Budget Meeting On Direct Tax

A change in direction

Income Tax

Jhankhana Thakkar

2 August 2014

Policy Statements

Policy statements

Direct Taxes Code	• DTC, 2010 has presently lapsed • Revised draft after Standing Committee and stakeholders comments placed in public domain in March 2014 • Government to review DTC in the present shape and take a view in the matter • No roadmap provided
Clarity in tax laws	• Formation of High Level Committee • To interact with trade and industry on a regular basis • Clarifications proposed to be issued within a period of two months
Indirect transfers	• Sovereign right to undertake retroactive legislations reaffirmed • To be exercised with caution and judiciously • Government not to ordinarily indulge so • All fresh cases arising out of 2012 retroactive amendment to be scrutinized by High level Committee prior to initiation of any action • Existing cases = logical conclusion

Policy statements contd..

Advance rulings

- Proposed to be extended to resident tax payers in respect of their income tax liability exceeding a threshold limit
- Additional benches to be constituted

Settlement Commission

- Scope of Settlement Commission proposed to be enlarged
- Tax payer may approach the Commission for settlement of disputes
- Continues to be once in a lifetime opportunity

Others

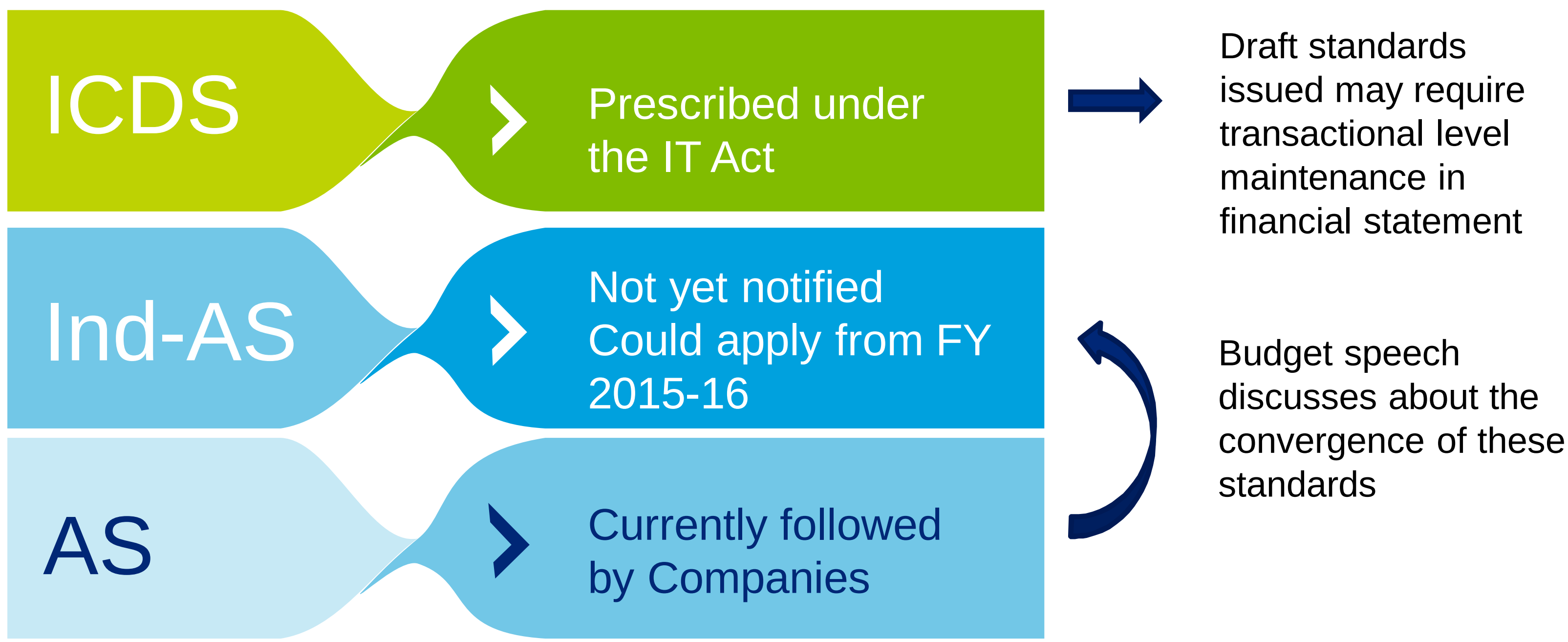
Income computation and disclosure standards

- Accounting standards committee was formed by the CBDT in 2010
- This committee issued its final report in August 2012 with 14 tax accounting standards
  - These standards are yet to be notified
- Tax accounting standards substituted as Income computation and disclosure standards (ICDS)
- Clarification that the standards will apply for computation of income and not for financial statements preparation
- ICDS to be followed by notified class of assessees or class of income
- Assessing Officer may invoke Best judgment assessment where income is not computed in accordance with ICDS

Others

Income computation and disclosure standards contd..

- Companies to comply with possibly more than one standards?



ICDS vs. Ind-AS vs. AS – Taxable income and book profit?

Personal
Taxation

Personal Taxation

Tax Rates

Status of individual	Basic Exemption Limit (Rs.)		Maximum Tax Savings (p.a)
	Old	New	
Resident/non-resident	200,000	250,000	5,665
Resident – Senior Citizen (60 to 79 years)	250,000	300,000	5,665
Resident – Very Senior Citizen (80 years and above)	500,000	5,00,000	No Savings

- There is no change in other slab limits and tax rates.
- Education cess and higher education cess continues @ 3%.
- Surcharge @ 10% continues to apply if the total income of an individual exceeds Rs. 1 Crore.

Personal Taxation

Specified investment/contribution

Specified investment/contribution	
Current limits	New limits
100,000	150,000
Life insurance premium, PPF, NSC etc.	

Consequential overall deduction limit	
Current limits	New limits
100,000	150,000

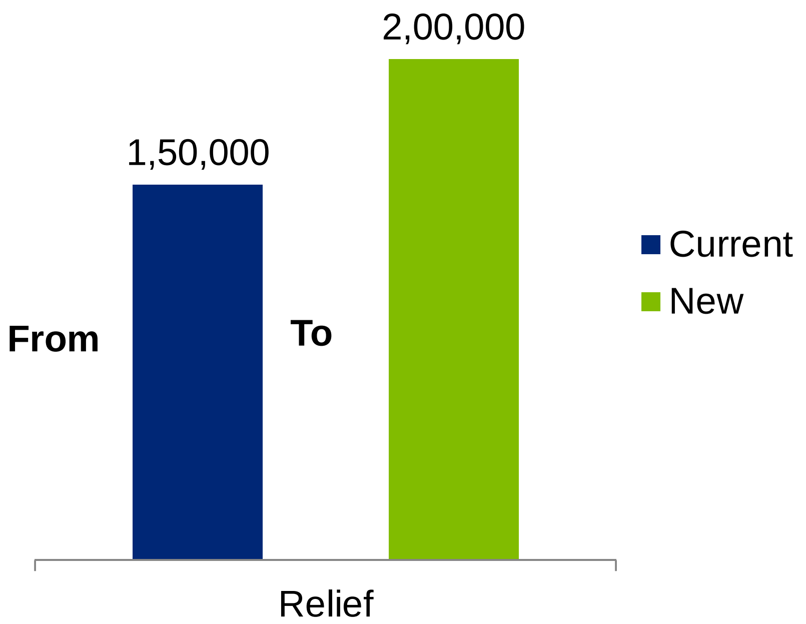
New pension scheme

- Extended to private sector employees employed prior to 1 January 2004
- Deduction limited to Rs.100,000

Personal Taxation

House Property Relief

- Deduction for interest on housing loan for self occupied house property increased



Enhanced basic exemption + enhanced investment limit + enhanced interest deduction = More cash for Individuals

Personal Taxation
Social Security

The Government is notifying minimum pension of Rs.1,000 per month to all subscriber members of EPF Scheme.

An increase in mandatory wage ceiling of subscription to EPF Scheme from Rs.6,500 to Rs.15,000 has been made.

EPFO will launch the "Uniform Account Number" Service for contributing members to facilitate portability of Provident Fund Account.

Welcome measures from a social security front

Corporate Taxation

Corporate Taxation

Corporate tax rate card

- No change in corporate tax rates
- The Current rates are as under

Types of companies	Below INR 10mn		Above INR 10mn upto INR 100mn		Above INR 100mn	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Domestic	Nil	30.90%	5%	32.45%	10%	33.99%
Foreign	Nil	41.20 %	2%	42.02%	5%	43.26%

Note:

- Education cess of 3% has been considered for determining the tax rates above
- MAT rates continue at 18.5% plus applicable surcharge and cess

Corporate Taxation

Investment Allowance for Manufacturing Company – Section 32AC

- Finance Act, 2013 allowed deduction to manufacturing companies at 15% on investment of more than Rs.100 Crores (for FY 2013-14 and 2014-15) in new plant and machinery
- It is proposed to reduce the threshold limit of investment to Rs. 25 Crores and extend the benefit till March 31, 2017
- Quantum of deduction based on investment criteria prescribed:

Investment Criteria	Method of computing deduction
If combined investment > Rs. 100 crores	15% after reducing deduction claimed in FY 2013-14 under the existing provision (Refer examples 1,2, 3 and 6 in the next slide)
If combined investment < Rs.100 crores but investment in FY 2014-15 > Rs.25 crores	15% on investment made in FY 2014-15 (Refer examples 4, 5 and 6 in the next slide)

Corporate Taxation

Investment Allowance for Manufacturing Company contd..

Eg.	Particulars	PY 2013-14	PY 2014-15	PY 2015-16	PY 2016-17	Remarks
1	Investment Amount	20	90	-	-	Under the existing section 32AC(1)
	Deduction allowable	-	16.5	-	-	
2	Investment Amount	90	20			
	Deduction allowable	-	16.5			
3	Investment Amount	150	10	-	-	
	Deduction allowable	22.5	1.5	-	-	
4	Investment Amount	30	40	-	-	Under the new section 32AC(1A)
	Deduction allowable	-	6	-	-	
5	Investment Amount	30	30	30	40	
	Deduction allowable	-	4.5	4.5	6	
6	Investment Amount	150	20	70	20	Deduction both under section 32AC(1) and 32AC(1A)
	Deduction allowable	22.5	3	10.5	-	
7	Investment Amount	60	20	-	-	No deduction under section 32AC
	Deduction allowable	-	-	-	-	

Corporate Taxation
Investment Allowance for Manufacturing Company contd..

Illustration

Particulars	Amount
Investment in Capital asset	100
Investment allowance @ 15%	15
Depreciation @ 15%	15
Additional Depreciation @ 20%	20
Total deduction available	50
Tax savings @ 30%	15

An investment of Rs 100 at the beginning of year 1 can result in cash back of Rs 15 through savings in taxes

Corporate Taxation
Capital expenditure on Specified Business

Section 35AD

- Currently, a deduction of capital expenditure (other than expenditure on land, goodwill and financial instrument) is allowed for specified businesses.
- Extended to the following businesses:
  - laying and operating a slurry pipeline for the transportation of iron ore;
  - setting up and operating a semiconductor water fabrication manufacturing unit as may be notified by the Board in accordance with prescribed guidelines.
  - Deduction allowed either under section 10AA or section 35AD
- Time limit of 8 years prescribed for use of capital asset (no limit currently).
- If capital asset is not used for specified purpose, deduction claimed for all the previous years will be taxed after allowing applicable depreciation to date

- Excludes Sick Industrial companies which have become sick companies during the above stated 8 year period
- No profit linked deduction for units set up in SEZ, if deduction is already claimed

Corporate Taxation

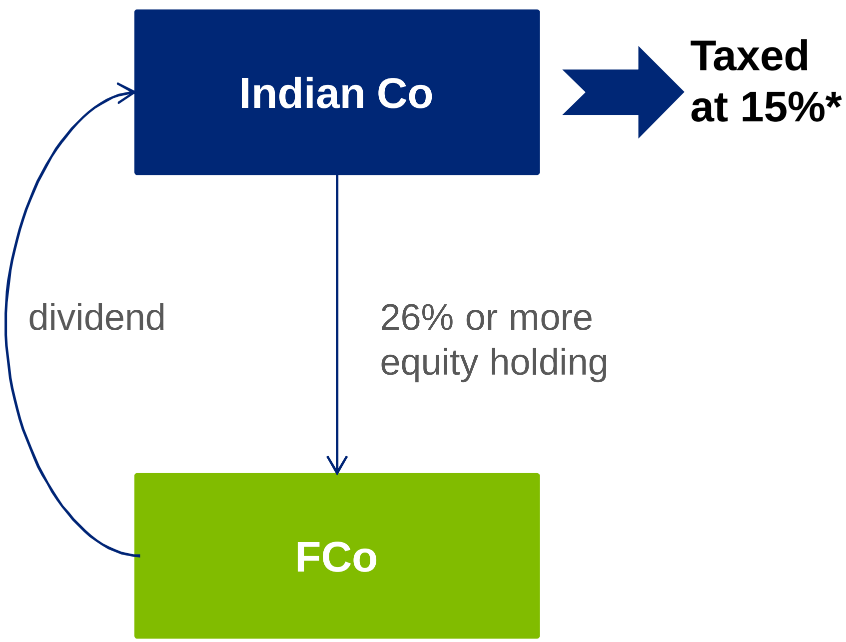
Corporate Social Responsibility (CSR) – New Proviso to Section 37(1)

Companies Act 2013	Tax treatment of CSR spend clarified

• CSR spend made mandatory for Companies satisfying certain conditions (already notified).
  • CSR spend to be at least 2% of average net profits of 3 years
• List of activities eligible and ineligible towards CSR spending has been specified
• Activities undertaken in pursuance of normal course of business not an eligible CSR spend
	• CSR referred to under **section 135** of the Companies Act, 2013 spend shall not qualify as tax deductible expenses under residuary section,
	  • since it is not incurred wholly and exclusively for business purposes
	• Eligibility of claiming deduction under other specific deduction sections are open for evaluation

- Companies may evaluate spending on activities covered under specific deduction sections to make their CSR spend count for tax purposes
- No clarity on tax treatment of common administrative expenditure for e.g. employee time cost incurred on CSR activities

Corporate Taxation
Dividends



- Till FY2014, dividends from foreign company (with shareholding of 26% or more) is taxed at concessional rate of 15%*
- The concessional tax rate on the above is extended indefinitely

**to be increased by applicable surcharge and education cess*

Proposal to incentivize repatriation of cash into India

Corporate Taxation
Dividend Distribution Tax – 115-O

- Currently, tax on dividend distributed by a domestic company and income distributed by a mutual fund is payable on the amount so distributed
- DDT is now payable in case of Companies and Mutual Funds on a gross basis w.e.f 1 October 2014

Illustration

Particulars	Current position	New	Increase/ (Decrease)
Amount of dividend that shareholders receive	100	100	
Rate of DDT	15%*	15%	
Amount on which DDT is payable	100	117.65 [100 / 0.85]	
DDT payable @ 15%* (after applicable grossing up)	15	17.65	
Total outgo for company	**115**	**117.65**	**2.65**

***rate of DDT may vary from 15%/25%/30%**

Corporate Taxation
Dividend Distribution Tax contd..

- Should grossing up be done on base rate or rate including surcharge and cess?
  - Likely only on base rate of 15%

Effective rate of DDT:

Particulars	Companies	Mutual Fund (distribution to Individual / HUFs)	Mutual Fund (distribution to Companies)
Dividend Distributed	100	100	100
DDT applicable	15 %	25 %	30 %
New effective DDT	17.65 %	33.33 %	42.86 %
Surcharge	1.76	3.33	4.29
Cess	0.58	1.10	1.41
Total effective tax rate	19.99%	37.77%	48.56%
Earlier effective tax rate	16.995%	28.325%	33.99%
Increase	3%	9.44%	14.57%

Resource Mobilization Measure

Corporate tax

Interest on delayed payment of demand

- An assessment order to be accompanied by a notice of demand
- Delay in payment of demand beyond 30 days time from date of receipt of notice attracts interest
- It is clarified that original demand notice would remain valid till disposal of appeal by last appellate authority or disposal of proceedings, as the case may be
  - Fresh notice of demand need not be issued by AO while passing order giving effect to appellate, revisionary or rectification order
- In case of increase or decrease in tax demand due to appeal, rectification or revision of assessment order, interest is now to be levied from the due date specified in original notice of demand
- Effective from 1 October 2014

Corporate tax

Interest on delayed payment of demand contd..

Illustration

Year	Appellate forum	Demand amount	No. of years for which interest is payable*
0	Assessment order	100	
1	First appellate order	40	
2	Second appellate order	100	2

* It is presumed that demand is paid on receipt of second appellate order

Clarified that interest on demand is to be paid from the date of original notice of demand even in case of increase of demand by appellate authorities

Corporate Taxation

Asset classification for capital gains

Criteria for qualifying as long term capital asset	Current position	New position**
Shares held in an unlisted company	Held for more than 12 months	Held for more than 36 months
Unit of mutual funds other than equity oriented fund		
Only a security listed on stock exchange as well as units of equity oriented fund held by an assessee for more than twelve months shall be considered as 'long-term capital assets		

** A new proviso has been inserted in section 2(42A) to provide that the unlisted shares and units of a Mutual Fund shall continue to be deemed to be long-term capital assets if they have been transferred during the period from April 1, 2014 to July 10, 2014 after holding them for a period of more than 12 months (instead of more than 36 months). This proviso shall be inserted with effect from April 1, 2015.

Corporate Taxation

Asset classification for capital gains

Rate of tax	Current position	New position**
Rate of tax on long term capital gains on units of mutual funds other than equity oriented fund	20%* (with indexation) or 10%* (without indexation) Whichever was beneficial	20%*(with indexation)

** The benefit of the proviso shall continue to be available for the long-term capital assets, being units of Mutual Funds, transferred between April 1, 2014 and July 10, 2014. Thus, the assessee shall have an option to pay tax at lower of following rates if units of Mutual Funds are transferred between the said periods:

- At 10% of capital gains as computed after reducing the cost of acquisition without indexation
- At 20% of capital gains as computed after reducing the indexed cost of acquisition

There are doubts about the retrospective effect of the provision to tax the units of Mutual Funds (other than equity oriented mutual funds) redeemed. Thus, a proviso has been inserted for the transitional period to allow benefits of concessional tax rates during the aforesaid period.

***The rates will have to be increased by applicable surcharge and cess**

- **Higher tax outgo in case of transfer of shares of private limited companies**
- **Nudging private limited companies into IPO/listing**

Capital gains

Foreign Institutional Investors (FIIs)

Income earned by FIIs (also called as FPIs – Foreign Portfolio Investors) from transfer of securities to be taxable as 'capital gains'

- Presently ambiguity in classification of FIIs income on transfer of security - Business income vs. Capital gains vs. income from other sources
- As per the amendment to capital asset definition which is amended to include securities held by FIIs
- Transfer of a security held by FIIs, taxable as **capital gains** and not as business income

Impact

- Puts to rest ambiguity around characterisation of income
- Uncertainty on the withholding tax rate to be applied, settled
- Fund managers need not have apprehension of working from India, which otherwise raised issues around triggering a 'business presence' in India

To end the controversy of categorization of income of FII, nullifying the judgement of Fidelity Advisor Series VIII, 142 Taxman 111 (AAR- New Delhi)

Capital gains

Enhanced compensation on compulsory acquisition – Section 45(5)(b)

- Normally, income earned on compulsory acquisition of assets (initial compensation or enhanced compensation) is taxable only in the year of **receipt of income**
  - In case of a dispute on the compensation amount received, the taxpayer may litigate it in a Tribunal/Court
  - The Tribunal/Court could pass an interim order granting an enhancement (partial/full)
  - Under the current provisions, there is uncertainty on the year in which the enhancement received in an interim order should be taxed

Capital gains

Enhanced compensation on compulsory acquisition contd..

- It is amended that enhanced compensation on compulsory acquisition to be taxable in the year of receiving the final order of the concerned forum

Particulars	Taxation during the year	
	Present provisions	**New Provisions**
Interim order received- Rs.100	Nil	Nil
Interim cash received- Rs. 100	100	Nil
Final order received- Rs. 150	Nil	100
Final cash received- Rs. 50 (Rs. 100- Rs. 150)	50	50

- Tax treatment arising on an appeal against the aforementioned final order to follow the above table

Capital gains

Section 54 & 54F: Investment in Residential House Property

Existing Provisions	New Provisions	Effective from
Exemption on purchase or construction of a residential house	Exemption on purchase or construction of one residential house in India.	A.Y.2015-16

- Following decisions rendered inapplicable:
  - CIT v. D. Ananda Basappa [2009] 309 ITR 329 (Kar)
  - CIT v. Smt. K.G. Rukminiamma [2011]331 ITR 211 (Kar)
  - Vinay Mishra v ACIT ITAT (Bang) Appeal No 895 of 2012

Capital gains

Exemption contd..

Section 54EC : Investment in NHAI & RECL Bonds

Existing provisions	New provisions	Effective from
Exemption for investment in NHAI and RECL bonds in a financial year capped at Rs. 50 Lakhs.	Aggregate of investment in bonds in the year of transfer and subsequent financial year capped at Rs. 50 Lakhs.	A.Y.2015-16

Overruled the following decisions:

- *Aspi Ginwala, Shree Ram Engg. & Mfg. Industries* v. *Asstt. CIT* [2012] 20 taxmann.com 75/52 SOT 16 (Ahd.)
- Smt. Sriram Indubal v ITO [2013] 32 taxmann.com 118 (Chennai)
- ITO v. Ms. Ranio Falerio [2013] 33 taxmann.com 611 (Panaji – Trib)

Capital gains
Exemption contd..

Example Amount (Rs.)

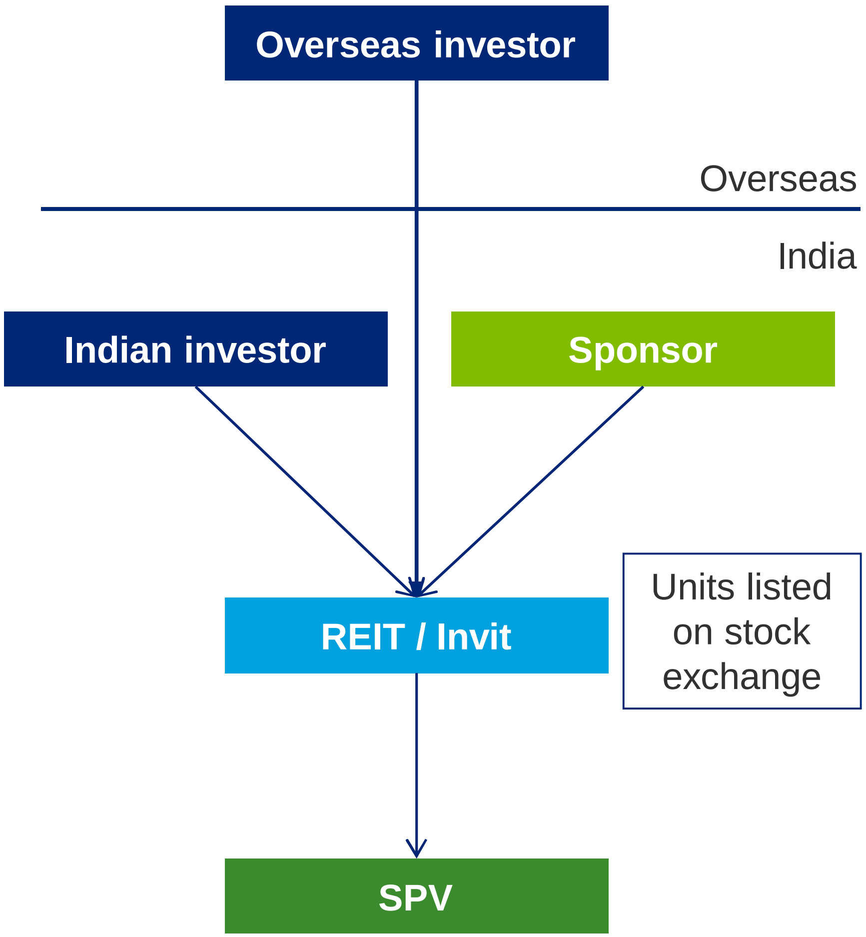
Particulars	Current	New
Long term capital gains	2 crores	2 crores
Date of transfer of long term capital asset	1 November 2014	1 November 2014
Date of investment in specified bonds	Jan 2014 – 50 lakhs April 2015 – 50 lakhs	Jan 2014 – 50 lakhs April 2015 – 50 lakhs
Exemption	1 crore	50 lakhs
Taxable Capital gains	1 crore	1.5 crores

Capital gains
Other amendments

- The cost inflation index to be based on Consumer Price Index (Urban) instead of Consumer Price Index (CPI) for urban non-manual employees
  - Aligns with revised CPI norms
  - No impact from a taxpayer’s perspective
- Transfer of government security from one non-resident to another, to be exempt. Conditions:
  - Government security to carry periodic interest
  - The transfer should happen through an intermediary dealing in settlement of securities
  - Transfer to be executed outside India.

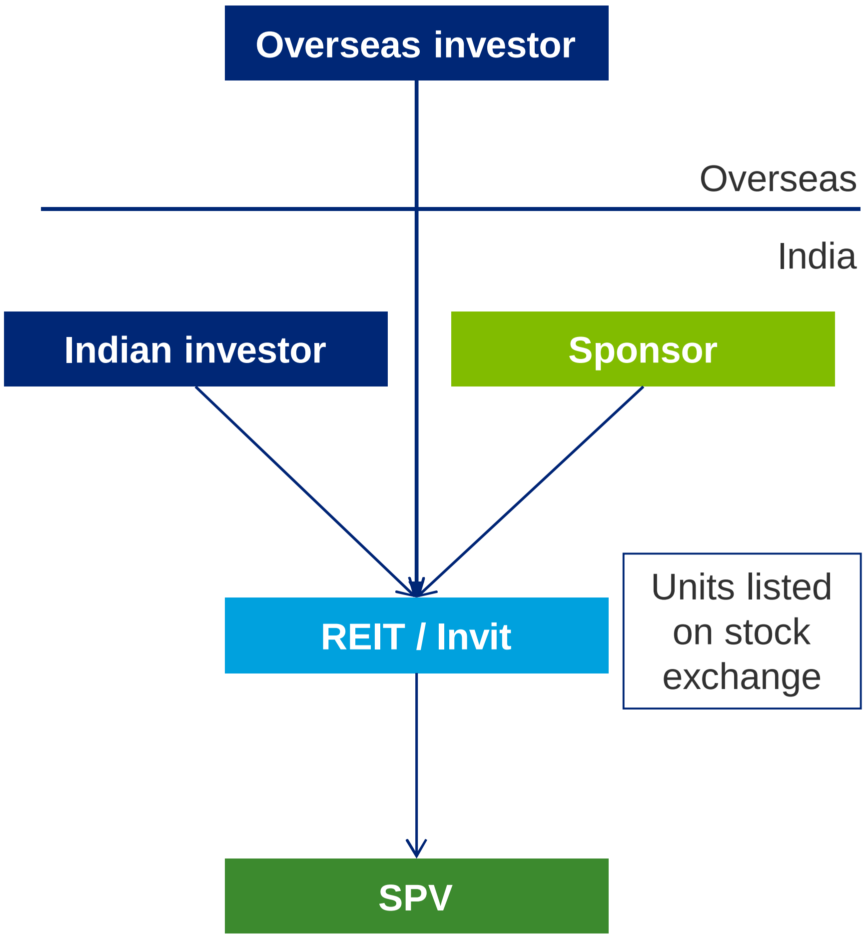
Demat account held in India, qualifies for exemption?

Business Trust
REITs and Invits (1/4)



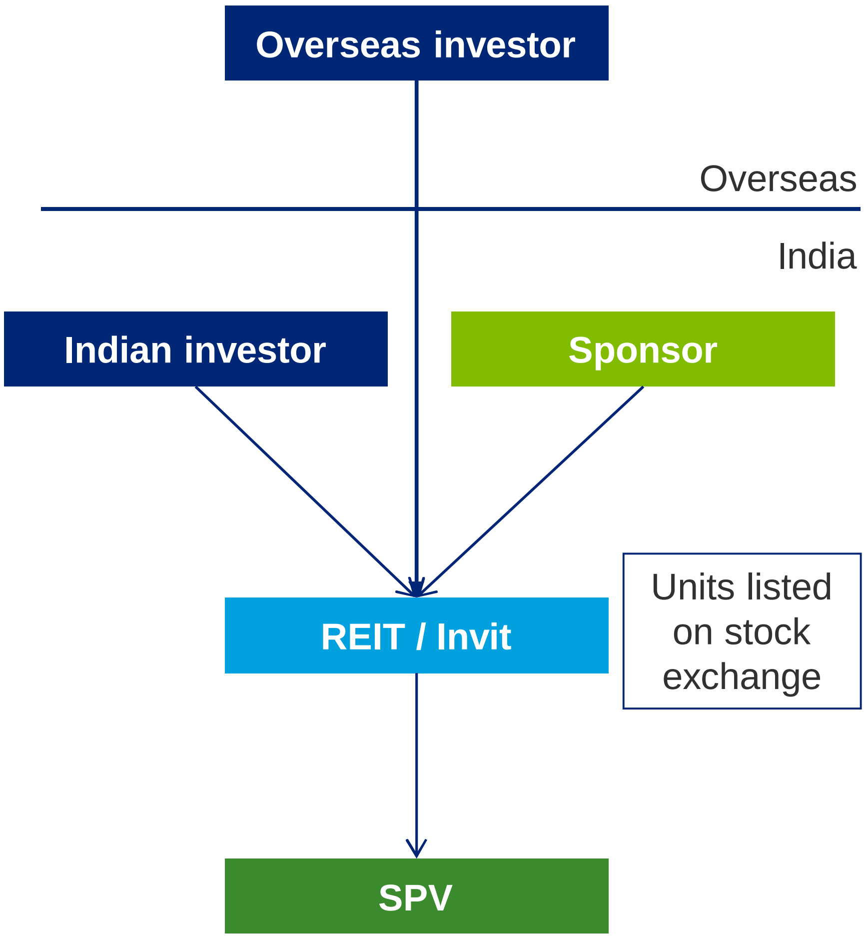
- Special taxation regime for Real Estate Investment Trusts [REITs] and Infrastructure Investment Trusts [Invits]
- REIT / Invits
  - Interest and dividend exempt
  - Capital gains taxable at the applicable rates
  - Any other income taxable at the maximum marginal rate (30%++)
- SPV taxable in the normal course – no special tax treatment

Business Trusts
REITs and Invits (2/4)



- Investors
  - Sale of units liable to Securities Transaction Tax; correspondingly long-term capital gains exempt, short-term capital gains taxable @ 15%++
  - Interest taxable; tax @ 5%++ for overseas investor, withholding tax @ 10% for Indian investor
  - Income distributed by the trust exempt

Business Trusts
REITs and Invits (3/4)



- Sponsor
  - Capital gains on exchange of shares in SPV deferred till disposal of units of REIT / Invit
  - Preferential capital gains tax treatment not available for units acquired pursuant to exchange
  - Cost of shares to be regarded as cost of units
  - Period of holding of shares by sponsor shall be included in computing period of holding for unit
  - Income streams similar to that as an investor

Business Trusts
REITs and Invits (4/4)

Nature of income	Taxability in hands of REIT / Invit	Taxability in hands of Investors
Interest	Exempt	Taxable
Dividend *	Exempt	Exempt
Capital gains on transfer by REIT / Invit	Taxable	Exempt
Other income	Taxable	Exempt

* DDT payable by SPV

Withholding tax

Deductibility of expenditure in case of Non-resident payees – Section 40(a)(i)

- Currently, expenditure is deductible if taxes deducted during the previous year are deposited within the due dates as prescribed

- It has been now prescribed to allow expenditure if taxes deducted are deposited **before the due date of filing the return**

Illustration

Date of deduction	Time limit for deposit of taxes for claiming deduction	
	Current	New
10 June 2014	31 March 2015	30 November 2015*
5 March 2015	30 April 2015	30 November 2015*

*** or September 2015 as the case may be**

- Amendmenet is in alignment with treatment for resident payees

- Disallowance continues to be 100% of expenditure

Withholding tax

Deductibility of expenditure in case of Resident payees – Section 40(a)(ia)

Reduction in disallowance

- Disallowance restricted to 30% of the expenditure as compare to 100% currently

Illustration

Amount of expenditure on which taxes not deducted/ deposited	Current disallowance	As per (amendment) disallowance
100	100	30

Scope of expenses liable for disallowance expanded

- All expenses paid to residents now brought into the purview of disallowance
  - Salaries, directors' sitting fees, non-compete fees now covered

Withholding tax

Section 194LC – Interest paid to Non Residents on Foreign currency Borrowings Outside India

Existing Provisions	New Provisions	Effective from
TDS on interest at 5% inter-alia on long term infrastructure bonds.	Concessional rate of TDS of 5% extended to **any long term bond.**	1 October 2014
Borrowing to be before 01-07-2015 for concessional TDS rate to apply.	Time limit extended to 01-07-2017	
Section 206AA not to apply.	Benefit of exemption from Section 206AA extended to any long term bond.	

Withholding tax

Section 194DA(New) – Payment for Life Insurance Policy

Existing Provisions	New Provisions	Effective from
No TDS on sums received under Life Insurance Policy, exempt u/s. 10(10D).	• TDS at 2% on sum paid under a life insurance policy including bonus (exceeding Rs. 1 lac), where sum not exempt u/s. 10(10D). • Payment to include sums allocated by way of a bonus.	1 October 2014

Withholding tax – New proviso to section 200(3)
Revision of withholding tax return

- No express provisions presently under the IT Act for revision of withholding tax returns
- Provision now incorporated for revision of withholding tax returns (referred to as correction statement)
  - No time limit prescribed for such revision
  - However, revision may have to be completed before completion of the withholding tax assessment

Current position	New position
Rectification / updation of TDS Statements can be filed in terms of Notification No. 3 of 2013 dated 15-01-2013.	Correction / updation statement of original TDS Statements can be filed in **terms of the New Proviso.** (effective from 1 October 2014

Withholding tax
Withholding tax assessment/ reassessment

- Revision in time limit for completion of withholding tax assessment/ reassessment w.e.f 1 October 2014

Particulars	Current time limit*	Prescribed time limit*
Where withholding tax return is filed	2 years*	7 years#
Where withholding tax return is not filed	6 years #	

*** Time limit from the end of financial year in which statement is filed**
 # Time limit from the end of financial year in which tax is payment is made or credit is given

- Regular reassessment proceedings can be initiated within 7 years form the end of financial year for which income has escaped assessment
- Increase in time limit intended to cover cases of non-withholding of taxes which come to notice during search/reassessment proceedings

– Memorandum to FB (No.2) 2014

Withholding tax

Withholding tax assessment/ reassessment contd..

- Extended time limit may not cover cases of non-withholding of taxes identified during completion of reassessment proceedings

Illustration

Financial Year	Due date for initiation of reassessment	Due date for completion of regular reassessment	Due date for completion of withholding tax reassessment
2008-09	31 March 2016	31 March 2017	31 March 2016

Non-compliance of withholding tax provisions identified during reassessment proceedings carried out after 31 March 2016, still not covered

Trusts

Taxation of Trust

Retrospective effect of Registration (w.e.f. October 1, 2014)

- Under the current provisions, income can be claimed exempt prospectively upon obtaining registration
- Amendment in the provisions that the AO shall grant benefit of exemption for the period prior to registration, if:
  - the objects and activities for registration are same; and
  - assessments proceedings are pending
- No assessment can be reopened in respect of such previous year on the ground that the Trust was not registered
- Retrospective effect of registration is not applicable, if no registration has been granted or the registration has been subsequently cancelled

Taxation of Trust

Interplay between exemption provisions relating to Trusts

- Presently there are certain incomes exempt under section 10
  - Eg: Dividend income, income of educational institutions subject to certain conditions, LTCG from listed securities
- Income of charitable trust is exempt subject to certain conditions.
- Where on non-compliance of specific condition under section 11, trusts can and have been making alternative claim under the general provision of exemption under section 10.
- Now it is prescribed that -
  - Eligible registered Trust shall claim exemption only under special exemption applicable to trust under section 11
  - General exemption under section 10 not available except:
    - Agricultural income; and
    - Income under section 10(23C) applicable to education institutions, hospitals, etc.

Overruled the Pune Tribunal decision in case of Bharti Vidyapeeth Medical foundation (37 taxmann.com 242, wherein it was held that choice should be left to assessee.

Taxation of Trust

Illustration

Prior to amendment

Particulars	Donation	LTCG suffering STT	Dividend	Agricultural income
Income	100	100	100	100
If application = 0%, Taxable income in the hands of Trust	85	-	-	-
Exemption under section 10	-	100	100	100
Taxable income	85	-	-	-

Post amendment

Particulars	Donation	LTCG suffering STT	Dividend	Agricultural income
Income	100	100	100	100
If application = 0%, Taxable income in the hands of Trust	85	100	100	-
Exemption under section 10	-	-	-	100
Taxable income	85	100	100	-

Taxation of Trust

Interplay between exemption provisions relating to Trusts

- Can amendment in section 11 override general exemptions provided in section 10?
- Dividend income exempt but still taxable?
- Validity?
- Income suffering STT and DDT still taxable?

Taxation of Trust

On grant of Depreciation claim

- Specified percentage of income needs to be applied by a charitable trust to claim exemption
- Investment in capital asset = application of income.
- Depreciation on such capital asset was claimed as application of income in addition to underlying investment.
  - Courts upheld both the claims
- To curb the above double benefit, it is prescribed not to allow depreciation as application of income if the entire cost of asset is already claimed as application of income.

Overruled
CIT v. Market Committee, Pipli (28 taxmann.com 559) (Punj. & Har) & CIT v. Institute of Banking (264 ITR 110) (Bom.)

Support
the contention Kerala HC in the case of Lissie Medical Institutions v. CIT (209 Taxman 19)

Taxation of Trust

Clarification regarding the term "substantially financed by the Government"

- Currently, specified institutions set up solely for education or philanthropic purposes are granted exemption if they are "wholly or substantially financed by the Government".
- The term 'substantially financed by the Government' was not defined which led to litigations.
  - Now this would be clarified by prescribing a specific percentage.

To overcome the subject matter of litigation.
For instance in case of Indian Institute of Mgmt (8 taxmann.com 239 & Ganapathy Educational Trust (144ITD 509)

Taxation of Trust

Grounds for cancellation of registration extended (w.e.f. October 1, 2014)

Current Grounds	Additional Grounds inserted
• The activities of the Trust are not genuine; or • The activities are not being carried out in accordance with the objects of the Trust	• Trust income is not used for the benefit of general public • Trust income is used for benefit of any particular religious community or caste • Trust income or property is applied for benefit of specified persons like author of trust, trustees, etc. • Trust funds are invested in prohibited modes

Non-compliance envisages not only denial of exemption but also results in withdrawal of registration

Taxation of Trust

Anonymous donations

- Anonymous donations received by certain specified institutions/trusts exceeding **prescribed limit** are taxed at 30%
- Amendment has been made to tax anonymous donations which are not taxed at 30% should be included in the remaining income chargeable to tax under the normal governing provisions
  - Including application of income provisions
- Comparison of existing and new provision tabulated below:

Particulars	Existing	New
Income including anonymous donations (A)	100	100
Total value of anonymous donations (B)	20	20
Anonymous donations taxed at 30% (only 15 out of 20, exceeding prescribed limit) (C)	15	15
Total income to be considered for application	(A-B) 80	(A-C) 85

Other amendments

Tax Holiday
Section 80-IA:

- Deductions in respect of Infrastructure Development etc

Existing Provisions	New Provisions
Eligible undertaking in power generation/distribution/transmission sector required to commence activity by March 31, 2014.	Time limit to commence activity extended to **March 31, 2017.**

Other amendments

Income from other sources :

Particulars	Existing	New	Effective from
Section: 51/56(2)/ 2(24) **Advance Received for Transfer of Capital Asset**	Any advance received in respect of negotiation of capital asset to be deducted from cost or WDV or Fair Market Value.	Amount received as **advance** in case of a capital asset and when such sum is forfeited or negotiations do not result in transfer shall be taxable under Section 56(2)(ix). Such amount covered under the definition of **income** under Section **2(24)(xvii).** Such amount **not to be reduced** from the cost or WDV or FMV.	A.Y.205-16

(Overruling the judgment of Hon'ble SC decision in case of Travencore Rubber & Tea Co. Ltd (243 ITR 158)

Alternate Minimum Tax (AMT)
Computation

- Alternate Minimum Tax is applicable to non-corporate assessees, when regular income-tax is less than AMT on adjusted total income ("ATI")
- ATI is calculated with reference to total income of the assessee as against book profits in the case of Minimum Alternative Tax (MAT) for companies
- Change in computation mechanism for AMT
  - Deduction claimed under section 35AD should be added back to compute ATI
  - Depreciation otherwise allowable (under the IT Act) on the amount claimed under section 35AD to be reduced to compute ATI
    - **Benefit of depreciation deduction to be available in subsequent years?**
    - **Additional depreciation to be included in the above computation?**

Particulars	Amount (INR)	
Total Income		60
Deduction under Ch VI-A C		40
Deduction under section 35AD		100
Computation of adjusted total income for purposes of AMT		
Total Income		60
Add: (i) Ch VI-A (C) deduction claimed (on non-specified business)		40
Add: (ii) Deduction under section 35AD (on specified business)	100	
Less: Depreciation claim allowable under section 32 (on the section 35AD amount)	(15)	85
Adjusted total income under section 115JC		185

Alternate Minimum Tax (AMT)
Computation contd..

- Specified business claiming benefit under section 35AD brought within the ambit of AMT

Credit of AMT

- AMT provisions do not apply when ATI does not exceed INR 20 lakhs
  - Say in Year 1, the assessee pays tax under AMT provisions
  - In Year 2, the assessee is not covered by AMT provisions as the ATI does not exceed INR 20 lakhs;
  - Currently, such assessee cannot claim credit of AMT in Year 2 (which is available from the Year 1)
  - To remove this lacuna in law, now granted AMT credit in Year 2 and subsequent years in such cases
- **The amendment is effective only from AY 2015-16 and not retrospective; credit of AMT to such assessees will not be available in prior years**

Other amendments
Miscellaneous provisions

Presumptive taxation

- Presumptive income under section 44AE for assessee engaged in business of plying, hiring or leasing goods carriage has been increased to Rs.7,500 per month for all types of goods carriage (for both heavy goods vehicle and others)

CTT suffered commodity derivatives - Not speculative

- Circular No. 3 dated 24.01.2014 codified, thereby excluding only CTT suffered commodity derivatives from the definition of “Speculative transactions”.

Losses from principle business of trading in shares - Not speculative

- Currently, a loss from a speculation business can be set off, only against the profits of any other speculation business.
- Restrictive provisions relating to set-off of speculative losses, not to apply for companies, whose “principal business” is trading in shares.
- **However, the meaning of the term “principal business”, which is a subject matter of litigation still remains unclarified**

Other amendments
Miscellaneous provisions contd..

Scope of survey expanded

- Powers to conduct a survey under section 133A has been expanded to include verification of TDS and TCS cases. However, the power to retain books as available to other surveys not available for such matters.

  The existing provisions were in any case construed to be wide enough to cover TDS/TCS matters and practically, TDS surveys have been conducted under Section 133A

- Time limit for retention of books of accounts and other documents by income tax authorities (without obtaining prior approval from higher authorities) in other survey cases has been extended from 10 to 15 days
- The above amendments to take effect from 1 October 2014

Wilful failure to produce documents to attract imprisonment

- The option of penalty being only in the form of fine has been done away with

Other amendments

Miscellaneous provisions contd..

Estimate of value of assets by valuation officer – Section 142A

Existing provisions	New Provisions	Effective from
Powers of the AO to make a reference to the Valuation Officer in the course of the assessment or reassessment proceedings **restricted** to determination of FMV under sections 69, 69B, 69A or 56(2).	Powers of the AO for to make a reference to a Valuation Officer to determine the FMV of any asset, property of investment **not restricted** to sections 69, 69B, 69A and 56(2). Such assets like bullion, jewellery etc Time line - completion of valuation within 6 months form end of the month in which reference is made	1 October 2014
	Reference possible regardless of whether or not the AO is satisfied about the correctness or completeness of the accounts of the assessee.	
	Power of best judgement given to the valuation officer in case of noncooperation by the assessee.	

Other amendments
Miscellaneous provisions contd..

Provisional attachment of Property– time limit extended – 281B

Existing	New	Effective from
Provisional attachment of property during pendency of any proceeding for assessment or reassessment, can be made for 6 months, extendable upto 2 years.	Provisional attachment of property during pendency of any proceeding for assessment or reassessment,can be made for 6 months, extendable upto 2 years or 60 days after the assessment, whichever is later.	1 October 2014

Other amendments
Miscellaneous provisions contd..

“Income tax Authorities” definition expanded

- Definition of income tax authorities amended to include “Principal Chief Commissioner of Income-tax”, “Principal Commissioner of Income-tax”, “Principal Director General of Income-tax” and “Principal Director of Income-tax”
- One of the few retrospective amendments with effect from 1st June 2013, intended to align with the existing administrative hierarchy

Power to collect information expanded

- In order to validate information in their possession, Income tax authorities can issue notice to any person calling for information
- Partially overlaps with the existing powers already conferred under Section 133(6)

Other amendments
Miscellaneous provisions contd..

Mode of acceptance/repayment of loans and deposits

- Electronic Clearance System (ECS) recognized as a mode of acceptance/ repayment of loans and deposits - 269SS & 269T

Annual Information return (AIR) compliance requirements modified

- AIR renamed as “Statement of financial transaction or reportable account”
- Reporting requirement extended to any Reporting Financial Institutions that may be prescribed
- Form to capture “reportable account” in addition to specified financial transaction as may be prescribed
- Objective to facilitate exchange of information in respect of resident and non-resident

Other amendments
Miscellaneous provisions contd..

Requirement to file Return of Income (ROI)

- Mutual Funds, Securitization Trusts and Venture Capital Companies or Venture Capital Funds to file ROI, in lieu of “Prescribed Statements”.
- Amendment brings parity with respect to return filing requirements of certain other tax exempt funds/entities

Taxpayers can approach Settlement Commission even for pending re-assessment cases

- It has been proposed to enlarge the scope of the Income-tax Settlement Commission so that taxpayers can approach the Commission for settlement of disputes. Accordingly, the proviso to section 245(b) which restricted the scope of the term 'case' to the pending assessment cases only has been deleted.
- Such amendment would reinstate the existing position wherein an assessee can apply for settlement of even those cases which are pending for re-assessment proceedings. The changes in the provisions shall take effect from October 1, 2014.

Other amendments
Miscellaneous provisions contd..

Resident taxpayers can approach Authority for Advance Ruling

- Currently, an advance ruling can be obtained for determining the tax liability of a non-resident. This facility is not available to resident taxpayers, except Public Sector Undertakings.
- Section 245N(*a*) is amended to provided that the term 'Advance Ruling' shall mean a determination by the authority in relation to the tax liability of a resident applicant arising out of a transaction undertaken or proposed to be undertaken by him. Further, the meaning of the applicant has been amended so that the Central Government may notify the class of resident persons for the purpose of obtaining the advance ruling.

Transfer Pricing (TP) Amendments

Advance Pricing Agreement ("APA")
Roll back Provision

Features of APA Roll back

- Existing APA provisions apply prospectively i.e. cover a maximum period of five consecutive years
- Effective 1st October 2014, section 92CC of the Act is proposed to be amended to provide roll back mechanism
- Roll back to be applied for a period not exceeding four previous years preceding first of the previous years for which APA applies
  - For example, if the APA has been agreed from FY 2015-16 onwards, then the agreement may also cover prior four years -- from FY 2011-12 to FY 2014-15
- APA to provide for determination of arm's length price or methodology of determination of arm's length price
- Proposal to strengthen the administrative set up to expedite disposal of applications

Advance Pricing Agreement ("APA")
Roll back Provision

Detailed conditions, procedure and manner to be prescribed

- Unilateral and/ or Bilateral/ Multilateral
- Manner of applicability for the years under audit/ appeal/ open years
- Additional fees
- Unilateral APA roll back conversion into bilateral or vice versa
- Timing for application of roll back
- Applicability of roll back provisions to the concluded APAs and APA applications already made
- Withdrawal of application for prior years (in case of favourable ruling under the domestic route)

Other TP Amendments
Range Concept

Introduction of Range Concept

- Arithmetic mean leads to distorted results due to extreme values (outliers); Inter-quartile range would automatically eliminate outliers
  - Extreme results indicate abnormal business conditions; these are generally excluded from arm's length range
- The Finance Minister in the budget speech has proposed the introduction of range concept for determination of arm's length price
  - Arithmetic mean concept to continue where number of comparables is inadequate
  - Relevant data is under analysis and appropriate rules will be prescribed
- Statistical tools like inter-quartile range enhance reliability of comparability analysis
- Range concept is internationally accepted and in existence in countries like USA, UK, Australia, Singapore, etc.

Other TP Amendments
Multiple Year Data

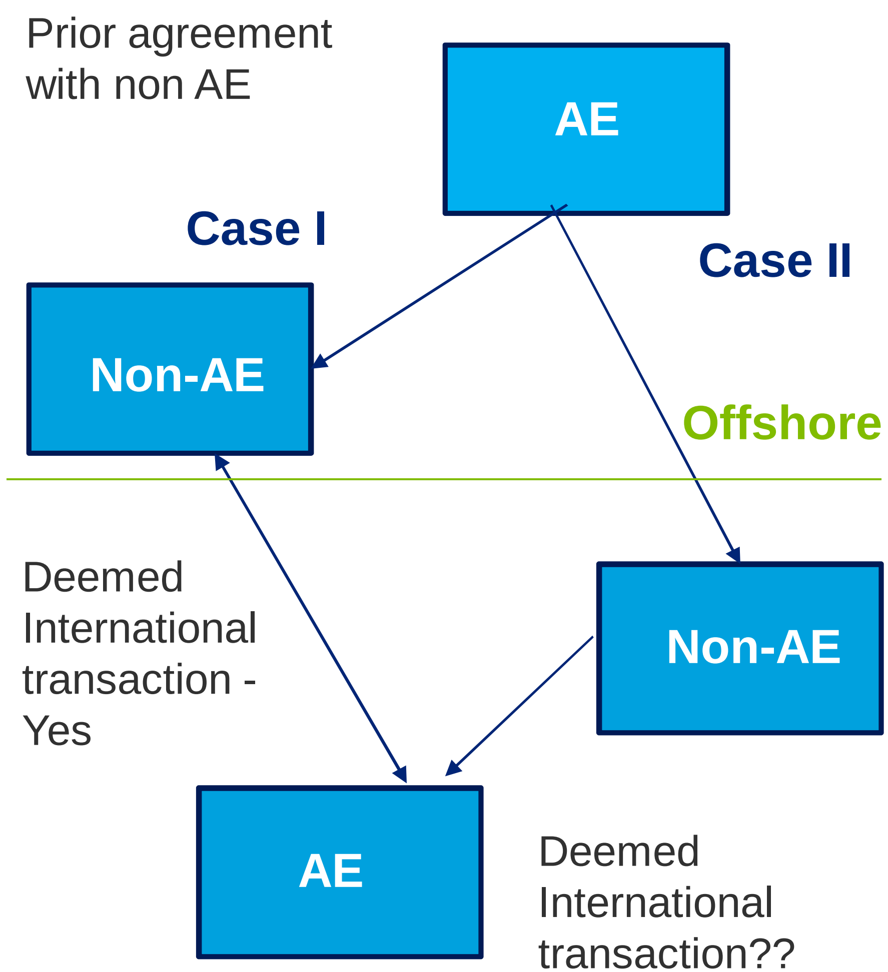
Use of Multiple year Data for Comparability Analysis

- Rule 10B(4) provides for benchmarking based on relevant single year data; prior year data upto two years data may be used if it has an influence on determination of transfer price
  - Insufficiency of current year data as on return filing date - *impossibility of performance*
  - TPOs use current year data available at time of TP assessments *(generally 3 years after closure of financial year)*
- The Finance Minister in the budget speech proposed to amend the regulations to use multiple year data
- Detailed rules to be prescribed
- Use of multiple year internationally accepted and in existence in countries like the USA, Australia, China, UK, South Africa, Germany, etc.

Other TP Amendments
Deemed International Transaction

Rationalization of definition

- A transaction entered into by an enterprise with a third party is deemed to be a covered transaction, if
  - There exists a prior agreement between such third party and the AE, or;
  - The term of the transaction is determined in substance between such third party and the AE.
- Whether transaction with resident third party in such cases covered under the ambit of the TP?



Other TP Amendments
Deemed International Transaction

Amendment in section 92B(2):

- Section 92B(2) is proposed to be amended to provide that relevant transaction shall be deemed to be an international transaction where:

  "the enterprise or the associated enterprise or both of them are non-resident, ***whether or not 'such other person' is a non-resident****"*

- Thus, deeming provision would also apply to cases where the third party is an Indian resident
- The provision is proposed to be applicable from Financial Year 2014-15.

Other TP Amendments
Penalty Provisions

Provisions of section 271G of the Act

- Effective 1st October, 2014, Transfer Pricing Officer also empowered to levy penalty for non-furnishing of Transfer Pricing documentation by taxpayers

ANY QUESTIONS ??

THANK YOU