired before 1st April, 1981 and the fair market value of the asset as on 1st April, 1981 is taken as the cost of acquisition at the option of the assessee. The assessee may declare a higher fair market value as cost of acquisition so as to reduce his capital gains and consequent tax liability.

(ii) Consequently, section 55A has been amended to provide that the Assessing Officer may refer to the Valuation Officer in a case where the value of asset, as claimed by the assessee is in accordance with the estimate made by a registered valuer, and the Assessing Officer is of the opinion that the value so claimed is *at variance* with the fair market value of the asset.

(iii) As a result, the Assessing Officer can now make a reference to the Valuation Officer even in a case where the fair market value of the asset as on 01.04.1981 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.1981 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

(Effective from 1st July, 2012)

(g) Non-residents and foreign companies to be subject to tax at a concessional rate of 10% (without indexation benefit or currency fluctuation) on long-term capital gains arising from transfer of unlisted securities [Section 112]

(i) Section 112 provides for the manner of computation of tax liability where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under the head "Capital Gains". Such long-term capital gains, included in the total income of the assessee, would be subject to tax@20%.

(ii) In case the tax payable on long-term capital gains arising on transfer of listed securities exceeds 10% of capital gains computed without the benefit of indexation, such excess shall be ignored for computing the tax payable by the assessee. However, this benefit is not available in respect of unlisted securities, which are subject to tax@20% with indexation benefit.

(iii) The above provisions contained in section 112 are applicable for both resident and non-resident assessees.

(iv) Under section 115AD, where the total income of a Foreign Institutional Investor includes long-term capital gains on sale of unlisted securities, the same would be taxable@10%, without the benefit of indexation or currency fluctuation.

(v) In order to bring parity in tax rate on long-term capital gains (arising on sale of unlisted securities) applicable to non-residents and FIIs, section 112 has been amended to provide that, in the case of non-corporate non-residents and foreign companies, long-term capital gains arising from transfer of unlisted

securities would be subject to tax@10% without giving effect to indexation provision under second proviso to section 48 and currency fluctuation under first proviso to section 48.

(Effective from A.Y.2013-14)

Note – Section 115AD is not covered within the scope of syllabus of IPCC Paper 4: Taxation. Section 115AD has been explained above solely to elucidate the rationale of the amendment made in section 112.

7. INCOME FROM OTHER SOURCES

(a) Any sum of money or property received by a HUF without consideration or for inadequate consideration from its members to be exempt from tax [Explanation to Section 56(2)(vii)]

(i) As per section 56(2)(vii), any sum of money or property received without consideration or for inadequate consideration, by an individual or HUF shall be chargeable to tax, subject to certain conditions. However, if such sum of money or property is received from a relative, then, the provisions of section 56(2)(vii) are not applicable.

(ii) The definition of "relative" as per the *Explanation* to section 56(2)(vii) for applicability of exclusion provision only contains reference to relatives in relation to an individual, though the taxability provisions under section 56(2)(vii) are attracted both in the case of individuals and HUFs.

(iii) Therefore, to remove the unintended inequity, the existing definition of "relative" is replaced with a new definition including therein, in case of a HUF, any member thereof, as its relative. Therefore, if a Hindu Undivided Family receives any sum of money or property from its member without consideration or for inadequate consideration, then, the same shall not be chargeable to tax as per the provisions of section 56(2)(vii).

(Effective retrospectively from 1st October, 2009)

Example

Discuss the taxability or otherwise of the following in the hands of the recipient under section 56(2)(vii) the Income-tax Act, 1961 -

(i) Akhil HUF received ₹ 75,000 in cash from niece of Akhil (i.e., daughter of Akhil's sister). Akhil is the Karta of the HUF.

(ii) Nitisha, a member of her father's HUF, transferred a house property to the HUF without consideration. The stamp duty value of the house property is ₹ 9,00,000.

(iii) Mr. Akshat received 100 shares of A Ltd. from his friend as a gift on occasion of his 25th marriage anniversary. The fair market value on that date was ₹ 100

per share. He also received jewellery worth ₹ 45,000 (FMV) from his nephew on the same day.

(iv) Kishan HUF gifted a car to son of Karta for achieving good marks in XII board examination. The fair market value of the car is ₹ 5,25,000.

(v) Ms. Kratika purchased a land from PMC Co. a partnership concern for ₹ 7,15,000. The stamp duty value of the same was ₹ 12,00,000.

Answer

	Taxable/ Non-taxable	Amount liable to tax (₹)	Reason
(i)	Taxable	75,000	Sum of money exceeding ₹ 50,000 received without consideration from a non relative is taxable under section 56(2)(vii). Daughter of Mr. Akhil's sister is not a relative of Akhil HUF, since she is not a member of Akhil HUF.
(ii)	Non-taxable	Nil	Immovable property received without consideration by a HUF from its relative is not taxable under section 56(2)(vii). Since Nitisha is a member of the HUF, she is a relative of the HUF. However, income from such asset would be included in the hands of Nitisha under 64(2).
(iii)	Taxable	55,000	As per provisions of section 56(2)(vii), in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds ₹ 50,000, the whole of the aggregate value shall be taxable. In this case, the aggregate fair market value of shares (₹ 10,000) and jewellery (₹ 45,000) exceeds ₹ 50,000. Hence, the entire amount of ₹ 55,000 shall be taxable.
(iv)	Non-taxable	Nil	Car is not included in the definition of property for the purpose of section 56(2)(vii), therefore, the same shall not be taxable.
(v)	Non-taxable	Nil	Immovable property acquired for inadequate consideration is not taxable under section 56(2)(vii).

(b) Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [Section 56(2)(viib)]

(i) New clause (viib) has been inserted in section 56(2) to bring to tax the consideration received from a resident person by a company, other than a company in which public are substantially interested, which is in excess of the fair market value (FMV) of shares.

(ii) Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head "Income from Other Sources", in cases where consideration received for issue of shares exceeds the face value of shares i.e. where shares are issued at a premium.

(iii) However, these provisions would not be attracted where consideration for issue of shares is received:

(1) by a Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC); or

(2) by a company from a class or classes of persons as notified by the Central Government for this purpose.

(iv) Fair market value of the shares shall be the higher of, the value as may be –

(a) determined in accordance with the prescribed method; or

(b) substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

(iv) Consequently, sub-clause (xvi) is inserted to section 2(24) defining "income" to provide that, any consideration received for issue of shares as exceeds the fair market value of the shares referred to in section 56(2)(viib) shall be considered as income in the hands of the company.

(Effective from A.Y.2013-14)

Example

The following are the details of the shares issued by Ray (P) Ltd. Discuss the applicability of provisions of section 56(2)(viib) in the hands of the company:

	Face value of shares (₹)	FMV of shares (₹)	Issue price of shares (₹)	Applicability of section 56(2)(viib)
(i)	100	120	130	The provisions of section 56(2)(viib) are attracted in this case since the shares are

				issued at a premium (i.e., issue price exceeds the face value of shares). The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). ₹ 10 (₹ 130 - ₹ 120) shall be treated as income in the hands of Ray (P) Ltd.
(ii)	100	120	110	The provisions of section 56(2)(viib) are attracted since the shares are issued at a premium. However, no sum shall be chargeable to tax under the said section as the shares are issued at a price less than the FMV of shares.
(iii)	100	90	98	Section 56(2)(viib) is not attracted since the shares are issued at a discount, though the issue price is greater than the FMV.
(iv)	100	90	110	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium. The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Therefore, ₹ 20 (₹ 110 - ₹ 90) shall be treated as income in the hands of Ray (P) Ltd.

8. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Life insurance premium up to 10% of minimum capital sum assured to qualify for deduction under section 80C, in respect of policies issued on or after 1.4.2012

Related amendment in section: 10(10D)

(i) Under section 80C, deduction in respect of premium or any sum paid for life insurance policy, other than contract for a deferred annuity, is allowed to an individual or a HUF only to the extent of such premium or other payment made not in excess of 20% of actual capital sum assured.

(ii) According to section 10(10D), any sum received under a life insurance policy including the sum allocated by way of bonus on such policy is exempt. However, in case the premium payable for any of the years during the term of the policy exceeds 20% of the actual capital sum assured, then the exemption under section 10(10D) would not be available.

(iii) The actual capital sum assured referred to in aforesaid sections would be calculated as per the *Explanation* to section 80C(3) i.e., while computing actual capital sum assured, the value of premium to be returned or any benefit by way of bonus or otherwise to be received over and above the sum actually assured shall not be taken into account.

(iv) The Finance Act, 2012 has reduced the permissible limit of 20% of the actual capital sum assured to 10% of the actual capital sum assured in respect of the insurance policies to be issued on or after 1st April, 2012.

(v) Hence, the deduction under section 80C for premium or other payment made on insurance policy, other than a contract for a deferred annuity, shall be restricted to the 10% of the actual sum assured, in case the insurance policy is issued on or after 1st April, 2012.

(vi) Similarly, no exemption under section 10(10D) shall be granted to the assessee, in case the premium payable for any of the years during the term of the policy exceeds 10% of the capital sum assured in case the life insurance policy is issued on or after 1st April, 2012.

(vii) Also, *Explanation* to section 80C(3A) has been introduced to provide that, in respect of the life insurance policies to be issued on or after 1st April, 2012, the actual capital sum assured shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account :

(1) the value of any premium agreed to be returned; or

(2) any benefit by way of bonus or otherwise over and above the sum actually assured which is to be or may be received under the policy by any person.

(viii) Section 10(10D) also makes reference to the above mentioned *Explanation* to section 80C(3A) for the meaning to be assigned to "actual capital sum assured" for the life insurance policies to be issued on or after 1st April, 2012.

(ix) In effect, in case the insurance policy has varied sum assured during the term of policy then the minimum of the sum assured during the life time of the policy shall be taken into consideration for calculation of the "actual capital sum assured" for the purpose of section 80C and section 10(10D), in respect of life insurance policies to be issued on or after 1st April, 2012.

(x) The following is a tabular summary of the amendments effected in section 10(10D) and section 80C -

From A.Y.2013-14			
In respect of policies issued between 1.4.2003 and 31.3.2012		In respect of policies issued on or after 1.4.2012	
Exemption u/s 10(10D)	Deduction u/s 80C	Exemption u/s 10(10D)	Deduction u/s 80C
Any sum received under a LIP including the sum allocated by way	Premium paid to the extent of 20% of "actual capital sum	Any sum received under a LIP including the sum allocated by way of	Only premium paid to the extent of 10% of "minimum

of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of "actual capital sum assured".	assured" qualifies for deduction u/s 80C.	bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of "minimum capital sum assured" under the policy on the happening of the insured event at any time during the term of the policy.	capital sum assured" qualifies for deduction u/s 80C.

(Effective from A.Y. 2013-14)

(b) One time deduction for investment by a resident individual in listed equity shares as per notified scheme [New section 80CCG]

(i) In the Budget Speech, a new scheme was proposed to be introduced to encourage flow of savings in financial instruments and improve the depth of domestic capital market.

(ii) Accordingly, new section 80CCG has been introduced to provide for a one-time deduction to a resident individual who has acquired listed equity shares in a previous year in accordance with a scheme notified by the Central Government.

(iii) The deduction would be 50% of amount invested in such equity shares or ₹ 25,000, whichever is lower. The maximum deduction of ₹ 25,000 would be available on investment of ₹ 50,000 in such listed equity shares.

(iv) The following conditions have to be satisfied for claiming the above deduction–

(a) The gross total income of the assessee for the relevant assessment year should be less than or equal to ₹ 10 lakh.

(b) The assessee should be a new retail investor as per the requirement specified under the notified scheme.

(c) The investment should be made in such listed shares as may be specified under the notified scheme.

(d) The minimum lock-in period in respect of such investment is three years from the date of acquisition in accordance with the notified scheme.

In addition to the above, other conditions may also be prescribed, subject to fulfillment of which, deduction under section 80CCG can be claimed.

(v) If the individual, after having claimed such deduction, fails to comply with any of the conditions in any previous year, say, he sells the shares before three years, then, the deduction earlier allowed shall be deemed to be the income of the previous year in which he fails to comply with the condition. The income shall, accordingly, be liable to tax in the assessment year relevant to such previous year.

(vi) If deduction has been claimed and allowed under this section for any assessment year, the assessee would not be allowed any deduction under this section for any subsequent assessment year.

(Effective from A.Y.2013-14)

(c) Eligible age for senior citizen reduced from 65 years to 60 years for availing increased deduction under section 80D & 80DDB

(i) The Finance Act, 2011 had amended the effective age of a senior citizen being an Indian resident from 65 years of age to 60 years for the purposes of application of various tax slabs and rates of tax under the Income-tax Act, 1961 for income earned during the financial year 2011-12 (A.Y.2012-13).

(ii) However, the eligible age for senior citizen was not correspondingly reduced for applicability of provisions contained in other sections. Therefore, in order to bring uniformity, the age for qualifying as a senior citizen has now been amended for the purpose of section 80D and section 80DDB.

(iii) As per section 80D, a deduction of ₹ 15,000 is allowed in respect of premium paid towards a health insurance policy for the assessee or his family (spouse and dependant children) and a further deduction of ₹ 15,000 is also allowed for premium paid in respect of health insurance policy for parents. Where the premium is paid to effect or keep in force an insurance on the health of any person who is a senior citizen, the deductions are allowable up to a higher sum of ₹ 20,000 instead of ₹ 15,000.

(iv) Section 80DDB provides for a deduction in respect of medical treatment of specified disease or ailment up to ₹ 40,000 of an individual or his dependant or any member of the Hindu Undivided Family, in case the assessee is a Hindu Undivided Family. This deduction is enhanced to a maximum of ₹ 60,000 where the amount is for the medical treatment of the above mentioned person(s) who is a senior citizen.

(v) Under section 80D & 80DDB the effective age of a "senior citizen" for availing the benefit of above mentioned higher deduction was 65 years or more at any time during the relevant previous year. The said age of 65 years has now been reduced to 60 years.

(Effective from A.Y. 2013-14)

(d) Deduction for expenditure on preventive health check-up [Section 80D]

(i) As per section 80D, in case of an individual, a deduction is allowed in respect of premium paid to effect or keep in force an insurance on the health of self, spouse and dependent children or any contribution made to the Central Government Health Scheme, up to a maximum of ₹ 15,000 in aggregate. A further deduction of ₹ 15,000 is also allowed in case the premium is paid for the health insurance taken for the health of parents.

An increased deduction of ₹ 20,000 (instead of ₹ 15,000) shall be allowed in case any of the persons mentioned above is a senior citizen.

Further, deduction would be allowed only if the payment of insurance premium is made in any mode other than cash.

(ii) Section 80D has been amended to provide that deduction to the extent of ₹ 5,000 shall be allowed in respect payment made on account of preventive health check-up of self, spouse, dependent children or parents made during the previous year. However, the said deduction of ₹ 5,000 is within the overall limit of ₹ 15,000 or ₹ 20,000, as the case may be.

(iii) In effect the maximum deduction allowable under this section in any assessment year shall be to the extent of ₹ 15,000 for self, spouse and dependent children (₹ 20,000 in case any of the persons are senior citizen) in respect of the following payments made -

(1) to effect or keep in force an insurance on the health of self, spouse or dependent children.

(2) on account of contribution to the Central Government Health Scheme

(3) on account of preventive health check-up of self, spouse or dependent children.

(iv) A further deduction up to ₹ 15,000 (₹ 20,000 in case either of parents are senior citizens) is allowable –

(1) to effect or keep in force an insurance on the health of parents.

(2) on account of preventive health check-up of parents.

(v) The maximum deduction allowable in respect of expenditure on preventive health check-up of self, spouse, dependent children and parents would be ₹ 5,000.

(vi) Further it is provided that, for claiming such deduction under section 80D, the payment can be made:

(1) by any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(2) by any mode other than cash, in all other cases.

(Effective from A.Y. 2013-14)

Example

Mr. A, aged 40 years, paid medical insurance premium of ₹ 12,000 during the P.Y.2012-13 to insure his health as well as the health of his spouse. He also paid medical insurance premium of ₹ 17,000 during the year to insure the health of his father, aged 63 years, who is not dependent on him. He contributed ₹ 2,400 to Central Government Health Scheme during the year. He has incurred ₹ 3,000 in cash on preventive health check-up of himself and his spouse and ₹ 4,000 by cheque on preventive health check-up of his father. Compute the deduction allowable under section 80D for the A.Y.2013-14.

Solution

Deduction allowable under section 80D for the A.Y.2013-14

	Particulars	₹	₹
		Actual Payment	Maximum deduction allowable
A.	Premium paid and medical expenditure incurred for self and spouse		
(i)	Medical insurance premium paid for self and spouse	12,000	12,000
(ii)	Contribution to CGHS	2,400	2,400
(iii)	Exp. on preventive health check-up of self & spouse	3,000	600
		17,400	15,000
B.	Premium paid and medical expenditure incurred for father, who is a senior citizen		
(i)	Mediclaim premium paid for father, who is over 60 years of age	17,000	17,000
(ii)	Expenditure on preventive health check-up of father	4,000	3,000
		21,000	20,000
	Total deduction under section 80D (15,000 + 20,000)		35,000

Notes

(1) The total deduction under A. (i), (ii) and (iii) above should not exceed ₹ 15,000. Therefore, the expenditure on preventive health check-up for self and spouse would be restricted to ₹ 600, being (₹ 15,000 - ₹ 12,000 - ₹ 2400).

(2) The total deduction under B. (i) and (ii) above should not exceed ₹ 20,000. Therefore, the expenditure on preventive health check-up for father would be restricted to ₹ 3,000, being (₹ 20,000 - ₹ 17,000).

(3) In this case, the total deduction allowed on account of expenditure on preventive health check-up of self, spouse and father is ₹ 3,600 (i.e., ₹ 600 + ₹ 3,000), which is less than the maximum permissible limit of ₹ 5,000.

(e) No deduction in respect of cash donation exceeding of ₹ 10,000 [Section 80G & Section 80GGA]

(i) As per section 80G, deduction is provided in respect of donations, being sum of money, made to certain funds, charitable institutions, etc. subject to fulfillment of the specified conditions.

(ii) Similarly, section 80GGA provides for deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/institutions, subject to fulfillment of the specified conditions.

(iii) Sub-section (5D) and (2A) have been inserted in section 80G and 80GGA, respectively, to provide that no deduction shall be allowed in respect of donation of any sum exceeding ₹ 10,000 unless such sum is paid by any mode other than cash.

(Effective from A.Y. 2013-14)

(f) Extension of sunset clause for tax holiday under section 80-IA for power-sector undertakings [Section 80-IA(4)(iv)]

(i) As per the provisions of section 80-IA(4)(iv), a deduction of 100% of profits and gains is allowed for 10 consecutive assessment years to an undertaking which:

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2012;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2012;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2012.

(ii) This time limit has been extended by one year i.e., from 31st March, 2012 to 31st March, 2013, to enable undertakings which start generation, or transmission or distribution of power during the period between 1st April, 2012 and 31st March, 2013 or which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1st April, 2012 and 31st March, 2013 to avail benefit of deduction under this section.

(Effective from A.Y.2013-14)

(g) Deduction in respect of interest on deposits in savings accounts [New Section 80TTA]

(i) Section 80TTA has been introduced to provide that in case the gross total income of an assessee, being an individual or a Hindu Undivided Family, includes any income by way of an interest on deposits in a saving account (not

being time deposits, which are deposits repayable on expiry of fixed periods), deduction up to ₹ 10,000 in aggregate shall be allowed while computing the total income of such assessee. Such deduction shall be allowed in case the saving account is maintained with:

(1) a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);

(2) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or

(3) a post office.

(ii) However, if the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an AOP/BOI, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the AOP or any individual of the BOI.

(iii) In effect the deduction under this section shall be allowed only in respect of the income derived in form of the interest on the saving bank deposit (other than time deposits) made by the individual or Hindu Undivided Family directly.

(Effective from A.Y. 2013-14)

Example

Mr. Gurnam, aged 62 years, earned professional income (computed) of ₹ 5,50,000 during the year ended 31.03.2013. He has earned interest of ₹ 14,500 on the saving bank account with State Bank of India during the year. Compute the total income of Mr. Gurnam for the assessment year 2013-14 from the following particulars:

(i) Life insurance premium paid to Birla Sunlife Insurance in cash amounting to ₹ 25,000 for insurance of life of his dependent parents. The insurance policy was taken on 15.07.2012 and the sum assured on life of his dependent parents is ₹ 1,25,000.

(ii) Life insurance premium of ₹ 25,000 paid for the insurance of life of his major son who is not dependent on him. The sum assured on life of his son is ₹ 1,75,000 and the life insurance policy was taken on 18.04.2011.

(iii) Life insurance premium paid by cheque of ₹ 22,500 for insurance of his life. The insurance policy was taken on 08.09.2012 and the sum assured is ₹ 2,00,000.

(iv) Subscription to long-term infrastructure bonds amounting to ₹ 25,000.

(v) Premium of ₹ 16,000 paid by cheque for health insurance of self and his wife.

(vi) ₹ 1,500 paid in cash for his health check-up and ₹ 4,500 paid in cheque for health check-up for his parents.

(vii) Paid interest of ₹ 6,500 on loan taken from bank for MBA course pursued by his daughter.

(viii) A sum of ₹ 15,000 donated in cash to an institution approved for purpose of section 80G for promoting family planning.

(ix) Contribution ₹ 10,500 made in cash to an electoral trust.

Answer

Computation of total income of Mr. Gurnam for the Assessment Year 2013-14

Particulars	₹	₹	₹
Professional Income (computed)			5,50,000
Interest on saving bank deposit			14,500
Gross Total Income			5,64,500
Less: Deduction under Chapter VIA			
Under section 80C (See Note 1)			
Life insurance premium paid for life insurance of:			
- major son	25,000		
- self ₹ 22,500 restricted to 10% of ₹ 2,00,000	20,000	45,000	
Under section 80D (See Note 3)			
Premium paid for health insurance of self and wife by cheque	16,000		
Payment made for health check-up:			
- Self ₹ 1,500			
- His Parents ₹ 4,500			
₹ 6,000 restricted to	5,000	21,000	
Under section 80E			
For payment of interest on loan taken from bank for MBA course of his daughter		6,500	
Under section 80GGC			
Contribution to electoral trust		10,500	
Under section 80TTA (See Note 5)			
Interest on savings bank account ₹ 14,500 restricted to		10,000	93,000
Total Income			4,71,500

Notes:

(1) As per section 80C, no deduction is allowed in respect of premium paid for life insurance of parents whether they are dependent or not. Therefore, no deduction is allowable in respect of ₹ 15,000 paid as premium for life insurance of dependent parents of Mr. Gurnam.

As per the amendment made by Finance Act, 2012, deduction shall be allowed in

respect of premium paid for life insurance only to the extent of 10% of sum assured in respect of insurance policy issued after 01.04.2012. In case the insurance policy is issued before 01.04.2012, deduction of premium paid on life insurance policy shall be allowed up to 20% of sum assured.

Therefore in the present case, deduction of ₹ 25,000 is allowable in respect of life insurance of Mr. Gurnam's son since the insurance policy was issued before 01.04.2012 and the premium amount is less than 20% of ₹ 1,75,000. However, in respect of premium paid for life insurance policy of Mr. Gurnam himself, deduction is allowable only up to 10% of ₹ 2,00,000 since, the policy was issued after 01.04.2012 and the premium amount exceeds 10% of sum assured.

(2) Deduction under section 80CCF for subscription to long-term infrastructure fund was allowed up to A.Y. 2012-13. Therefore, no deduction for the same is allowable for A.Y. 2013-14.

(3) As per section 80D, in case the premium is paid in respect of health of a person specified therein and for health check-up of such person who is a senior citizen i.e., aged 60 years or more, deduction shall be allowed up to ₹ 20,000. Further, as per amendment made by Finance Act, 2012, deduction up to ₹ 5,000 in aggregate shall be allowed in respect of health check-up of self, spouse, children and parents. In order to claim deduction under section 80D, the payment for health-check up can be made in any mode including cash. However, the payment for health insurance premium has to be paid in any mode other than cash.

Therefore, in the present case, deduction of ₹ 16,000 is allowed in respect of premium paid for health insurance of self and wife, since Mr. Gurnam is a senior citizen and the payment is made by cheque. Also, the aggregate value of premium paid for health insurance and the payment for health check-up is ₹ 17,500 (₹ 16,000 + ₹ 1,500), which is less than ₹ 20,000. Further, deduction up to a maximum of ₹ 5,000 is allowable in respect of health check-up of self and his parents. This implies that ₹ 3,500 is allowable for health check-up of parents which falls within the additional limit of ₹ 20,000 for mediclaim premium and expenditure on preventive health check-up of parents.

(4) As per the Finance Act, 2012, no deduction shall be allowed under section 80G in case the donation is made in cash of a sum exceeding ₹ 10,000. Therefore, no deduction is allowed under section 80G in respect of donation made to institution approved therein. However, there is no such restriction for contribution to an electoral trust which qualifies for deduction under section 80GGC.

(5) As per section 80TTA, deduction shall be allowed from the gross total income of an individual or Hindu Undivided Family in respect of income by way of interest on deposit in the savings account included in the assessee's gross total income, subject to a maximum of ₹ 10,000. Therefore, a deduction of ₹ 10,000 is allowable from the gross total income of Mr. Gurnam, though the interest from savings bank account is ₹ 14,500.

9. PROVISIONS CONCERNING ADVANCE TAX AND TAX DEDUCTED AT SOURCE

(a) Tax not to be deducted at source in case aggregate of interest which is payable to an individual or Hindu Undivided Family on debentures does not exceed ₹ 5,000 [Proviso to section 193]

(i) Under section 193, tax is required to be deducted at the rates in force by a person responsible for paying to a resident, any income by way of interest on securities.

(ii) The proviso to section 193 provides for certain exemptions i.e., cases where tax need not be deducted at source.

(iii) One such exemption provided in clause (v) of the proviso is in a case where, a person is responsible for paying interest to a resident individual on listed debentures of a company, in which the public are substantially interested. Tax is not required to be deducted at source in case the interest or aggregate of interest paid or likely to be paid during a financial year by the company to such individual does not exceed ₹ 2,500 and the interest is paid by an account payee cheque.

(iv) For the purpose of reducing the compliance burden on small assessees and companies, clause (v) of the proviso has been substituted w.e.f. 1st July, 2012 to provide that a company, in which the public are substantially interested, is not required to deduct tax at source, in case the interest is payable to an individual or Hindu Undivided Family in respect of any *debenture* issued by the company (whether or not listed in a recognized stock exchange), if:

(1) the amount of interest or the aggregate amount of such interest paid or likely to be paid on such debentures during the financial year by the company to such individual or Hindu Undivided Family does not exceed ₹ 5,000: and

(2) such interest is paid by the company by an account payee cheque.

(Effective from 1st July, 2012)

(b) Rate of tax deduction at source under section 194E increased from 10% to 20% and payment to a non-resident entertainer included within the scope of section 194E

(i) Section 115BBA has been amended by the Finance Act, 2012 to increase the rate of tax in respect of income specified therein from 10% to 20% and to also include within its scope, income of non-resident entertainers from performance in India.

(ii) Therefore, the following income shall be charged to tax at the rate of 20% as per the provisions of section 115BBA w.e.f. 1st July, 2012:

(1) the income of a non-resident sportsman (including an athlete) who is not a citizen of India, by way of participation in any game (other than a game

the winnings from which are taxable under section 115BB) or sport in India or advertisement or any contribution of article in relation to any game or sport in India; or

(2) any amount guaranteed to be paid or payable to any non-resident sports association or institution in relation to any game (other than a game the winnings from which are taxable under section 115BB) or sport played in India; or

(3) income of a non-resident entertainer who is not a citizen of India, received or receivable from his performance in India

(iii) Consequently, section 194E has been amended to provide that tax shall be deducted at source on the income referred to in section 115BBA at the rate of 20%.

(Effective from 1st July, 2012)

Note – Section 115BBA is not covered within the scope of syllabus of IPCC Paper 4: Taxation. Since section 194E provides for deduction of tax at source on income referred to in section 115BBA, the provisions of section 115BBA have been explained to enable the students to understand the provisions of section 194E.

(c) Tax to be deducted under section 194J on any remuneration paid to a director, other than in the nature of salary on which tax is deductible under section 192

(i) At present, a company, being an employer, is required to deduct tax at the time of payment of salary to its employees including Managing director/Whole time director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary.

(ii) Therefore, section 194J has been amended to provide that tax is required to be deducted@10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary on which tax is deductible at source under section 192.

(Effective from 1st July, 2012)

(d) Threshold limit for non-deduction of tax at source on payment of compensation on compulsory acquisition of immovable property increased [Section 194LA]

(i) Under the section 194LA, a person responsible for paying to a resident, any compensation or enhanced compensation or consideration or enhanced consideration on compulsory acquisition of immovable property (other than agricultural land) under any law for the time being in force is required to deduct tax at the rate of 10% in case the compensation or consideration exceeds ₹ 1 lakh in aggregate during the financial year.

(ii) In order to reduce the compliance burden on small assessees, the above mentioned threshold limit of ₹ 1 lakh for attracting TDS provisions under section 194LA has been increased to ₹ 2 lakh.

(iii) Now, the person responsible for making payment in respect of compulsory acquisition of the immovable property (other than agricultural land) shall not be required to deduct tax at source in case the compensation or the consideration paid or payable by way of a single payment or aggregate of payments during the financial year does not exceed ₹ 2 lakh.

(Effective from 1st July, 2012)

Table showing comparative position of TDS provisions prior to and from 1.7.2012

Section	Upto 30.6.2012	On or after 1.7.2012
193	Exemption under clause (v) of the proviso available only in respect of payment of interest – (i) on debentures listed in a recognized stock exchange; (ii) to resident individuals; (iii) not exceeding ₹ 2500 in aggregate	Exemption under clause (v) of the proviso available only in respect of payment of interest – (i) on debentures, whether or not listed in a recognized stock exchange; (ii) to resident individuals and HUFs (iii) not exceeding ₹ 5,000 in aggregate.
194E	TDS@10% on certain payments or credits to – (i) non-resident sportsman, who is not a citizen of India; or (ii) non-resident sports associations or institutions.	TDS @ 20% on certain payments or credits to - (i) non-resident sportsman who is not a citizen of India; or (ii) non-resident sports associations or institutions; or (iii) non-resident entertainer who is not a citizen of India.
194J	Directors' remuneration, fees and commission not included within the scope of section 194J.	Directors' remuneration, fees and commission, by whatever name called, other than in the nature of salary on which tax is deductible under section 192, included within the scope of section 194J.
194LA	TDS provisions attracted if payment or aggregate payment of compensation on compulsory acquisition of immovable property exceeds ₹ 1 lakh.	TDS provisions attracted if payment or aggregate payment of compensation on compulsory acquisition of immovable property exceeds ₹ 2 lakh.

(e) Concessional rate of tax deduction at source on interest on borrowings in foreign currency by Indian companies [Section 194LC]

Related amendment in section: 195

(i) Interest paid by an Indian company to a foreign company or a non-corporate non-resident in respect of borrowing made in foreign currency from sources outside India between 1.7.2012 and 30.6.2015 would be subject to tax at a concessional rate of 5% on gross interest (as against the rate of 20% of gross interest applicable in respect of other interest received by a non-corporate non-resident or foreign company from Government or an Indian concern on money borrowed or debt incurred by it in foreign currency).

(ii) To avail this concessional rate, the borrowing should be from a source outside India under a loan agreement or by way of issue of long-term infrastructure bonds approved by the Central Government.

(iii) The interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.

(iv) Such interest paid by an Indian company to a non-corporate non-resident or a foreign company would be subject to TDS@5% under section 194LC.

(v) Accordingly, section 195 would include, within its scope, interest payments to foreign companies and non-corporate non-residents, other than interest covered under section 194LB and section 194LC.

Note – It may be noted that last year, a provision was introduced in the Income-tax Act, 1961 to enable the Central Government to notify infrastructure debt funds to be set up in accordance with the prescribed guidelines, the income from which would be exempt from tax. Interest income received by a non-corporate non-resident or foreign company from such fund was also subject to tax at a concessional rate of 5% on the gross amount of such interest income as compared to tax@20% on other interest income received by the non-resident from an Indian concern. Such interest was also subject to TDS@5% under section 194LB. This is similar to the benefit given this year by way of concessional rate of tax @5% on interest on overseas borrowings in foreign currency by Indian companies under a loan agreement or by way of issue of long-term infrastructure bonds.

(f) Eligible age for senior citizen reduced from 65 years to 60 years for the purpose of section 197A(1C)

(i) The Finance Act, 2011 had amended the effective age of a senior citizen being an individual, resident in India, from 65 years of age to 60 years for availing the benefit of higher basic exemption limit under the Income-tax Act, 1961 for income earned during the F.Y.2011-12 (A.Y. 2012-13).

(ii) However, the eligible age for senior citizen was not correspondingly reduced in various other beneficial provisions of the Act. Therefore, in order to ensure

uniformity, the age of a senior citizen to qualify for the benefit under section 197A(1C) has also been reduced to 60 years.

(iii) Accordingly, no deduction of tax at source shall be made in the case of an individual resident in India of the age of 60 years or more at any time during the previous year, under section 193 (interest on securities) or section 194 (dividends) or section 194A (interest other than interest on securities), if such individual furnishes a declaration in the prescribed form (Form No. 15H) to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

(Effective from 1st July, 2012)

(g) No tax to be deducted in case of payment made to notified institutions, associations etc. [Section 197A(1F)]

(i) Tax is required to be deducted from certain payments as per the provisions of Chapter XVII-B of the Income-tax Act, 1961. However, such requirement may cause genuine hardship to the deductee in certain cases.

(ii) Therefore, to alleviate the hardship and compliance burden in such cases, section 197A provides that no deduction of tax would be made in certain cases on submission of declaration in writing to the person responsible for paying income of the nature specified therein to the effect that tax on estimated total income of the previous year in which such income is to be included in computing his/its total income will be nil.

(iii) Further, sub-section (1F) has been inserted in section 197A to provide that, no deduction of tax shall be made from such specified payments to such institution, association or body or class of institutions or associations or bodies as may be notified by the Central Government in the Official Gazette in this behalf.

(iv) Therefore, in respect of such specified payments made to notified bodies, no tax is to be deducted at source.

(Effective from 1st July, 2012)

(h) Payer not to be treated as an assessee-in-default for non-deduction of tax at source, if such tax is paid by the resident payee & Due date of filing the return of the payee would be deemed as the date of payment of taxes [Section 201]

Related amendment in section: 40(a)(ia)

(i) The provisions of Chapter XVII-B require deduction of tax at source by the payer on certain specified payments at the specified rates if the payment exceeds specified threshold. In case he fails to deduct tax at source in accordance with the provisions of this Chapter, he is deemed to be an assessee-in-default under section 201(1) in respect of the amount of such non-deduction.

(ii) However, as per section 191, a person shall be deemed to be an assessee-in-default in respect of non/short deduction of tax only in cases where the payee

has also failed to pay the tax directly. Therefore, the payer cannot be treated as an assessee-in-default in respect of non-deduction or short-deduction of tax if the payee has discharged his tax liability. However, the payer is liable to pay interest under section 201(1A) on the amount of non-deduction or short-deduction of tax.

(iii) Section 201 has been amended to provide that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee –

(1) has furnished his return of income under section 139;

(2) has taken into account such sum for computing income in such return of income; and

(3) has paid the tax due on the income declared by him in such return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

"Accountant" shall have the same meaning as assigned to it in *Explanation* to section 288(2).

(iv) The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

(v) Further, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee-in-default under section 201(1) on account of payment of taxes by such resident payee, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

(Effective from 1st July, 2012)

(vii) Consequently, in cases where such person responsible for deducting tax is not deemed to be an assessee-in-default on account of payment of taxes by the resident payee, it shall be deemed that the payer has deducted and paid the tax on such sum on the date of furnishing return of income by the resident payee.

Since the date of furnishing the return of income by the resident payee is taken to be the date on which the payer has deducted tax at source and paid the same, the expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(ia) in the year in which the said expenditure is incurred. Such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the resident payee, since tax is deemed to have been deducted and paid by the payer in that year.

(Effective from A.Y. 2013-14)

(i) Time limit for passing an order, declaring an assessee to be assessee-in-default under section 201, extended in certain cases

(i) Section 201(3) provides the time limit for passing an order deeming a person to be an assessee-in-default for non-deduction or short-deduction of tax at source from any payment made to a person resident in India.

(ii) In a case where TDS statement referred to in section 200 has been furnished, the time limit for passing such an order is two years from the end of the financial year in which the statement is filed.

(iii) In a case where TDS statement referred to in section 200 has not been filed, the time limit for passing such an order is four years from the end of the financial year in which the payment is made or credit is given.

(iv) The time limit for passing an order in case where TDS statement referred to in section 200 has not been filed, has now been extended from four years to six years from the end of the financial year in which the payment is made or credit is given.

(Effective retrospectively from 1st April, 2010)

(j) "Drawing or Disbursing Officer" to be "the person responsible for paying" in case of payment by Central Government or State Government [Section 204]

(i) Under section 204, a "person responsible for paying" has been defined to include, *inter alia*, the employer, company or its principal officer or the payer. However, it is not clear as to who is the person responsible for paying the sum to the payee, in case the payment is made or sum is credited by or on behalf of Central Government or State Government.

(ii) In order to clarify the meaning of "person responsible for paying" in case of payment by or on behalf of Central Government or State Government, it has now been provided that the Drawing and Disbursing Officer or any other person (by whatever name called) responsible for crediting, or as the case may be, making payment shall be the "person responsible for paying" within the meaning of section 204.

(Effective from 1st July, 2012)

(k) Senior Citizens, not having profit and gains of business or profession, exempt from payment of advance tax [Section 207]

(i) Under section 208, every assessee is required to pay advance tax if the tax liability for the previous year is ₹ 10,000 or more.

(ii) It is observed that, in case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship.

(iii) Therefore, in order to reduce the compliance burden on such senior citizens exemption from payment of advance has now been provided to a resident individual-

(1) not having any income chargeable under the head "Profits and gains of business or profession"; and

(2) of age 60 years or more.

Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

(Effective from 1st April, 2012)

(l) No reduction of tax deductible but not deducted for computing advance tax liability [Section 209]

(i) As per the provisions of section 209, the amount of advance tax payable by a person is computed by reducing the amount of income-tax which would be *deductible* during the financial year from any income which has been taken into account in computing the total income.

(ii) Some courts have opined that in case where the payer pays any amount (on which tax is deductible at source) without deduction of tax at source, the payee shall not be liable to pay advance tax to the extent tax is deductible from such amount.

(iii) With a view to make such a person (payee) liable to pay advance tax, a proviso has been inserted in section 209(1)(d). Accordingly, the amount of tax deductible at source but not so deducted by the payer shall not be reduced from the income tax liability of the payee for determining his liability to pay advance tax.

(iv) In effect, only if tax has actually been deducted at source, the same can be reduced for computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee.

(Effective from 1st April, 2012)

Example

Discuss whether the person making payment is liable to deduct tax at source in the following circumstances. Also compute the amount of tax to be deducted.

(i) Interest of ₹ 1,750 paid by Histax Ltd. to Yash and ₹ 4,500 to his HUF on 15.05.2012, by way of account payee cheque on account of debentures of the company held by them separately. Debentures of Histax Ltd. are listed in Bombay Stock Exchange.

(ii) Interest of ₹ 5,750 paid by United Ltd. to Yamini and ₹ 4,785 to Janak HUF on 31.01.2013, by way of account payee cheque on account of debentures of the company held by them. Debentures of United Ltd. are not listed on a recognised stock exchange in India.

(iii) Interest of ₹ 11,700 on recurring deposit credited to Mr. Pritam.

(iv) *HNY Ltd. paid ₹ 5,00,000 to non-resident entertainer on 18.07.2012 in respect performance in an event of promotion of a new product.*

(v) *Delhi Sports Magazine paid ₹ 2,00,000 to Shane Warne, a non-resident cricketer, for writing an article for the September issue. The payment for the same was made on 25.06.2012.*

(vi) *Sitting fees of ₹ 15,700 paid to director of the company on 28.08.2012.*

(vii) *₹ 1,50,000 paid to Mr. A on 25.03.2013 by Delhi State Government on compulsory acquisition of his urban land.*

Answer

	Tax deductible or not	Amount of tax to be deducted at source (₹)	Reason
(i)	Not deductible	Nil	As per the proviso to section 193 the company shall not be liable to deduct tax at source on the interest less than ₹ 2,500 paid to a resident individual in respect of listed debentures by way of account payee cheque before 1.7.2012. Therefore, no tax shall be deducted at source on the interest paid to Yash by Histax Ltd. provided Yash is a resident in India during the year.
	Deductible	450 (₹ 4,500×10%)	Tax shall be deducted at source on interest paid by Histax Ltd. to the HUF of Yash on 15.05.2012 under section 193.
(ii)	Deductible	575 (₹ 5,750 × 10%)	United limited is liable to deduct tax at source on the interest paid to Yamini on account of debentures under section 193, since the payment exceeds ₹ 5,000.
	Not deductible	Nil	As per the proviso to section 193 a company shall not be liable to deduct tax at source on the interest paid to a resident individual or Hindu Undivided Family in respect of debentures, whether or not listed on a recognized stock exchange in India, if such payment made does not exceed ₹ 5,000 during the year and the same is paid by way of account payee cheque on or after 1.7.2012. Therefore, United Ltd. is not liable to deduct tax at source on interest paid to Janak HUF, provided Janak HUF is resident in India.

(iii)	Not deductible	Nil	As per the provisions of section 194A, tax shall not be deducted at source on interest paid on account of recurring deposit.
(iv)	Deductible	1,00,000 (₹ 5,00,000 × 20%)	As per the provisions of section 194E, any person making payment to a non-resident entertainer on or after 1.7.2012, which is taxable under section 115BBA, shall deduct tax at source@20%.
(v)	Deductible	20,000 (₹ 2,00,000 × 10%)	As per the provisions of section 194E, any person making payment to a non-resident sportsperson before 1.7.2012, which is taxable under section 115BBA, shall deduct tax at source@10%.
(vi)	Deductible	1,570 (₹ 15,700 × 10%)	According to section 194J, the company shall be liable to deduct tax at source@10% under this section on any fees paid to a director on or after 1.7.2012, on which the tax is not deductible under section 192.
(vii)	Not deductible	Nil	No tax shall be deducted at source under section 194LA in case the consideration or enhanced consideration during the year does not exceed ₹ 2,00,000.

10. PROVISIONS FOR FILING RETURN OF INCOME

(a) Extension of due date for filing of return of income and tax audit report in case of all assessees undertaking international transaction [Section 44AB & 139(1)]

(i) The due date for filing of a transfer pricing report under the provisions of section 92E in Form 3CEB and filing of return of income under section 139(1) in case of corporate assessees who have undertaken international transactions during the relevant previous year was extended from 30th September to 30th November of the assessment year by the Finance Act, 2011.

(ii) The benefit is now extended to the non-corporate assessees who have undertaken international transactions during the relevant previous year. The due date for filing of a transfer pricing report under the provisions of section 92E in Form 3CEB and filing of return of income under section 139(1) in case of such assessees has also been extended from 30th September to 30th November of the assessment year by the Finance Act, 2012.

(iii) Consequently, clause *(ii)* of *Explanation* to section 44AB defining "specified date", on or before which the tax audit report should be furnished, has been amended to co-relate the same with due date for filing return of income under section 139(1). Accordingly, in case of assessees undertaking international

transaction, the specified date would be 30th November of the assessment year and in case of other assessees, 30th September of the assessment year.

(Effective from A.Y. 2012-13)

Note – Section 92E is not covered within the scope of syllabus of IPCC Paper 4: Taxation. Section 139(1) has been amended to provide a different due date for assessees who have to file a transfer pricing report under section 92E (i.e. assessees who have undertaken international transactions). Therefore, reference has been made to this section i.e. section 92E for explaining the amendment in section 139(1).

(b) Mandatory filing of ROI by every resident having any asset (including financial interest in any entity) located outside India [Section 139(1)]

(i) Every resident and ordinarily resident having –

(1) any asset (including financial interest in any entity) located outside India or

(2) signing authority in any account located outside India

is required to file a return of income in the prescribed form compulsorily, whether or not he has taxable income.

(ii) The return of income should be verified in the prescribed manner and provide such particulars as may be prescribed.

(Effective from A.Y.2012-13)

Note – The Finance Act, 2012 has extended the scope of transfer pricing to specified domestic transactions and made consequential amendments in sections 40A, 80A & 80-IA. Though these sections are included within the scope of syllabus of IPCC Paper 4: Taxation, the amendments made in these sections consequent to the extension of scope of transfer pricing have not been discussed in this Supplementary Study Paper, since the provisions relating to transfer pricing are outside the scope of syllabus IPCC Paper 4: Taxation.

SIGNIFICANT NOTIFICATIONS ISSUED BY THE CBDT BETWEEN 1ST MAY, 2011 AND 30TH APRIL, 2012

1. Notification No. 32/2011 dated 3.06.2011

Limits for exemption of interest on Post Office Savings Bank Account

Under section 10(15)(i), income by way of, *inter alia*, interest on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification in the Official Gazette, specify in this behalf, would be exempt subject to such conditions and limits specified in the said notification.

In exercise of powers given in section 10(15)(i), the Central Government has, through this notification, amended the Notification No. GSR 607(E) dated 9th June, 1989 which specified the bonds, annuity certificates, savings certificates and other certificates issued by the Central Government for the purpose of exemption under this clause as well as the

maximum limit up to which the income by way of, *inter alia*, interest on such securities, bonds, savings certificates etc. issued by the Central Government shall be exempt from tax for any assessment year. The said notification dated 9th June, 1989 provided for exemption of the whole of the amount of interest on Post Office Savings Bank Account.

However, as per the amendment by this notification, the interest on Post Office Savings Bank Account which was so far fully exempt would henceforth be exempt from tax for any assessment year only to the extent of:

(i) ₹ 3,500 in case of an individual account.

(ii) ₹ 7,000 in case of a joint account.

2. Notification No.33/2011 dated 3.06.2011

Income received by any person on behalf of a fund established for the purpose of providing cash benefits to its employee-members to meet the cost of annual medical tests or medical checkups to qualify for benefit of exemption under section 10(23AAA)

Section 10(23AAA) provides that any income received by any person on behalf of the fund established for notified purposes for the welfare of employees or their dependents, and of which fund such employees are members, would be exempt subject to fulfillment of certain conditions.

Accordingly, in exercise of the powers conferred by section 10(23AAA), the CBDT had, vide Notification No. S.O. 672(E) dated 27th July, 1995, notified the following purposes –

(1) cash benefits to a member of the fund -

  (a) on superannuation, or

  (b) in the event of his illness or illness of his spouse or dependent children, or

  (c) to meet the cost of education of his dependent children or

(2) cash benefits to the dependents of a member of the fund in the event of the death of such member.

The CBDT has, through this notification, amended the Notification No. S.O. 672(E) dated 27th July, 1995 to include cash benefits to a member of the fund to meet the cost of annual medical tests or medical checkups of a member, his spouse and dependent children as one of the purposes of the fund.

3. Notification No. 49/2011 dated 6.9.2011

Notification of allowances and perquisites exempt under section 10(45)

The Finance Act, 2011 has inserted new clause (45) in section 10 to exempt specified allowances and perquisites received by Chairman or any other member, including retired Chairman or member of the Union Public Service Commission (UPSC). The exemption would be available in respect of such allowances and perquisites as may be notified by the Central Government in this behalf.

Accordingly, the Central Government has notified the following allowances and perquisites for serving Chairman and members of UPSC, for the purpose of exemption under section 10(45) -

(i) the value of rent free official residence,

(ii) the value of conveyance facilities including transport allowance,

(iii) the sumptuary allowance and

(iv) the value of leave travel concession.

In case of retired Chairman and retired members of UPSC, the following have been notified for exemption under section 10(45):

(i) a sum of maximum ₹ 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis.

(ii) the value of a residential telephone free of cost and the number of free calls to the extent of ₹1,500 pm (over and above free calls per month allowed by the telephone authorities)

This notification shall be effective retrospectively from 1st April, 2008.

4. Notification No. 52/2011 dated 23-09-2011 (as amended by Notification No. 6/2012 dated 14-2-2012)

Specification of bonds for interest exemption under section 10(15)(iv)(h)

Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available.

Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free, secured, redeemable, non-convertible bonds of National Highways Authority of India (NHAI), Indian Railways Finance Corporation Ltd. (IRFCL), Housing and Urban Development Corporation Ltd.(HUDCL) and Power Finance Corporation (PFC) to be issued during the financial year 2011-12, the interest on which would be exempt under the said section.

The tenure of the bonds shall be ten or fifteen years. It shall be mandatory for the subscribers to furnish their PAN to the issuer. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said entity.

5. Notification No. 57/2011 dated 24.10.2011

Relaxation of time limit for submission of quarterly statements in case of a deductor being an office of Government

The CBDT has, through this notification, notified the Income-tax (Eighth Amendment) Rules, 2011 which shall come into force on 1st November, 2011. The said amendment Rules have given effect to following amendments:

(a) Rule 31A – Statement of deduction of tax under section 200(3)

(i) Rule 31A(2) has been substituted to extend the time limit for submission of quarterly statements in case the deductor is an office of Government :

Date of ending of the quarter of the financial year	Due date in the case of a deductor, being an office of Government
30th June	31st July of the financial year
30th September	31st October of the financial year
31st December	31st January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made

For other deductors, the due dates as prescribed earlier (i.e., 15th July, 15th October and 15th January of the financial year for quarters ending 30th June, 30th September and 31st December of the financial year, respectively) would continue to be applicable.

(ii) In Rule 31A(4), clause (vii) has been inserted which requires the deductor to furnish, at the time of preparing statements of tax deducted, particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under section 197A(1) or 197A(1A) or section 197A(IC) by the payee.

(b) Rule 37BA – Credit for tax deducted at source for the purposes of section 199

Rule 37BA(1) provides that credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Clause (i) of Rule 37BA(2) has four sub-clauses (a) to (d) providing for the specific instances where income of the deductee is assessable in the hands of another person, consequent to which credit for tax deduction at source shall be given to the other person in those specific cases.

Clause (i) of Rule 37BA(2) has been substituted to provide that where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee. In effect, the specific situations have been substituted by a general provision.

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1) of Rule 37BA.

6. Notification G.S.R. 844(E) dated 25-11-2011

Increase in limit for subscription to public provident fund

As per Paragraph 3(1) of Public Provident Fund Scheme, 1968, the maximum limit for subscription by an individual, on his behalf or on behalf of a minor of whom he is the guardian, is ₹ 70,000.

In exercise of the powers conferred by section 3(4) of the Public Provident Fund Act, 1968, the Central Government has amended Paragraph 3(1) of the Public Provident Fund Scheme, 1968 to increase the maximum limit to ₹ 1,00,000. Such contribution to PPF would qualify for deduction under section 80C.

7. Notification No. 7/2012 dated 14-2-2012 (as amended by Notification No. 13/2012 dated 28-02-2012)

Specification of bonds for interest exemption under section 10(15)(iv)(h)

(a) Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available.

(b) Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free, secured, redeemable, non-convertible bonds of the Rural Electrification Corporation Limited (RECL), to be issued during the financial year 2011-12, the interest on which would be exempt under the said section.

(c) The tenure of the bonds shall be ten or fifteen years. It shall be mandatory for the subscribers to furnish their PAN to the issuer. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his, her or its name and the holding with the said entity.

(d) Such exemption shall be available if such bonds are issued by way of public issue and not by way of a private placement.

8. Notification No. 11/2012 dated 28-2-2012

Specification of body/ authority/ Board/ Trust/ Commission for exemption under section 10(46)

(a) Section 10(46) exempts any specified income arising to a body/ authority/ Board/ Trust/ Commission which has been constituted with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity, if the same is notified by the Central Government in this regard subject to certain conditions mentioned the notification.

Accordingly, the Central Government has notified that for the purposes of section 10(46), the following income arising to the National Skill Development Corporation (NSDC), a body constituted by the Central Government, for F.Y. 2011-12 to F.Y. 2015-16, shall not be chargeable to tax:

(i) long-term or short-term capital gain out of investment in an organization for skill development;

(ii) dividend and royalty from skill development venture supported or funded by NSDC;

(iii) interest on loans to Institutions for skill development;

(iv) interest earned on fixed deposits with banks; and

(v) amount received in the form of Government grants.

(b) Such exemption shall apply if:

(i) the activities and the nature of the specified income of NSDC remain unchanged throughout the financial year, and

(ii) NSDC files its return of income in accordance with section 139(4C)(g).

9. Notification No. 12/2012 dated 28-2-2012

Specification of body/ authority/ Board/ Trust/ Commission for exemption under section 10(46)

(a) Section 10(46) exempts any specified income arising to a body/ authority/ Board/ Trust/ Commission which has been constituted with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity, if the same is notified by the Central Government in this regard subject to certain conditions mentioned the notification.

Accordingly, the Central Government has notified that for the purposes of section 10(46), the following income arising to the Competition Commission of India (CCI), a Commission established under section 7(1) of the Competition Act, 2002, for F.Y. 2011-12 to F.Y. 2015-16, shall not be chargeable to tax:

(i) amount received in the form of Government grants;

(ii) fee received under the Competition Act, 2002; and

(iii) interest income accrued on Government grants and interest accrued on fee received under the Competition Act, 2002.

(b) Such exemption shall apply if:

(i) the activities and the nature of the specified income of CCI remain unchanged throughout the financial year, and

(ii) CCI files its return of income in accordance with section 139(4C)(g).

10. Notification No. 15/2012 dated 30-3-2012

Depreciation on wind mill installed after 31.03.2012 restricted to 15%

As per the existing provisions, the plant and machinery in the nature of renewable energy devices being:

(a) Wind mills and any specially designed devices which run on wind mills

(b) Any special devices including electric generators and pumps running on wind energy

are entitled to depreciation@80% under section 32.

The CBDT has, vide this notification, restricted the eligibility of claiming depreciation@80% to such wind mills and special devises installed on or before 31.03.2012. Accordingly, such plant and machinery installed on or after 1st April, 2012 shall be entitled to depreciation at the general rate applicable to plant & machinery i.e., 15%. However, such plant and machinery installed on or before 31st March, 2012 shall continue to claim depreciation@80%.

PART - II : SERVICE-TAX

AMENDMENTS BY THE FINANCE ACT, 2012

(1) Section 65 dealing with definitions ceased to apply w.e.f. July 1, 2012

Section 65 of the Act deals with definitions of all taxable services as well as various other terms relating to services. A Proviso has been newly inserted in section 65 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(2) Section 65B newly inserted which deals with definitions

A new section 65B has been inserted with effect from July 1, 2012 so as to define the following expression. Hence from now onwards definitions will be dealt by newly inserted section 65B instead of section 65.

In this Chapter, unless the context otherwise requires,—

(1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882.

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. [Section 3 of the Transfer of Property Act, 1882.]

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.

(3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.

(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training.

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

(6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce.

(7) "aircraft" has the meaning assigned to it in clause (*1*) of section 2 of the Aircraft Act,1934.

"aircraft" means any machine which can derive support in the atmosphere from

reactions of the air, [other than reactions of the air against the earth's surface] and includes balloons, whether fixed or free, airships, kites, gliders and flying machines. [Section 2(1) of the Aircraft Act,1934.]

(8) "airport" has the meaning assigned to it in clause (*b*) of section 2 of the Airports Authority of India Act, 1994.

"airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934. [Section 2(b) of the Airports Authority of India Act, 1994.]

(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided.

(10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962.

(11) "approved vocational education course" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or

(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

(12) "assessee" means a person liable to pay tax and includes his agent.

(13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961.

"associated enterprise", in relation to another enterprise, means an enterprise--

a which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise ; or

b. in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. [Section 92A of the Income-tax Act, 1961.]

(14) "authorised dealer of foreign exchange" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999.

"authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities.[Section 2(c) of the Foreign Exchange Management Act, 1999.]

(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

(17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

(18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948.

(19) "Central Transmission Utility" shall have the meaning assigned to it in clause (*10*) of section 2 of the Electricity Act, 2003.

"Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38 of the Electricity Act,2003.[Section 2(10) of the Electricity Act, 2003.]

(20) "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.

(21) "customs station" shall have the meaning assigned to it in clause (*13*) of section 2 of the Customs Act, 1962.

"customs station" means any customs port, customs airport or land customs station.[Section 2(13) of the Customs Act, 1962.]

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E.

(23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government.

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme.

(25) "goods" means every kind of movable property other than actionable claim and

money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

(27) "India" means,—

(a) the territory of the Union as referred to in clauses (*2*) and (*3*) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(*e*) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

(28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

(*29*) "inland waterway" means national waterways as defined in clause (*h*) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (*b*) of section 2 of the Inland Vessels Act, 1917.

(30) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

(31) "local authority" means-

(a) a Panchayat as referred to in clause (*d*) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (*e*) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution.

(32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder.

(33) "money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value.

Note:

Omission of definition of money from the explanation to section 67 (w.e.f. July 1, 2012)

The definition of money which was earlier provided in Explanation to Section 67 has now been omitted.

(34) "negative list" means the services which are listed in section 66D.

(35) "non-taxable territory" means the territory which is outside the taxable territory.

(36) "notification" means notification published in the Official Gazette and the expressions ‘‘notify’’ and "notified" shall be construed accordingly.

(37) "person" includes,––

(*i*) an individual,

(*ii*) a Hindu undivided family,

(*iii*) a company,

(*iv*) a society,

(*v*) a limited liability partnership,

(*vi*) a firm,

(*vii*) an association of persons or body of individuals, whether incorporated or not,

(*viii*) Government,

(*ix*) a local authority, or

(*x*) every artificial juridical person, not falling within any of the preceding sub-clauses.

(38) "port" has the meaning assigned to it in clause (*q*) of section 2 of the Major Port Trusts Act,1963 or in clause (*4*) of section 3 of the Indian Ports Act, 1908.

"port" includes also any part of a river or channel in which the Indian Ports Act is for

the time being in force. [Section 3(4) of the Indian Ports Act, 1908.]

"port" means any major port to which the Major Port Trusts Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.[Section 2(q) of the Major Port Trusts Act,1963]

(39) "prescribed" means prescribed by rules made under this Chapter.

(40) "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 alcoholic liquors for human consumption, 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.

(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

(42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934.

(43) "securities" has the meaning assigned to it in clause (*h*) of section 2 of the Securities Contract (Regulation) Act, 1956.

securities" include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

[Section 2(h) of the Securities Contract (Regulation) Act, 1956.]

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but does not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(*A*) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(*B*) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(*C*) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.-For the purposes of this clause, transaction in money shall not include any activity relating to the 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.

Explanation 3.— For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

(45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 of the Special Economic Zones Act, 2005 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

[Section 2(za) of the Special Economic Zones Act, 2005.]

(46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988.

"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. [Section 2(40) of the Motor Vehicles Act, 1988.]

(47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948.

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003.

"State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39 of the Electricity Act, 2003. [Section 2(67) of the Electricity Act, 2003.]

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

(50) "tax" means service tax leviable under the provisions of this Chapter.

(51) "taxable service" means any service on which service tax is leviable under section 66B.

(52) "taxable territory" means the territory to which the provisions of this Chapter apply.

(53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963.

"vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson. [Section 2(z) of the Major Port Trusts Act, 1963.]

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

(3) Section 66 –The charging section ceased to apply w.e.f. July 1, 2012.

Section 66 is the charging section of the Act, which provides that service tax is levied at a specific rate on the value of taxable services referred to in section 65(105) of the Act. A Proviso has been newly inserted in section 66 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(4) Section 66B-The New Charging section w.e.f. July 1, 2012.

Section 66B is the new charging section inserted by the Finance Act 2012. Earlier Section 66 was the charging section which will cease to apply now. Section 66B provides that there shall be levied a service tax at the rate of twelve per cent on the value of all services, except the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another and collected in the prescribed manner.

(5) INTRODUCTION OF NEGATIVE LIST APPROACH

A Negative List approach to taxation of services has been introduced vide new sections, namely, 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services would be effective from July 1, 2012.

Negative List of Services, Section 66D (effective from July 1,2012)

Section 66D has been newly inserted which specify the following list of services as the negative list: –

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere –

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government.

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.

(iii) transport of goods or passengers or

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

(b) services by the Reserve Bank of India.

(c) services by a foreign diplomatic mission located in India.

(d) services relating to agriculture or agricultural produce by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing.

(ii) supply of farm labour.

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market.

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use.

(v) loading, unloading, packing, storage or warehousing of agricultural produce.

(vi) agricultural extension services.

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

(e) trading of goods.

(f) any process amounting to manufacture or production of goods.

(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

(h) service by way of access to a road or a bridge on payment of toll charges.

(i) betting, gambling or lottery.

(j) admission to entertainment events or access to amusement facilities.

(k) transmission or distribution of electricity by an electricity transmission or distribution utility.

(l) services by way of –

(i) pre-school education and education up to higher secondary school or equivalent.

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

(iii) education as a part of an approved vocational education course.

(m) services by way of renting of residential dwelling for use as residence.

(n) services by way of –

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

(ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

(o) service of transportation of passengers, with or without accompanied belongings, by –

(i) a stage carriage

(ii) railways in a class other than –

(A) first class or

(B) an airconditioned coach

(iii) metro, monorail or tramway

(iv) inland waterways

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India and

(vi) metered cabs, radio taxis or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency or

(B) a courier agency

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India or

(iii) by inland waterways

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

(6) Section 66E newly inserted- Declared Services (effective from July 1,2012)

Section 66E has been newly inserted which specify that the nine specific activities or transactions are declared to be covered as 'service'. Such activities includes:–

(a) renting of immovable property

(b) construction of a complex.*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments

(h) service portion in the execution of a works contract

(i) 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

* Construction of a complex

Service to include:

- construction of a complex, building
- civil structure or a part thereof including a complex or building

intended for sale to a buyer, wholly or partly,

except the cases where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation — For the purposes of this clause, –

(I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non requirement of such certificate from such authority, from any of the following, namely:–

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

Taxability of Service-The New Equation

Service = Activity + Consideration + Person + Declared Service

–

Negative List

=

Taxable Service

+

Place of Provision in Taxable Territory

=

Taxability

(7) Section 67A newly inserted- Date of determination of rate of tax, value of taxable service and rate of exchange.(Effective from May 28th, 2012)

Section 67A has been newly inserted by the Finance Act 2012 which specify that the rate of service tax, value of a taxable service and rate of exchange will be the one as in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the *Explanation* to section 14 of the Customs Act, 1962

"rate of exchange" means the rate of exchange —

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. *[Explanation* to section 14 of the Customs Act, 1962]

(8) Section 68, Payment of service tax

Prior to Amendment

Section 68 provides as follows:-

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed. [Sub-Section (1)]

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. [Sub-Section (2)]

Amendment made by the Finance Act, 2012, NEW REVERSE CHARGE MECHANISM (effective from July 1, 2012)

Sub- section (2) of Section 68 has been amended with effect from July 1,2012 providing that for the words "any taxable service notified", the words "such taxable services as may be notified" will be substituted.

Prior to amendment, in respect of certain notified services service tax is to be paid by the recipient of taxable service. However, Section 68 has been amended and a proviso has been inserted which empowers the Central Government to notify the services and the extent of service tax which is payable by the service recipient and the remaining part of the service tax will be paid by the service provider.

Section 68(2) of the Finance Act, 1994 has been amended to put the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver.

(9) Section 98 newly inserted - Special provision for exemption in certain cases relating to management, etc., of non commercial buildings.

W.e.f. 28.05.2012, Management, maintenance or repair service undertaken in relation to non-commercial Government buildings has been exempted from service tax vide section 98, with effect from 16.06.2005 till July 1,2012. In case service tax has been wrongly collected then refund will be made of all such service tax. An application for the claim of refund of service tax will be made within a period of six months from 28.05.2012.