



ACADEMIC UPDATES

APPLICABLE FOR JUNE 2015 EXAMINATION

The students are advised to read their Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in various laws and regulatory prescriptions upto December, 2014, applicable for June, 2015 Examination. The students are advised to read all the relevant regulatory amendments made and applicable upto December, 2014 alongwith the study material.

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

Disclaimer

These Academic Updates have been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of these Academic Updates should do so only after cross checking with the original source.

S. No.	Topic of Update	Relevant Subjects
(1)	Amendment Rules/Circulars/Notifications/Order issued under Companies Act 2013, by Ministry of Corporate affairs	<ul style="list-style-type: none"> • Company Law (Executive Programme) • Company Secretarial Practice (Professional Programme- Old Syllabus) • Due Diligence and Corporate Compliance Management (Professional Programme- Old Syllabus) • Governance, Business ethics and Sustainability (Professional Programme- Old Syllabus) • Advanced Company Law and Practice (Professional Programme- New Syllabus) • Secretarial Audit, Compliance Management and Due Diligence (Professional Programme- New Syllabus) • Ethics, Governance and Sustainability (Professional Programme- New Syllabus)
(2)	New Regulations by SEBI	<ul style="list-style-type: none"> • Capital Market and Securities Laws (Executive Programme) • Capital, Commodity and Money Market (Professional Programme- New Syllabus)
(3)	Amendments in SEBI Act, Rules and Regulations	<ul style="list-style-type: none"> • Capital Market and Securities Laws (Executive Programme) • Due Diligence and Corporate Compliance Management (Professional Programme- Old Syllabus) • Secretarial Audit, Compliance Management and Due diligence (Professional Programme- New Syllabus) • Capital, Commodity and Money Market (Professional Programme- New Syllabus)
(4)	Replaced or Repealed SEBI Regulations	<ul style="list-style-type: none"> • Capital Market and Securities Laws (Executive Programme) • Due Diligence and Corporate Compliance Management (Professional Programme- Old Syllabus) • Secretarial Audit, Compliance Management and Due diligence (Professional Programme- New Syllabus) • Capital, Commodity and Money Market (Professional Programme- New Syllabus)
(5)	Clause 49 of the Listing Agreement	<ul style="list-style-type: none"> • Capital Market and Securities Laws (Executive Programme) • Due Diligence and Corporate Compliance Management (Professional Programme- Old Syllabus) • Governance, Business ethics and Sustainability (Professional Programme- Old Syllabus) • Capital, Commodity and Money Market (Professional Programme- New Syllabus) • Secretarial Audit, Compliance Management

		<p>and Due diligence (Professional Programme- New Syllabus)</p> <ul style="list-style-type: none"> • Ethics, Governance and Sustainability (Professional Programme- New Syllabus)
(6)	The Depository Receipts Scheme, 2014	<ul style="list-style-type: none"> • Company Law (Executive Programme) • Capital Market and Securities Laws (Executive Programme) • Company Secretarial Practice (Professional Programme- Old Syllabus) • Due Diligence and Corporate Compliance Management (Professional Programme- Old Syllabus) • Advanced Company Law and Practice (Professional Programme- New Syllabus) • Secretarial Audit, Compliance Management and Due Diligence (Professional Programme- New Syllabus) • Capital, Commodity and Money Market (Professional Programme- New Syllabus)
(7)	Company Accounts and Auditing Practices	<ul style="list-style-type: none"> • Company Accounts and Auditing Practices (Executive Programme) • Company Law (Executive Programme) • Advanced Company Law and Practice (Professional Programme- New Syllabus)
(8)	Cost Accounting Records and Cost Audit	<ul style="list-style-type: none"> • Company Law (Executive Programme) • Cost and Management Accounting (Executive Programme) • Advanced Company Law and Practice (Professional Programme- New Syllabus)
(9)	Amendments in Industrial and Labour Laws	<ul style="list-style-type: none"> • Industrial, Labour and General Laws (Executive Programme)
(10)	Finance(No. 2) Act, 2014 and Notifications issued by CBDT & CBEC	<ul style="list-style-type: none"> • Tax Laws and Practice (Executive Programme) • Advanced Tax Laws and Practice(Professional Programme-Old Syllabus) • Advanced Tax Laws and Practice (Professional Programme-New Syllabus)

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AMENDMENT RULES/CIRCULARS/NOTIFICATIONS/ORDER ISSUED UNDER COMPANIES ACT 2013, BY MINISTRY OF CORPORATE AFFAIRS

S.No	Topic of Updation	Details of Updates Required
A. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2014		
1	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 amends sub-rule 3 of Rule 9, relating to attachment of documents to the application for allotment of Director Identification Number.	Companies (Appointment and Qualification of Directors) Amendment Rules 2014 has omitted an item, from the list of document to be accompanied to application for allotment of Director Identification Number. Accordingly the following is to be omitted from the list provided. "Verification by the applicant for applying for allotment of DIN in form DIR-4"
2	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 adds a sub rule to Rule 9 relating to list of documents to be attached to the application for allotment of Director Identification Number.	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 adds the following sub rule 4 to rule 9 of the said rules. "In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A"
3	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 amends sub-rule 1, sub-rule 2 of rule 10 relating to allotment of DIN by removing the words provisional DIN and substituted with the words application number.	The revised sub-rule 1 of Rule 10 shall be read as: "On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically." The revised sub-rule 2 of Rule 10 would read as under: "After generation of the application number, the Central Government shall process the applicationsuch application."
4	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 substitutes new DIR 3 format in the place of existing Dir 3 format relating to application for allotment	Revised DIR-3 has to be refereed as prescribed under Companies (Appointment and Qualification of Directors) Amendment Rules, 2014

	of Director Identification Number.	
5	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 amends sub-rule 4 of rule 10 by removing the words relating to provisional DIN getting lapsed, in case of rejection or invalidation of application.	The revised sub-rule 4 of Rule 10 reads as under: “In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.”
6	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 adds new Rule 10A relating to intimation of Director Identification Number	New Rule 10A reads as follows: “10A. (1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B. (2) The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.”;
7	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 substitutes sub-clause (i) of sub rule (1) of Rule 12 relating to intimation of changes in particulars specified in DIN Application.	Revised sub-clause (i) of sub rule (1) of Rule 12 reads as under: “The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically”
8	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 amends sub rule 3 of Rule 6 relating to application by persons who desires to get his name registered in the data bank of independent directors.	The revised sub rule 3 of rule 6 reads as follows: “Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency.” Earlier to this amendment it required the above application to me made in Form DIR 1. The said amendment has removed the words “in From DIR-1”

9	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated September 18, 2014 omits the existing DIR-1 form relating to Application for inclusion in databank of independent directors.	Existing Dir-1 to be omitted.
B. COMPANIES (MEETING OF BOARD AND ITS POWERS) SECOND AMENDMENT RULES, 2014		
1	Companies (Meeting of Board and its Powers) Second amendment Rules, 2014 dated August 14, 2014, has amended the rule 3(6) relating to the venue that is considered to be the place of the meeting conducted through video conferencing , by removing the words “which shall be in India”	The revised Rule3(6) should be read as follows” “With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.”
2	Companies (Meeting of Board and its Powers) Second amendment Rules 2014 dated August 14, 2014, has amended the rule 4 relating to matters not to be dealt with in a meeting through video conferencing or other audio visual means.	Companies (Meeting of Board and its powers) Second amendment Rules, 2014 has substituted the words “Audit Committee meetings for Consideration of financial statement including consolidated financial statement if any” for the words “audit committee meetings for consideration of accounts”. Accordingly audit committee meetings for Consideration of financial statement including consolidated financial statement if any, are not to be dealt with in a meeting through video conferencing or other audio visual means.
3	Companies (Meeting of Board and its Powers) Second amendment Rules, 2014 dated August 14, 2014, has substituted new sub-rule of Rule 15 relating to contract or arrangement with a related party.	The amended sub-rule 3 of Rule 15 reads as under: “For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,— (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below - (i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in

	<p>clause (a) and clause (e) respectively of sub-section (1) of section 188;</p> <p>(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;</p> <p>(iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;</p> <p>(iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause</p> <p>(e) respectively of sub-section (1) of section 188:</p> <p>Explanation.—It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.</p> <p>(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or</p> <p>(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.</p> <p>Explanation.- (1) The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.</p> <p>(2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.</p> <p>(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars,</p>
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		namely:— (a) name of the related party ; (b) name of the director or key managerial personnel who is related, if any; (c) nature of relationship; (d) nature, material terms, monetary value and particulars of the contract or arrangement; (e) any other information relevant or important for the members to take a decision on the proposed resolution.”
C. COMPANIES (SPECIFICATION OF DEFINITIONS DETAILS) RULES, 2014		
1	Amendment to Rule 3 of Companies (Specification of Definitions Details) Rules, 2014 dated July 17, 2014 excludes independent director from the persons deemed to be a related party.	After, Companies (Specification of definitions details) Amendment Rules, 2014, rule 3 of the said rules should be read as under: “For the purpose of sub-clause (ix) of Clause 76 of Section 2, a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company shall be deemed to be a related party.”
D. COMPANIES (CORPORATE SOCIAL RESPONSIBILITY) AMENDMENT RULES, 2014		
1	Companies (Corporate Social Responsibility) Amendment Rules, 2014 dated September 12, 2014 amends sub-rule 6 of rule 4 relating to CSR activities.	After Companies (Corporate Social Responsibility) Amendment Rules, 2014 the sub-rule 6 of rule 4 would read as under: “Companies may build CSR capacity of their own personnel as well as those of their implementing agencies through Institutions with established track records of atleast three financial years but such expenditure including expenditure on administrative overheads shall not exceed five percent of total CSR expenditure of the company in one financial year.”
E. COMPANIES (AUDIT AND AUDITORS) AMENDMENT RULES, 2014		
1	Companies (Audit and Auditors) Amendment Rules, 2014 dated October 14, 2014 mandates time frame with respect to comments of the auditor on existence of adequate internal financial controls system and its operating effectiveness.	Companies (Audit and Auditors) Amendment Rules, 2014 dated October 14, 2014 states that for the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness.
F. COMPANIES (MANAGEMENT & ADMINISTRATION) SECOND AMENDMENT RULES, 2014		
1	Companies (Management & Administration) Second Amendment Rules, 2014	Rule 9 of Companies (Management and Administration) Rules, 2014 deals with declaration of Beneficial interest. Companies (Management and Administration) Second

	dated July 24, 2014 provides for Exception to declaration of beneficial interest as prescribed under Rule 9.	Amendment Rules, 2014 has added a proviso to Rule 9(3), providing for some exceptions. Accordingly nothing in Rule 9 is applicable to trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India.
2	Companies (Management & Administration) Second Amendment Rules, 2014 dated July 24, 2014, modifies Rule 13 on specification relating to filing of return of changes in shareholding position of promoters and top ten shareholders by listed companies with the registrar.	Rule 13 of Companies (Management and Administration) Rules, 2014 prescribes that Every listed company shall file with the Registrar, a return in Form No.MGT.10 along with the fee with respect to changes relating to either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders of the company in each case, either value or volume of the shares, within fifteen days of such change. Companies (Management & Administration) Second Amendment Rules, 2014, prescribes that the words " <i>either value or volume of the shares</i> ", as stated in rule 13 shall be removed. The said Amendment Rules removes the explanation with respect to the word change mentioned in Rule 13.
G. ORDERS, NOTIFICATIONS AND CIRCULARS		
1	Companies (Removal of Difficulties) Seventh Order, 2014 dated 4th September 2014 has included companies 'owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments' relating to power of CAG on Supplementary Audit.	Sub-section (5) of Section 143 of the Companies Act, 2013 which provides for power of the Comptroller and Auditor-General of India to conduct supplementary audit does not specifically cover companies 'owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments' Accordingly the Companies (Removal of Difficulties) Seventh Order, 2014 states as under: In section 143 of the Companies Act, 2013 in sub-section (5), for the portion beginning with the words "In the case of a Government company" and ending with the words "required to be audited and", the following shall be substituted, namely :— "In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor- General of India shall appoint

		the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and”.
2	Central Government vide Notification dated July 25, 2014 notified the class of companies for the purpose of second proviso to subsection (10) of Section 203 of Companies Act, 2013.	<p>First proviso to Section 203(1) states that an individual shall not be appointed or reappointed as the Chairperson of the company, as well as the Managing Director or Chief Executive Officer of the company at the same time unless the articles of such a company provide otherwise; or the company does not carry multiple businesses. However, Second proviso states that such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government are exempted from the above.</p> <p>The Central Government accordingly has made the following notification</p> <p>Public companies having paid up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purpose of Second Proviso to sub-section (1) of Section 203.</p>
3	Circular dated July 17, 2014 by Ministry of Corporate Affairs issued clarifications on related party transactions	<p>Second proviso to subsection (1) of section 188 of the Companies Act, 2013 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.</p> <p>It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.</p> <p>Contracts entered into by companies, after making</p>

		necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.
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A. SEBI (RESEARCH ANALYST) REGULATIONS, 2014

The Securities and Exchange Board of India (SEBI) had on November 29, 2013 issued a consultation paper on draft SEBI (Research Analyst) Regulations, 2013 on its website inviting comments and suggestions from the public to regulate research analysts, intermediaries and independent entities who are engaged in preparation of research reports and giving opinion and recommendations concerning a security or securities. Subsequent to receipt of comments from the public and market participants, SEBI has notified the SEBI (Research Analysts) Regulations, 2014 on September 01, 2014. These regulations shall come into force on the ninetieth day from the date of their publication in the Official Gazette.

These Regulations inter-alia lay down the eligibility criteria for seeking registration, procedure for grant of registration certificate and management of conflicts of interest and disclosure requirements. As per these Regulation "research analyst" means a person who is primarily responsible for,-

- i. preparation or publication of the content of the research report; or
- ii. providing research report; or
- iii. making 'buy/sell/hold' recommendation; or
- iv. giving price target; or
- v. offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Explanation.-The term also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above;

"Research entity" means an intermediary registered with SEBI who is also engaged in merchant banking or investment banking or brokerage services or underwriting services and issue research report or research analysis in its own name through the individuals employed by it as research analyst and includes any other intermediary engaged in issuance of research report or research analysis;

The highlights of the SEBI (Research Analysts) Regulations, 2014 are as under:

- No person shall act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from SEBI under these regulations.
- The certificate of registration granted shall be valid for five years from the date of its issue.
- Any person acting as research analyst or research entity before the commencement of these regulations may continue to do so for six months from such commencement or, if it has made an application for a certificate of registration under sub-regulation (2) within the said period of six months, till the disposal of such application.

- Investment advisers, credit rating agencies, portfolio managers, asset management companies, fund managers of Alternative Investment Funds or Venture Capital Funds are exempt from these regulations.
- A professional qualification or post-graduate degree or post-graduate diploma in finance, accountancy, business management, commerce, economics, capital market, financial services or markets as also an National Institute of Securities Markets (NISM) or equivalent certification to ensure that investors get the right financial advice.
- The research report prepared should have complete disclosures in respect of financial interest, receipt of compensation, etc, so that investors can understand the actual or potential conflicts of interest and their likely impact on the quality of the research report published.
- Foreign entities or any person living outside India engaged in issuance of research report or research analysis in respect of securities listed or proposed to be listed on stock exchange shall enter into an agreement with a research analyst or research entity registered under these regulations.
- A research report shall not be made available selectively to internal trading personnel or a particular client or class of clients in advance of other clients who are entitled to receive the research report.
- Research analyst or research entity who distributes any third-party research report shall disclose any material conflict of interest of such third-party research provider or he shall provide a web address that directs a recipient to the relevant disclosures.
- Research analyst or research entity shall take steps to ensure that facts in its research reports are based on reliable information and shall define the terms used in making recommendations, and these terms shall be consistently used.
- Research analyst or research entity shall maintain the following records: (i) research report duly signed and dated (ii) research recommendation provided (iii) rationale for arriving at research recommendation (iv) record of public appearance.
- A research analyst who is an individual or partnership firm shall have net tangible assets of value not less than Rs 1 lakh.
- A research analyst who is body corporate or limited liability partnership firm shall have a net worth of not less than Rs 25 lakh.
- The regulations also specify restrictions on trading and on compensation of the persons who make comments or recommendations concerning securities or public offer through public media
- There are some restrictions on dealing in securities recommended – 30 days before and 5 days after the publication of research reports; restrictions on recommendation of securities traded in – previous 30 days and restriction on purchase of IPO/FPO shares, if issuer is engaged in same industry as covered by research analysts.

- SEBI may *suo motu* or upon receipt of information or complaint appoint one or more persons as inspecting authority to undertake inspection of the books of accounts records and documents relating to research analyst or research entity.

B. SECURITIES AND EXCHANGE BOARD OF INDIA (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014

SEBI had come out with a consultation paper on Infrastructure Investment Trusts ("InvITs") on December 20, 2013 for public comments and based on the comments received on the consultative paper and in pursuance to the Budget Announcement, Finance Bill for FY2014-15 provided various provisions in the Income Tax Act with respect to InvITs., SEBI has notified SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") thereby providing a framework for registration and regulation of Infrastructure Investment Trusts ("InvITs") 26th September, 2014.

"InvIT" or 'Infrastructure Investment Trust' shall mean the trust registered as such under these regulations.

"InvIT assets" means assets owned by the InvIT, whether directly or through a SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

"SPV" or "special purpose vehicle" means any company or LLP,— (i) in which the InvIT holds or proposes to hold controlling interest and not less than fifty per cent. of the equity share capital or interest: Provided that in case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions under proviso to sub-regulation (3) of regulation 12; (ii) which holds not less than ninety per cent. of its assets directly in infrastructure projects and does not invest in other SPVs; and (iii) which is not be engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects.

The Salient features of the InvIT Regulations, include the following:

- a. Infrastructure is as defined by Ministry of Finance vide its notification dated October 07, 2013 and shall include any amendments/additions made thereof.
- b. InvITs shall be set up as a trust and registered with SEBI. It shall have parties such as Trustee, Sponsor(s), Investment Manager and Project Manager.
- c. The trustee of an InvIT shall be a SEBI registered debenture trustee who is not an associate of the Sponsor/Manager.
- d. InvITs shall invest in infrastructure projects, either directly or through SPV. In case of PPP projects, such investments shall only be through SPV.
- e. An InvIT shall hold or propose to hold controlling interest and more than 50% of the equity share capital or interest in the underlying SPV, except where the same is not possible because of a regulatory requirement/ requirement emanating from the concession agreement. In such cases sponsor shall enter into an agreement with the InvIT, to ensure that no decision taken by the sponsor, including voting decisions with respect to the SPV, are against the interest of the InvIT/ its unit holders.

- f. Sponsor(s) of an InvIT shall, collectively, hold not less than 25% of the total units of the InvIT on post issue basis for a period of at least 3 years, except for the cases where a regulatory requirement/concession agreement requires the sponsor to hold a certain minimum percent in the underlying SPV. In such cases the consolidated value of such sponsor holding in the underlying SPV and in the InvIT shall not be less than the value of 25% of the value of units of InvIT on post-issue basis.
- g. The proposed holding of an InvIT in the underlying assets shall be not less than Rs 500 crore and the offer size of the InvIT shall not be less than Rs 250 crore at the time of initial offer of units.
- h. The aggregate consolidated borrowing of the InvIT and the underlying SPVs shall never exceed 49% of the value of InvIT assets. Further, for any borrowing exceeding 25% of the value of InvIT assets, credit rating and unit holders' approval is required.
- i. An InvIT which proposes to invest at least 80% of the value of the assets in the completed and revenue generating Infrastructure assets, shall :
- i. raise funds only through public issue of units.
 - ii. have a minimum 25% public float and at least 20 investors.
 - iii. have minimum subscription size and trading lot of Rs ten lakhs and Rs five lakhs respectively.
 - iv. distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, atleast on a half yearly basis.
 - v. through a valuer, undertake a full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.
- j. A publicly offered InvIT may invest the remaining 20% in under construction infrastructure projects and other permissible investments, as defined in the regulations. However, the investments in under construction infrastructure projects shall not be more than 10% of the value of the assets.
- k. An InvIT which proposes to invest more than 10% of the value of their assets in under construction infrastructure projects shall:
- i. raise funds only through private placement from Qualified Institutional Buyers and body corporates.
 - ii. have minimum investment and trading lot of Rs. 1 crore.
 - iii. have minimum of 5 investors with each holding not more than 25% of the units
 - iv. distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, atleast on a yearly basis

v. undertake full valuation on yearly basis and declare NAV within 15 days from the date of such valuation.

I. Conditions for InvITs investing in under construction projects

i. For PPP project(s)

1. has achieved completion of at least 50% of the construction of the infrastructure project as certified by an independent engineer; or
2. has expended not less than 50% of the total capital cost set forth in the financial package of the relevant project agreement.

ii. For Non-PPP project(s), the Infrastructure Project has received all the requisite approvals and certifications for commencing construction of the project;

m. Listing shall be mandatory for both publicly offered and privately placed InvITs and InvIT shall make continuous disclosures in terms of the listing agreement.

n. Detailed provisions for related party transactions, valuation of assets, disclosure requirements, rights of unit holders, etc. are provided in the Regulations.

However, for any issue requiring unit holder's approval, the voting by any person who is a related party in such transaction as well as its associates shall not be considered.

C. SEBI (REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2014

SEBI had come out with a consultation paper on draft SEBI (Real Estate Investment Trusts) Regulations, 2013 on Oct 10, 2013 for public comments. Based on the comments received upon the draft regulations for Real Estate Investment Trusts (REIT's), the SEBI on 26th September 2014 finally notified the final regulations SEBI (Real Estate Investment Trust) Regulations, 2014 thereby providing a framework for registration and regulation of REIT's.

"REIT" or "Real Estate Investment Trust" shall mean a trust registered as such under these regulations.

"REIT assets" means real estate assets and any other assets owned by the REIT whether directly or through a special purpose vehicle.

Salient features of the REIT Regulations include the following:

- a. REITs shall be set up as a trust and registered with SEBI. It shall have parties such as Trustee, Sponsor(s) and Manager.
- b. The trustee of a REIT shall be a SEBI registered debenture trustee who is not an associate of the Sponsor/manager.
- c. REIT shall invest in commercial real estate assets, either directly or through SPVs. In such SPVs a REIT shall hold or proposes to hold controlling interest and not less than 50% of the equity share capital or interest.
- d. Further, such SPVs shall hold not less than 80% of its assets directly in properties and shall not invest in other SPVs.

- e. Once registered, the REIT shall raise funds through an initial offer. Subsequent raising of funds may be through follow-on offer, rights issue, qualified institutional placement, etc. The minimum subscription size for units of REIT shall be Rs 2 lakhs. The units offered to the public in initial offer shall not be less than 25% of the number of units of the REIT on post-issue basis.
- f. Units of REITs shall be mandatorily listed on a recognized Stock Exchange and REIT shall make continuous disclosures in terms of the listing agreement. Trading lot for such units shall be Rs 1 Lakh.
- g. For coming out with an initial offer, the value of the assets owned/proposed to be owned by REIT shall be of value not less than Rs 500 crore. Further, minimum issue size for initial offer shall be Rs 250 crore.
- h. The Trustee shall generally have an overseeing role in the activity of the REIT. The manager shall assume operational responsibilities pertaining to the REIT. Responsibilities of the parties involved are enumerated in the Regulations.
- i. A REIT may have multiple sponsors, not more than 3, subject to each holding at least 5% of the units of the REIT. Such sponsors shall collectively hold not less than 25% of the units of the REIT for a period of not less than 3 years from the date of listing. After 3 years, the sponsors, collectively, shall hold minimum 15% of the units of REIT, throughout the life of the REIT.
- i. Not less than 80% of the value of the REIT assets shall be in completed and revenue generating properties. Not more than 20% of the value of REIT assets shall be invested in following :
 - (i) developmental properties,
 - (ii) mortgage backed securities,
 - (iii) listed/ unlisted debt of companies/body corporates in real estate sector,
 - (iv) equity shares of companies listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity,
 - (v) government securities,
 - (vi) money market instruments or Cash equivalents.

However investments in developmental properties shall be restricted to 10% of the value of the REIT assets.

- j. A REIT shall invest in at least 2 projects with not more than 60% of value of assets invested in one project. Detailed investment conditions are provided in the Regulations.
- k. REIT shall distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to its investors, atleast on a half yearly basis.
- l. REIT, through a valuer, shall undertake full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.

- m. The borrowings and deferred payments of the REIT at a consolidated level shall not exceed 49% of the value of the REIT assets. In case such borrowings/ deferred payments exceed 25%, approval from unit holders and credit rating shall be required.
- n. Detailed provisions for related party transactions, valuation of assets, disclosure requirements, rights of unit holders, etc. are provided in the Regulations. However, for any issue requiring unit holders' approval, voting by a person who is a related party in such transaction as well as its associates shall not be considered.

AMENDMENTS IN SEBI ACT, RULES AND REGULATIONS

A. MUTUAL FUNDS

a. Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

- SEBI vide circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013 had permitted Mutual Fund Distributors to use recognised stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients.

- Paragraph 5 of the aforesaid circular is as under:

"The MF distributors shall not handle payout and pay in of funds as well as units on behalf of investor. The recognised stock exchange shall put necessary system in place to ensure that pay in will be directly received by recognised Clearing Corporation and payout will be directly made to investor account. In the same manner, units shall be credited and debited directly from the demat account of investors".

In this regard, in order to broad base the reach of this platform, SEBI has decided to permit non demat transactions also in the Mutual fund through stock exchange platform.

b. Amendment to SEBI (Mutual Funds) (Second Amendment) Regulations, 2014

In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, in regulation 21, in sub-regulation (1), in clause (f),

(a) in the first proviso, the words "these regulations" shall be substituted with the words "Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014";

(b) after the third proviso, the following proviso shall be inserted, namely,-

"Provided further that in cases where the Board is satisfied that an asset management company is taking steps to meet the networth requirement within the specified time, the asset management company may be allowed to launch upto two new schemes per year."

B. ALTERNATIVE INVESTMENT FUND

Amendment to SEBI (Foreign Venture Capital Investors) Regulations, 2000

In the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, in regulation 2, in sub-regulation (1), -

(i). clause (j) and the corresponding Third Schedule shall be omitted;

(ii). clause (m) shall be substituted with the following:-

"(m) "venture capital undertaking" means a domestic company:

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

- (1) non-banking financial companies, other than Core Investment Companies (CICs) in the infrastructure sector, Asset Finance Companies (AFCs), and Infrastructure Finance Companies (IFCs) registered with Reserve Bank of India;
- (2) gold financing;
- (3) activities not permitted under industrial policy of Government of India;
- (4) any other activity which may be specified by the SEBI in consultation with Government of India from time to time. "

C. REGULATORY FRAMEWORK GOVERNING STOCK EXCHANGES

a. Amendments to the Securities Contracts (Regulation) Act, 1956

In section 12A of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), the following Explanation shall be inserted, namely:—

“Explanation.— For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

- In section 23A of the principal Act, in clauses (a) and (b), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 23B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 23C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 23D of the principal Act, for the words “liable to a penalty not exceeding one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 23E of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.

- In section 23F of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.
- In section 23G of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.
- In section 23H of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 23-I of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23L, whichever is earlier.”.

- After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“23JA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

(3) For the purposes of settlement under this section, the procedure as specified by the SEBI under the Securities and Exchange Board of India Act, 1992 shall apply.

(4) No appeal shall lie under section 23L against any order passed by the SEBI or the adjudicating officer, as the case may be, under this section.”.

- After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:—

'23JB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the SEBI, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter XVIIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the SEBI under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the SEBI who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.'

- In section 23L of the principal Act, in sub-section (1), after the word, figure and letter “section 4B”, the words, brackets, figures and letter “or sub-section (3) of section 23-l” shall be inserted.
- In section 26 of the principal Act, sub-section (2) shall be omitted.
- After section 26 of the principal Act, the following sections shall be inserted, namely:—

“26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.

In section 31 of the principal Act, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

“(c) the terms determined by the SEBI for settlement of proceedings under sub-section (2) of section 23JA;

(d) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”.

- After section 31 of the principal Act, the following section shall be inserted, namely:—

“32. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”.

b. Amendment to Securities Contracts (Regulation) Rules, 1957

In the Securities Contracts (Regulation) Rules, 1957,

(i) in rule 19, in sub-rule (2),—

(a) for clause (b), the following clause shall be substituted, namely:—

“(b) (i) at least twenty five per cent. of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

(ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees;

(iii) at least ten per cent. of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees:

Provided that the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent. within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India:

Provided further that this clause shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement.”;

(b) clause (c) shall be omitted;

(ii) in rule 19A, in sub- rule (1),—

(a) the words “other than public sector Company” shall be omitted;

(b) for the proviso the following proviso shall be substituted, namely:—

“Provided that every listed public sector company which has public shareholding below twenty five per cent., on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2014, shall increase its public shareholding to atleast twenty five per cent., within a period of three years, in the manner, as may be specified, by the Securities and Exchange Board of India.”;

(c) in rule 19A, in the Explanation to sub-rule (1), the words, brackets and figures “sub-clause (ii) of” shall be omitted.

(iii) in rule 19A, sub-rule (3) shall be omitted.

D. SEBI ACT, 1992

Amendments to SEBI Act, 1992

- In section 11 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act),—

(i) in sub-section (2),—

(a) for clause (ia), the following clause shall be substituted, namely:—

“(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the SEBI, shall be relevant to any investigation or inquiry by the SEBI in respect of any transaction in securities;”

(b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—

“(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;

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

“(5) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund

established by the SEBI and such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.

- In section 11AA of the principal Act,—

(i) in sub-section (1),—

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) the following proviso shall be inserted, namely:—

“Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.”;

(ii) in sub-section (2), in the opening portion, for the word “company”, the word

“person” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”;

(iv) in sub-section (3),—

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:—

“(ix) such other scheme or arrangement which the Central Government may, in consultation with the SEBI, notify,”.

- In section 11B of the principal Act, the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

- In section 11C of the principal Act,—

(i) in sub-section (8), for the words “the Judicial Magistrate of the first class having jurisdiction”, the words “the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government” shall be substituted;

(ii) after sub-section (8), the following sub-section shall be inserted, namely:—

“(8A) The authorised officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (8) and it shall be the duty of every such officer to comply with such requisition.”;

(iii) in sub-section (9), for the words “the Magistrate” occurring at both the places, the words “the Magistrate or Judge of the Designated Court” shall be substituted;

(iv) in sub-section (10), for the words “the Magistrate”, the words “the Magistrate or Judge of the Designated Court” shall be substituted.

- In section 15A of the principal Act, in clauses (a), (b) and (c), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 15B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 15C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 15D of the principal Act,—

(i) in clause (a), for the words “of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees” shall be substituted;

(ii) in clauses (b), (c), (d), (e) and (f), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.

- In section 15E of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 15F of the principal Act,—

(i) in clause (a), for the words “a penalty not exceeding five times the amount”, the words, “a penalty which shall not be less than one lakh rupees but which may extend to” shall be substituted;

(ii) in clause (b), for the words “of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees” shall be substituted;

(iii) in clause (c), for the words “of one lakh rupees or five times the amount of brokerage”, the words “which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage” shall be substituted.

- In section 15G of the principal Act, for the words “of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher”, the words “which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher” shall be substituted.
- In section 15H of the principal Act, for the words “of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher”, the words “which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher” shall be substituted.
- In section 15HA of the principal Act, for the words “of twenty- five crore rupees or three times the amount of profits made out of such practices, whichever is higher”, the words “which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher” shall be substituted.
- In section 15HB of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “ liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 15-I of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—
- “(3) The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.”.

- After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the SEBI or adjudicating officer, as the case may be, under this section.”.

- In section 15T of the principal Act, sub-section (2) shall be omitted.
- In section 26 of the principal Act, sub-section (2) shall be omitted.
- After section 26 of the principal Act, the following sections shall be inserted, namely:—

“26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting

prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section."

- After section 28 of the principal Act, the following section shall be inserted, namely:—
'28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the SEBI for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the SEBI, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—
 - (a) attachment and sale of the person's movable property;
 - (b) attachment of the person's bank accounts;
 - (c) attachment and sale of the person's immovable property;
 - (d) arrest of the person and his detention in prison;
 - (e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.’

- In section 30 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

“(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the terms determined by the SEBI for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”.

- After section 34 of the principal Act, the following section shall be inserted, namely:—

“34A. Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the SEBI and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”.

E. DEPOSITORIES

a. Amendments to the Depositories Act, 1996

- In section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following Explanation shall be inserted, namely:—
- “Explanation.— For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any

transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”.

- In section 19A of the principal Act, in clauses (a), (b) and (c), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19D of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19E of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19F of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees” shall be substituted.
- In section 19G of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 19H of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The SEBI may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23A, whichever is earlier.”.

- After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“19-IA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

(3) For the purpose of settlement under this section, the procedure as specified by the SEBI under the Securities and Exchange Board of India Act, 1992 shall apply.

(4) No appeal shall lie under section 23A against any order passed by the SEBI or the adjudicating officer under this section.”.

- After section 19-IA of the principal Act as so inserted, the following section shall be inserted, namely:—

'19-IB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the SEBI, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: —

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act

and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2. — Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3. — Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the SEBI under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

- In section 22 of the principal Act, sub-section (2) shall be omitted.
- After section 22B of the principal Act, the following sections shall be inserted, namely:—

“22C. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

22D. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken

cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

22E. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

22F. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

22G. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.

- In section 23A of the principal Act, sub-section (2) shall be omitted.
- In section 25 of the principal Act, in sub-section (2), after clause (g), the following clauses shall be inserted, namely:—

“(h) the terms determined by the SEBI for settlement of proceedings under subsection (2) of section 19-IA;

(i) any other matter which is required to be, or may be, specified by regulations or in respect of which provision to be made by regulations.”.

- After section 30 of the principal Act, the following section shall be inserted, namely:—

“30A. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”.
- Notwithstanding the fact that the Securities Laws (Amendment) Ordinance, 2014 has ceased to operate, anything done or any action taken or purported to have been done or taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if such provisions had been in force at all material times.

b. Single Registration for Depository Participants under SEBI (Depositories and Participants) Regulations, 1996

- a. If a new entity desires to act as a participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registration through the concerned depository in the manner prescribed in the DP Regulations.
- b. If an entity has been granted a certificate of registration to act as a participant through one depository and wishes to act as a participant with the other depository then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP Regulations. The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements including the following:
 - i. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;
 - ii. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past inspections or in case of actions initiated/ taken by SEBI/ depository(s) or other regulators. The depository may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate;
 - iii. Recovery of all pending fees/ dues payable to SEBI and depository; and
 - iv. payment of registration fees as prescribed in the DP Regulations.

The depositories shall report to SEBI about the approval as stated above on a monthly basis.

- c. The participant shall apply to SEBI for permanent registration through any of the depositories in which it is acting as a participant as per the DP Regulations.
- d. The participants shall continue to pay the applicable annual fees and registration fees as specified in Part A of Second Schedule in the manner specified in Part thereof w.r.t. their respective depository(ies), as the case may be.

c. Amendment to Basic services Demat Account (BSDA)

- DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that the dispatch of the physical statement may be discontinued if the account continues to remain zero balance even after one year.
- Accounts with zero balance and nil transactions during the year: DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that if no Annual Maintenance Charge (AMC) is received by the DP, the dispatch of the physical statement may be discontinued for the account which continues to remain zero balance even after one year.

- However, irrespective of the above, the DPs shall send electronic statement of holding to all the BOs whose email ids are registered with them. Also, if a BO requests for a physical statement, the DPs shall provide the same.

F. ISSUE OF SECURITIES

a. Amendment to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

- In regulation 26, sub-regulation (6), -
 - A. in clause (b) of second proviso, the symbol "." shall be substituted with symbol " ; " ;
 - B. after clause (b) of second proviso, a new clause shall be inserted, namely:-

"(c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the SEBI and further subject to the following, -

 - (i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the SEBI; and
 - (ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer. "
- For regulation 41, the following shall be substituted, namely:-

"Minimum net offer to public.

41. The minimum net offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957."
- In regulation 43, in sub-regulation (3), the word "thirty" shall be substituted with the word "sixty".
- After regulation 71, the following new regulation shall be inserted, namely:-

"Frequently traded shares.

71A. For the purpose of this Chapter, "frequently traded shares" means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares. "
- In regulation 76, -
 - A. in the title of the regulation, the words and symbol " - Frequently traded shares " shall be inserted after the words "Pricing of equity shares" ;
 - B. the words "closing prices" wherever occurring, shall be substituted with the words "volume weighted average price".

(vi) after regulation 76, the following regulations shall be inserted, namely:-

" Pricing of equity shares – Infrequently traded shares.

76A. Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

Adjustments in pricing - Frequently or infrequently traded shares

76B. The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- a. makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
 - b. makes a rights issue of equity shares;
 - c. consolidates its outstanding equity shares into a smaller number of shares;
 - d. divides its outstanding equity shares including by way of stock split;
 - e. re-classifies any of its equity shares into other securities of the issuer;
 - f. is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments. "
- In Schedule XI, in Part A, in para (10), in sub-para (c), for the word "thirty" the word "sixty" shall be substituted;

G. REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES

a. Amendment to the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

Single registration for Stock Brokers & Clearing Members

- As per the amendment, the existing requirement of obtaining registration as stock broker/ clearing member for each stock exchange/clearing corporation has been done away with and instead a single registration with any stock exchange/ clearing corporation shall be required. For operating in any other stock exchange(s)/ clearing corporation(s), approval will be required from the concerned stock exchange or clearing corporation.
 - For the purpose of implementing the revised registration requirements, the following guidelines are being issued:
- a. If a new entity desires to register as a stock broker or clearing member with any stock exchange or clearing corporation, as the case may be, then the entity shall apply to SEBI through the respective stock exchange or clearing corporation in the manner prescribed in the Broker Regulations. The entity shall be issued one certificate of registration, irrespective of the stock exchange(s)/ clearing corporation(s) or number of segment(s).
 - b. If the entity is already registered with SEBI as a stock broker with any stock exchange, then for operating on any other stock exchange(s) or any clearing corporation, the entity can directly apply for approval to the concerned stock exchange or clearing corporation, as per

the procedure prescribed in the Broker Regulations for registration. The stock exchange/ clearing corporation shall report to SEBI about such grant of approval.

- c. Similarly, if any entity is already registered with SEBI as a clearing member in any clearing corporation, then for operating in any other clearing corporation(s) or any stock exchange, the entity shall follow the procedure as prescribed in Clause b above.
- d. Fees shall be applicable for all the stock brokers, self clearing members and clearing members as per Schedule V of the Broker Regulations. As per current requirement, the entity shall continue to be liable to pay fees for each segment approved by the stock exchange or clearing corporation, as per the Schedule to the Brokers Regulations.
 - The stock exchange or clearing corporation shall grant approval for operating in any segment(s) or additional segment(s) to the SEBI registered stock broker, self-clearing member or clearing member, as the case may be, after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements, and shall also, *inter alia* ensure:
 - a. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;
 - b. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past in actions initiated/ taken by SEBI/ stock exchanges(s) or other regulators. The stock exchange or clearing corporation may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate; and
 - c. Recovery of all pending fees/ dues payable to SEBI, stock exchange and clearing corporation;
 - The stock exchange(s) and clearing corporation(s) shall coordinate and share information with one another, about their members.

b. Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011

In the SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, after regulation 16, the following regulation shall be inserted, namely,-

"Sharing of KYC information in the financial sector

16A. (1) The entities, regulated by other regulators in the financial sector specified by the Board from time to time, may access the system of KRA for undertaking KYC of their clients who engage them for financial services.

(2) The provisions of these regulations shall, mutatis mutandis, apply to the entities regulated by other regulators specified in sub-regulation (1).

(3) The system of KRA may be connected with any central KYC registry authorised by the Central Government for the purpose of collation and sharing of the KYC information in the financial sector. "

SCORES

- SEBI launched a centralized web based complaints redress system 'SCORES' in June 2011. The purpose of SCORES is to provide a platform for aggrieved investors, whose grievances, pertaining to securities market, remain unresolved by the concerned listed company or registered intermediary after a direct approach.
- SCORES also provides a platform, overseen by SEBI through which the investors can approach the concerned listed company or SEBI registered intermediary in an endeavor towards speedy redressal of grievances of investors in the securities market. It would, however, be advisable that investors may initially take up their grievances for redressal with the concerned listed company or registered intermediary, who are required to have designated persons/officials for handling issues relating to compliance and redressal of investor grievances.
- SEBI has issued various circulars/directions from time to time with respect to SCORES. In order to enable the users to have an access to all the applicable circulars/directions at one place, this Circular on SCORES consolidates the current provisions.
- Stock Brokers, Sub-Brokers and Depository Participants are not required to obtain SCORES authentication since complaints against these intermediaries shall continue to be routed through the platforms of the concerned Stock Exchange/Depository.
- The registered intermediaries shall submit the details in hard copy (Form-B) to the Department/Division of SEBI which has granted them registration to operate in the securities market. SCORES user id and password of an intermediary shall be created only after receiving approval from the concerned Department/Division of SEBI.
- In case of complaints against listed companies, the same can be processed by companies in-house or through its Registrar to Issue and Share Transfer Agent (RTI/STA). In case the complaints are processed by the RTI/STA on behalf of the listed company, the company should indicate in the enclosed Form-A whether they require the facility to forward complaints to the RTI/STA, so that the ATRs can be uploaded by them. In such cases, the name of the RTI/STA, the name of the Compliance Officer of the listed company and email id of the listed company should be furnished, so that the user id and password can be provided accordingly. In case the complaints are processed by the RTI/STA on behalf of the listed company, any failure on the part of the RTI/STA to redress the complaints or failure to update ATR in SCORES, will be treated as failure of the listed company to furnish information to SEBI and non redressal of investor complaints by the listed company.
- All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

- The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company / SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company / SEBI registered intermediary, for future reference.
- Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.
- A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.
- Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

REPLACED OR REPEALED SEBI REGULATIONS

A. SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014

SEBI has notified the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations). These New Regulations had replaced SEBI (Foreign Institutional Investors) Regulations, 1995. The New Regulations provides for the framework for Foreign Portfolio Investors (FPI) and Designated Depository Participant (DDP). The objective of the FPI Regulations is to simplify compliance requirements and have uniform guidelines for various categories of Foreign Portfolio Investors (FPIs) like Foreign Institutional Investors (FIIs) including their sub-accounts, if any and Qualified Foreign Investors (QFIs).

The FPI Regulations have been framed by SEBI considering the provisions of FII Regulations, QFIs framework and the recommendations of the “Committee on Rationalization of Investment Routes and Monitoring of Foreign Portfolio Investments”. The report was submitted by the Committee on 12 June 2013 to SEBI. After considering the recommendations of the Committee, SEBI issued a press release dated 5 October 2013 indicating the salient features of the draft SEBI (Foreign Portfolio Investors) Regulations, 2013. On 7 January 2014, SEBI notified the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations). The same shall be effective with effect from 7 January 2014. Subsequently, the SEBI has also vide a Circular dated 8 January 2013 issued operating guidelines for Designated Depository Participants (DDP) who would grant registration to Foreign Portfolio Investors (FPI).

On notification of the FPI Regulations, the FII Regulations stand repealed and SEBI Circulars on QFIs stand rescinded. However, the existing FIIs or QFIs who hold a valid certificate of registration are automatically deemed to be FPIs under the FPI Regulations till the expiry of the block of 3 years for which the fees have been paid under the FII Regulations. Further, notwithstanding such repeal and rescission, SEBI may continue to grant certificate of registration as a FII or sub-account under the FII Regulations till 31 March 2014 which may be extended upto 30 June 2014 by SEBI. The key highlights of the FPI Regulations are summarized below:

Registration requirements and eligibility criteria for a FPI

Definition of FPI

Designated Depository Participants (DDPs) are authorised to grant registration to FPIs on behalf of the SEBI. The application for grant of registration is to be made to the DDP in a prescribed form alongwith the specified fees. FPI means a person who satisfies the prescribed eligibility criteria. The eligibility criteria for a FPI, inter-alia, includes:

- (a) the applicant is a person not resident in India;
- (b) the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with SEBI;

- (c) the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
- (d) the applicant is not resident in a country identified in the public statement of Financial Action Task Force as:
 - (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
- (e) the applicant is not a non-resident Indian;
- (f) the applicant is legally permitted to invest in securities outside the country of its incorporation or establishment or place of business;
- (g) the applicant is authorized by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients;
- (h) the applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;
- (i) the grant of certificate to the applicant is in the interest of the development of the securities market;
- (j) the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008; and
- (k) any other criteria specified by SEBI from time to time.

Different Categories of FPI

Registration as a FPI can be obtained in one of the three categories specified by SEBI as under:

- (i) Category I which shall include Government and Government related investors such as central banks, Governmental agencies, sovereign wealth funds and international or multilateral organizations or agencies;
- (ii) Category II shall broadly include the following:
 - (a) funds such as mutual funds, investment trusts, insurance/reinsurance companies;
 - (b) regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers;

- (c) funds that are not appropriately regulated but whose investment manager is appropriately regulated:
- (d) university funds and pension funds; and
- (e) university related endowments already registered with SEBI as foreign institutional investors or sub-accounts.

(iii) Category III shall include all others FPIs not eligible under Category I and II foreign portfolio investors such as endowments, charitable societies, charitable trusts, foundations, corporate bodies, trusts, individuals and family offices.

(iv) Any other category as may be specified by the SEBI from time to time.

Registration requirements for existing FIIs and QFIs

- i. FIIs/ sub-accounts may, subject to payment of conversion fees, continue to trade in securities till the expiry of its registration or obtaining of a certificate of registration as foreign portfolio investor, whichever is earlier.
- ii. QFIs would be required to obtain a Certificate of Registration as a FPI within one year from 7 January 2014 (i.e. the date of commencement of the FPI Regulations).

Designated Depository Participant (DDP)

Application for approval

- i. A person can act as a DDP only after obtaining an approval of SEBI. However, an existing registered custodian of securities and qualified depository participant shall be deemed to have been granted approval as a DDP subject to the payment of prescribed fees.
- ii. An application for approval to act as a DDP shall be made to SEBI through the depository in which the applicant is a participant accompanied by the prescribed fees.

Eligibility criteria for DDP

SEBI shall grant an approval to a person to act as DDP subject to satisfaction of, inter-alia, the following conditions:

- (a) The applicant is a participant and custodian registered with the SEBI;
- (b) The applicant is an Authorized Dealer Category-1 bank authorized by the Reserve Bank of India;
- (c) The applicant has multinational presence either through its branches or through agency relationships with intermediaries regulated in their respective home jurisdictions;
- (d) The applicant has systems and procedures to comply with the requirements of FATF Standards, Prevention of Money Laundering Act, 2002, and the rules and circulars prescribed thereunder.
- (e) A Certificate of Registration granted to a DDP shall be permanent unless suspended or cancelled by SEBI or surrendered by the DDP.

Conditions for issuance of offshore derivative instruments by FPI

An FPI shall issue ODIs only to those subscribers which meet the eligibility criteria as laid down in Regulation 4 of the SEBI (Foreign Portfolio Investor) Regulations, 2014. Regulation 4 requires that an FPI applicant shall not be granted registration unless it satisfies *inter alia* the following conditions namely:

- a. the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with the SEBI;
- b. the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
- c. the applicant is not resident in a country identified in the public statement of Financial Action Task Force as:
 - i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

An FPI shall issue ODIs only to those subscribers which do not have opaque Structure (s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014.

Obligations and responsibilities of FPI

The obligations and responsibilities of FPI, inter-alia, include:

- (a) FPIs to obtain a Permanent Account Number (i.e. Indian income-tax registration number) from the Indian Revenue authorities.
- (b) FPI to appoint a compliance officer who shall be responsible for monitoring the compliance of various rules, regulations, notifications, etc issued by the DDP or SEBI or the Central Government.
- (c) A FPI (or any of its employees) shall not render directly or indirectly any investment advice about any security in the publicly accessible media, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.
- (d) An employee rendering such an advice is also required to disclose the interest of his dependent family members and his employer.

Liability for action in case of default

A FPI, DDP, depository or any other person who contravenes any of the provisions of these regulations shall be liable for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and/or the relevant provisions of the Act or the Depositories Act, 1996.

Key differences between FII Regulations and FPI Regulations

Particulars	FII regulations	FPI regulations
Regulatory Structure	2 Tier structure – FIIs and Sub-accounts	No tiers
Registering Institution	SEBI	DDP on behalf of SEBI
Need to be a resident in a country where securities market regulator is a signatory to IOSCO's MMOU or a signatory to bilateral MMOU with SEBI	Not applicable for Sub-accounts	Applicable to all
Investment limit for Foreign Individual / Foreign Corporate	5% of issued capital	Below 10% of issued capital
Investment Limit in Equity Shares	Upto 10% of issued capital	Below 10% of issued capital
Investment in unlisted equity shares	Permitted	Not permitted
Issuance / subscription of ODIs (Participatory Notes)	Permitted for all FIIs (not Sub-accounts)	Permitted for Category I and Category II FPIs except for unregulated broad based funds

B. SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

SEBI has notified the SEBI (Share Based Employee Benefits) Regulations, 2014 on 28th October, 2014 repealing SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

Applicability

- The provisions of these regulations shall apply to following, -
 - (i) employee stock option schemes;
 - (ii) employee stock purchase schemes;
 - (iii) stock appreciation rights schemes;
 - (iv) general employee benefits schemes; and
 - (v) retirement benefit schemes.

- The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:
 - (i) for direct or indirect benefit of employees; and

(ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and

(iii) satisfying, directly or indirectly, any one of the following conditions:

- a. the scheme is set up by the company or any other company in its group;
- b. the scheme is funded or guaranteed by the company or any other company in its group;
- c. the scheme is controlled or managed by the company or any other company in its group.

Non Applicability

Shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Highlights of the Regulations

The highlights of the regulations are as follows:

- To ensure a smooth transition for complying with the new regulatory framework, the existing employee benefit schemes have been provided with a time period of one year from the date of notification.
- Company can implement schemes either directly or by setting up an irrevocable trust(s). However, if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes. Further, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).
- No scheme shall be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
- Companies having employee stock option programmes are allowed to buy their own company shares subject to certain conditions.
- Company shall constitute a compensation committee for administration and superintendence of the schemes.
- Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.
- For undertaking secondary market acquisitions companies are required to take shareholders' approval through special resolution;
- The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months.
- Restrictions on sale of shares by trusts except certain circumstances.
- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.

- In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.
- The shares arising after the initial public offering (IPO) of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified by SEBI in this regard.
- The general employee benefit schemes and retirement benefit schemes may hold own shares / listed holding company's shares subject to a ceiling which shall not exceed 10% of the total assets held by such schemes.
- Such schemes holding shares which amount to more than the prescribed ceiling of 10% of total assets shall reduce the same within a period of 5 years from the date of notification of the Regulations.
- The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.
- The amount payable by the employee, if any, at the time of grant of option, may be forfeited by the company if the option is not exercised by the employee within the exercise period; or may be refunded to the employee if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the ESOS.

CLAUSE 49 OF THE LISTING AGREEMENT

Amendments in Clause 49 of the Listing Agreement

• **Applicability of Clause 49**

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- (a) Companies having paid up equity share capital not exceeding Rs.10 crore and Net Worth not exceeding Rs.25 crore, as on the last day of the previous financial year;

Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

- (b) Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

• **Clarification on applicability of appointment of woman director**

The provisions regarding appointment of woman director as provided in Clause 49 (II)(A)(1) shall be applicable with effect from April 01, 2015.

• **Clause 49(II)(B)(1)(c)**

The clause shall be substituted with the following:

"(c) apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year."

• **Clause 49(II)(B)(3)(a)**

The clause shall be substituted with the following:

"The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/ circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time.

• **Clause 49(II)(B)(4)(b)**

The clause shall be substituted with the following:

"(b) The terms and conditions of appointment shall be disclosed on the website of the company."

• **Clause 49(II)(B)(7)**

The clause shall be substituted with the following:

"7. Familiarisation programme for Independent Directors

- a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.
- b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report."

- **Clause 49(IV)(A)**

The clause shall be substituted with the following:

"A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee."

- **Clause 49(V)(D)**

The clause shall be substituted with the following:

"(D) The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report."

- **Clause 49(V) (F)**

The clause shall be substituted with the following:

"(F). No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal."

- **Clause 49(V)(G)**

The clause shall be substituted with the following:

"(G). Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

Explanation (i): For the purpose of sub-clause (V)(A), the term "material non listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose income or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated income or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation (ii): For the purpose of sub-clause (V)(C), the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation (iii): For the purpose of sub-clause (V), where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned."

- **Clause 49(VI)**

The clause 49(VI)(C) shall be substituted with the following:

"(C) The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. "

The following clauses shall be inserted after Clause 49(VI)(C):

"(D) The majority of Committee shall consist of members of the Board of Directors.

(E)Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors."

- **Clause 49(VII)(A)**

The following explanation shall be inserted after Clause 49(VII)(A):

"Explanation: A "transaction" with a related party shall be construed to include single transaction or a group of transactions in a contract."

- **Clause 49(VII)(B)**

The clause shall be substituted with the following:

"B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:

(i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or

(ii) such entity is a related party under the applicable accounting standards."

- **Clause 49(VII)(C)**

The clause shall be substituted with the following:

"(C) The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company."

- **Clause 49(VII)(D)**

The clause shall be substituted with the following:

"(D)All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company subject to the following conditions:

a. The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on Related Party Transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.

b. The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;

c. Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price if any and (iii) such other conditions as the Audit Committee may deem fit;

Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding Rs.1 crore per transaction.

d. Audit Committee shall review, atleast on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given.

e. Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year".

- **Clause 49(VII)(E)**

The following proviso and explanations shall be inserted after Clause 49(VII)(E):

"Provided that sub-clause 49 (VII)(D) and (E) shall not be applicable in the following cases:

(i) transactions entered into between two government companies;

(ii) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation (i): For the purpose of Clause 49(VII), "Government Company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013."

Explanation(ii): For the purpose of Clause 49(VII), all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not."

- **Clause 49(VIII)(A)(2)**

The clause shall be substituted with the following:

"(2) The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report."

- **Clause 49(VIII)(F), (G) and (H)**

These clauses shall stand deleted.

- **Clause 49(IX)**

The words " The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:" shall be substituted with:

"The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that :"

The Depository Receipts Scheme, 2014 (Effective From December 15, 2014)

- The Depository Receipts Scheme, 2014 (“2014 Scheme”) which was notified by the Central Government with effect from December 15, 2014. With the notification of the 2014 Scheme, the erstwhile provisions dealing with depository receipts in the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 (“1993 Scheme”) stand repealed except to the extent they are relating to foreign currency convertible bonds.
- The 2014 Scheme is based on the recommendations of the Sahoo Committee, which under the chairmanship of Mr. M.S. Sahoo undertook a comprehensive review of the 1993 Scheme and proposed significant revisions.
- Permission to issue unsponsored depository receipts, issuance of depository receipts against all types of securities (and not only equity shares), expanding the definition of “Issuer”, Custodian”, Depository”, permissible jurisdictions etc., are few of the key features.
- Unlike the 1993 Scheme, a company need not obtain approval of Ministry of Finance before issuing depository receipts. However, approval if any required under FDI policy would still be required.
- Clause 3 of the scheme describes the eligibility of issue of depository receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts:
 - Any Indian company, listed or unlisted, private or public;
 - Any other issuer of permissible securities;
 - Any person holding permissible securitieswhich has not been specifically prohibited from accessing the capital market or dealing in securities. Unsponsored depository receipts on the back of the listed permissible securities can be issued only if such depository receipts gave the holder the right to issue voting instruction and are listed on an international exchange.
- Clause 2(g) defines the term ‘permissible jurisdiction’ as foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering and the regulator of the securities market in that jurisdiction is a member of the International Organization of Securities Commission. Schedule I of the scheme gives the list of permissible jurisdiction.
- Under the 2014 scheme, the companies will be allowed to issue DRs in all kinds of permissible securities including shares, debentures, bonds, derivatives, units of a mutual fund, collective investment schemes, Government securities and right or interest in securities. In the 1993 Scheme, companies could issue DRs only against equity shares of Indian companies.

COMPANY ACCOUNTS AND AUDITING PRACTICES

Sl. no	Topic of Updation	Details of Updates Required
1	Provision for depreciation in Section 123 of the Companies Act, 2013	Amendment to Schedule II of the Companies Act 2013, vide Notification dated 29 th August 2014, the useful life of an asset shall not be longer than the useful life as specified in Part C of Schedule II and the residual value shall not be more than 5% of the original cost of the asset.
2	Duties of Auditors as provided by Companies (Audit and Auditors) Amendment Rules, 2014 dated October 14, 2014	Companies (Audit and Auditors) Amendment Rules, 2014 dated October 14, 2014 states that for the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness.

COST ACCOUNTING RECORDS AND COST AUDIT

Sl. no	Topic of Updation	Details of Updates Required
1.	The Companies (Cost Records and Cost Audit) Rules, 2013	The Companies (Cost Records and Cost Audit) Rules, 2013 to be read as "The Companies (Cost Records and Audit) Rules, 2014" as these rules were notified on 30 th June, 2014
2.	Cost Audit Report	<p>Cost audit report means the report duly audited and signed by the cost auditor including attachment, annexure, qualifications or observations etc. to cost audit report. Every cost auditor, who conducts an audit of the cost records of the company, shall within 180 days from the close of the company's financial year to which the report relates, submit the cost audit report along with his reservations or qualifications or observations or suggestions in the Form CRA-3 to the Board of Directors of the company.</p> <p>Every cost auditor shall forward his report to the Board of Directors of the company within a period of 180 days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report particularly any reservation or qualification contained therein.</p>
3.	Appointment and Remuneration of Cost Auditor	The companies covered under the Cost audit category shall within 180 days of the commencement of every financial year, appoint a cost auditor at remuneration to be determined in accordance with provisions of section 148(3) of the Companies Act, 2013 and rules made thereunder.
4.	Applicability for Cost Audit	<p>Every such class of company and with such threshold limit as may be prescribed in the Companies (Cost Records and Audit) Amendment Rules, 2014, shall be required to get such cost records audited by a cost auditor.</p> <p>Cost Audit</p> <p>Every company covered under Rule 3 of the Companies (Cost Records and Audit) Amendment Rules, 2014 and with such threshold limits as specified in the Rules shall within one hundred and eighty days of the commencement of every financial year appoint a cost auditor. The company shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in form CRA-2, alongwith the fee as specified in</p>

		<p>Companies (Registration Offices and Fees) Rules, 2014.</p> <p>Further every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed. The cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in form CRA-3.</p> <p>The cost auditor shall forward his report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of directors shall consider and examine such report particularly any reservation or qualification contained therein.</p> <p>Every company covered above shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in form CRA-4 alongwith fees specified in the Companies (Registration Offices and Fees) Rules, 2014.</p> <p>The provisions of section 143(12) of the Companies Act, 2013 and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Companies Act, 2013 and the Companies (Cost Records and Audit) Rules, 2014.</p> <p>Exemptions</p> <p>The requirement of Cost Audit is not applicable for the following categories of companies even if they are covered under applicable class of companies:</p> <ul style="list-style-type: none"> • whose revenue from exports, in foreign exchange, exceeds 75 per cent of its total revenue or • which is operating from a special economic zone
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A. LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) AMENDMENT ACT, 2014

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 passed by the Rajya Sabha on November 26, 2014; the Lok Sabha on November 28, 2014 and received the assent of the President on the 9th December, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the **Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988**. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

Definitions

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

(1) Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

(2) Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes – (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

(3) Form

Form means a Form specified in the Second Schedule {Section 2 (c)}. Following forms are specified in the second schedule. They are as under:

- Form I -Annual Return(*To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year*)
- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register

(4) Scheduled Act

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder {Section 2 (d)}. Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

(5) Small Establishment

Small establishment means an establishment in which not less than ten and not more than **forty** persons are employed or were employed on any day of the preceding twelve months {Section 2 (e)}.

(6) Very Small Establishment

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months. {Section 2 (f)}.

Exemption from furnishing or maintaining of returns and registers required under certain labour laws.

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer—

(a) furnishes, in lieu of such returns, annual return in Form I; and

(b) maintains at the work spot, in lieu of such registers,—

(i) registers in Form II and Form III, in the case of small establishments, and

(ii) a register in Form III, in the case of very small establishments,:

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

Penalty

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

Test Your Knowledge

Who is covered under the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988?

Answer: The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 applies to –

(i) Small Establishment - The Establishment in which not less than 10 and not more than 40 persons are employed or were employed on any day in preceding 12 months.

(ii) Very Small Establishment - The Establishment in which not more than 09 person are employed or were employed on any day in preceding 12 months.

Which returns are to be submitted by the Employer of Small Establishment and Very Small Establishment?

Answer: In both the Establishments, Annual Return in Form I is required to be submitted.

Test Your Knowledge

Which Registers are required to be maintained at the work spot by the employer of a Small Establishment?

Answer: The Registers required to be maintained at the work spot by the employer of a Small Establishment are as under –
Form II and Form III.

Which Register is required to be maintained at the work spot by the employer of a Very Small Establishment?

Answer: The Register required to be maintained at the work spot by the employer of a Small Establishment is as under –
Form III

B. THE APPRENTICES (AMENDMENT) ACT, 2014

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of “establishment”, “worker”, number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provisions relating to penalty create fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. These amendments have been made with the objective of expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

The amendments are as under:

Definitions

Section 2 of the Act defines various terms used in the Act, some of the amended definitions are given here under:

(1) Appropriate Government

Appropriate Government means –

(1) in relation to –

(a) the Central Apprenticeship Council, or

(aa) the Regional Boards, or

(aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;

(b) any establishment of any railway, major port, mine or oilfield, or

(bb) any establishment which is operating business or trade from different locations situated in four or more States, or

(c) any establishment owned, controlled or managed by –

(i) the Central Government or a department of Central Government,

(ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government on partly by that Government and partly by one or more State Governments,

(iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Govt;

the Central Government

(2) in relation to –

(a) a State Apprenticeship Council, or

(b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; { Section 2(d)}.

(2) Designated Trade

Designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act {Section 2(e)}.

(3) Graduate or Technician Apprentice

graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade {Section 2(j)}.

(4) Industry

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both {Section 2(k)}.

(5) Optional Trade

Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act {Section 2(II)}.

(6) Portal-site

Portal-site means a website of the Central Government for exchange of information under this Act {Section 2(III)}.

(7) Technician (Vocational) Apprentice

Technician (vocational) apprentice means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the

completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade{Section 2(pp)}.

(8) Trade Apprentice

Trade Apprentice means an apprentice who undergoes apprenticeship training in any designated trade {Section 2(q)}.

(9) Worker

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa) {Section 2(r)}.

Qualifications for being engaged as an apprentice

Section 3 provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

- (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

Contract of Apprenticeship

Section 4 of the Act deals with Contract of apprenticeship, It states that -

(1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.

(4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.

(4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.

(4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Regulation of Optional Trade

Section 5A provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

Engagement of Apprentices from other States

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

Period of Apprenticeship Training

As per section 6 the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows-

(a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.

(aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;

(b) in the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed;

(c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

Number of Apprentices for A Designated Trade and Optional Trade

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

Practical and Basic Training of Apprentices

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf] shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.
- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne-
 - (i) If such employer employs two hundred and fifty workers or more, by the employer;
 - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;

- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

Hours of Work, Overtime, Leave and Holidays

Section 15 of the Act deals with hours of work, overtime, leave and holidays provides that:

(1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.

(2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.

(3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

Records and Returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

Holding of Test and Grant of Certificate and Conclusion of Training

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and Acceptance of Employment

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

Offences and Penalties

Section 30 deals with offences and penalties. Section 30 provides that-

(1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

(2) If any employer or any other person-

(a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or

(b) refuses or wilfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(d) employs an apprentice on any work which is not connected with his training, or

(e) makes payment to an apprentice on the basis of piece-work, or

(f) requires an apprentice to take part in any output bonus or incentive scheme.

- (g) engages as an apprentice a person who is not qualified for being so engaged, or
(h) fails to carry out the terms and conditions of a contract of apprenticeship

he shall be punishable with fine of one thousand rupees for every occurrence.

(2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.

C. EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) SCHEME, 2014

In exercise of the powers conferred by section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide notification G.S.R.610 (E) dated 22nd August, 2014 amended the Employees' Provident Funds Scheme, 1952 w.e.f 01st September, 2014.

The amendments are as follows:

- The statutory wage ceiling under the Employees' Provident Funds Scheme has been increased from Rs. 6,500/- to Rs. 15,000/- per month.
- Employees drawing pay exceeding fifteen thousand rupees per month treated as excluded employees.

D. EMPLOYEES' DEPOSIT-LINKED INSURANCE (AMENDMENT) SCHEME, 2014

In exercise of the powers conferred by section 6C read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide Notification G.S.R. 610 (E) dated 22nd August, 2014 amended the Employees' Deposit-Linked Insurance Scheme, 1976 w.e.f 01st September, 2014.

The amendments are as follows:

- The wage ceiling under the Employees' Deposit-Linked Insurance Scheme has been increased from Rs. 6,500/- to Rs. 15,000/- per month.
- The insurance benefit under the Scheme increased by 20% in addition to the existing admissible benefits.

E. EMPLOYEES' PENSION (AMENDMENT) SCHEME, 2014

In exercise of powers conferred by section 6A read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide Notifications G.S.R. 593(E) dated 19th August, 2014 and G.S.R 609(E), dated 19th August, 2014 amended the Employees' Pension Scheme, 1995 w.e.f 1st September, 2014.

The amendments are as follows:

- The wage ceiling under the Employees' Pension Scheme, 1995 has been increased from Rs. 6,500/- to Rs. 15,000/- per month.

- The minimum pension is fixed at Rs. 1,000/- per month for the members of the Employees' Pension Scheme or their nominee/ widow, etc. for the financial year 2014-15.
- The pensionable salary shall be the average monthly pay drawn in any manner including piece rate basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on pro-rata basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month and for the period thereafter at the maximum of fifteen thousand rupees per month.
- If a member was not in receipt of full pay during the period of sixty months preceding the day he ceased to be the member of the Pension Fund, the average of previous sixty months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary, for calculating pension.
- If during the said span of sixty months there are non contributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the sixty months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.
- The maximum pensionable salary shall be limited to fifteen thousand rupees per month.
- The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month:
- The aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder:
- The fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014.
- The period specified above may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months.
- If no option is exercised by the member within a period of six months from the 1st day of September, 2014 (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time.

- The members' monthly pension shall be determined on a pro-rata basis for the pensionable service up to the 1st day of September, 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month.

F. PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936, is an Act to regulate the payment of wages of certain classes of employed persons, whereas it is expedient to regulate the payment of wages to certain classes of employed persons. It ensures timely payment of wages and no unauthorised deductions are made from the wages of the worker.

With effect from 11.09.2012, the employees drawing wages up to Rs.18, 000/- per month is covered under the Payment of Wages Act, 1936.

A. DIRECT TAXATION- LAWS AND PRACTICE

AMENDMENTS IN INCOME TAX ACT, 1961 VIDE FINANCE (NO. 2) ACT, 2014

Definitions

(a) As per clause (13A) inserted under section 2 of the Income Tax Act vide Finance (No. 2) Act, 2014, “business trust” means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognised stock exchange, in accordance with the regulations made under the Securities Exchange Board of India Act, 1992 and notified by the Central Government in this behalf;

(b) Finance (No. 2) Act, 2014 amended the definition of capital gain and for the words in the opening portion of clause (14) of section 2:

“capital asset” means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade’,

the following has been substituted, namely

“capital asset” means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992, but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)]

Further, following explanation has been inserted vide Finance (No. 2) Act, 2014:

‘Explanation 2.—For the purposes of this clause—

(a) the expression “Foreign Institutional Investor” shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression “securities” shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;’

Tax Rates

Tax Slab

(a) In case of Individual (including women) or Hindu undivided family or association of persons or body of individuals or every artificial juridical person:

Upto Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	10% of the amount in excess of Rs. 2,50,000
Rs. 5,00,001 to Rs.10,00,000	Rs. 25,000 plus 20% of the amount in excess of Rs. 5,00,000
Rs. 10,00,001 and above	Rs. 1,25,000 plus 30% of the amount in excess of Rs. 10,00,000

(b) In the case of every individual, being a resident in India, who is of the age of sixty years or more at any time during the previous year but not more than 80 years on the last day of the previous year:-

Upto Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 5,00,000	10 % of the amount in excess of Rs. 3,00,000
Rs. 5,00,001 to Rs. 10,00,000	Rs. 20,000 plus 20% of the amount in excess of Rs. 5,00,000
Rs. 10,00,001 and above	Rs. 1,20,000 plus 30% of the amount in excess of Rs. 10,00,000

However, in case of super senior citizen i.e. individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year the rates of income-tax for previous year 2014-15 will continue to be the same as those specified previous year 2013-14.

(c) Companies, Co-operative Societies, Firms and Local Authorities

In the case of Companies, Co-operative Societies, Firms and Local Authorities the rates of income-tax for financial year 2014-15 will continue to be the same as those specified financial year 2013-14.

SURCHARGE ON INCOME-TAX

(i) In case of Individual/HUF/AOP/BOI/Artificial Juridical Person/Co-operative society/firm/LLP: Where the total income exceeds 1 crore rupees, surcharge @10% shall be applicable.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(ii) In case of Company: In case of every domestic company having a total income exceeding 1 crore rupees but not exceeding 10 crore rupees surcharge @5% of such income-tax and surcharge @ 10% if the total income exceeds 10 crore rupees shall be applicable. Further, in case of company other than domestic company having a total income exceeding 1 crore rupees but not exceeding 10 crore rupees@ 2% and where the total income exceeds 10 crore rupees the surcharge @ 5% shall be applicable.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees, shall not exceed the total amount payable as income-tax on a total income of one crore rupees, by more than the amount of income that exceeds one crore rupees. The total amount payable as income-tax and surcharge on total income exceeding ten crore rupees, shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

In other cases including the following, the surcharge shall continue to be levied at the rate of 10%:

- a) Section 115-O- Tax on distributed income of domestic companies by way of dividend
- b) Section 115QA- Tax on distributed income of domestic company for buyback of shares
- c) Section 115R- Tax on distributed income of mutual funds
- d) Section 115TA- Tax on income distributed by securitization trusts

EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS

For financial year 2014-2015, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of 2% and 1% respectively, on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such Cess.

DIVIDEND AND INCOME DISTRIBUTION TAX

In order to ensure that tax is levied on proper base, the amount of distributable income and the dividends which are actually received by the unit holder of mutual fund or shareholders of the domestic company need to be grossed up for the purpose of computing the additional tax.

Therefore, section 115-O has been amended to provide that for the purposes of determining the tax on distributed profits payable in accordance with the section 115-O, any amount by way of dividends referred to in sub-section (1) of the said section, as reduced by the amount referred to in sub-section (1A) [referred to as net distributed profits], shall be increased such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits.

Similarly, section 115R has been amended to provide that for the purposes of determining the additional income-tax payable in accordance with sub-section (2) of the said section, the amount of distributed income shall be increased to such amount as would, after reduction of the additional income-tax on such increased amount at the rate specified in sub-section (2), be equal to the amount of income distributed by the Mutual Fund.

Illustration: Where the amount of dividend paid or distributed by a company is Rs. 85, then Dividend Distribution Tax under the amended provision would be calculated as follows:

Dividend amount distributed = Rs. 85
Increase by Rs. 15 [i.e. $(85 \times 0.15) / (1 - 0.15)$] = Rs. 100
Tax payable u/s 115-O will be DDT @ 15% of Rs. 100 = Rs. 15

REDUCTION IN TAX RATE ON CERTAIN DIVIDENDS RECEIVED FROM FOREIGN COMPANIES

Section 115BBD of the Act was introduced as an incentive for attracting repatriation of income earned by Indian companies from investments made abroad. It provides for taxation of gross dividends received by an Indian company from a specified foreign company at the concessional rate of 15 per cent. if such dividend is included in the total income for the assessment year 2012-13 or 2013-14 or 2014-2015.

With a view to encourage Indian companies to repatriate foreign dividends into the country, Finance Act (No. 2), 2014 has amended the provisions to extend the benefit of lower rate of taxation without limiting it to a particular assessment year. Thus, such foreign dividends received in financial year 2014-15 and subsequent financial years shall continue to be taxed at the lower rate of 15%.

CONCESSIONAL RATE OF TAX ON OVERSEAS BORROWING

Section 194LC has been amended to extend the benefit of the concessional rate of withholding tax @ 5% to borrowings by way of issue of any long-term bond, and not limited to a long term infrastructure bond.

Further, Finance Act (No. 2), 2014 extends by two years the period of borrowing for which the said benefit shall be available. The concessional rate of withholding tax is now available in respect of borrowings made before 1st day of July, 2017.

Section 206AA of the Act provides for levy of higher rate of withholding tax in case the recipient of income does not provide permanent account number to the deductor. An exception from applicability of section 206AA in respect of payment of interest on long-term infrastructure bonds eligible for benefit under section 194LC is currently provided in sub-section (7) of this section.

Consequential amendment has been made in section 206AA to ensure that this benefit of exemption is extended to payment of interest on any long-term bond referred to in section 194LC.

TAX DEDUCTION AT SOURCE FROM NON-EXEMPT PAYMENTS MADE UNDER LIFE INSURANCE POLICY

Under the existing provisions of section 10(10D) of the Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfilment of conditions specified under the said section.

Therefore, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) are taxable under the provisions of the Act.

In order to have a mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempted under section 10(10D) of the Act a new section has been inserted vide Finance (No. 2) Act, 2014 to provide for deduction of tax at the rate of 2 per cent. on sum paid under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D) of the Act.

Further, it has also been provided that no deduction under this provision shall be made if the aggregate sum paid in a financial year to an assessee is less than Rs.1,00,000/-.

Amendments Relating to Income from Capital Gains

LONG-TERM CAPITAL GAINS ON DEBT ORIENTED MUTUAL FUND AND ITS QUALIFICATION AS SHORT-TERM CAPITAL ASSET

The existing provisions contained in clause (42A) of section 2 of the Act provides that short-term capital asset means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, in the case of a share held in a company or any other security listed in a recognised stock exchange in India or a unit of the Unit Trust of India or a unit of a Mutual Fund or a zero coupon bond, the period of holding for qualifying it as short-term capital asset is not more than twelve months.

The Finance (No. 2) Act, 2014 amends the aforesaid clause (42A) of section 2 so as to provide that an unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be a short-term capital asset if it is held for not more than thirty-six months.

The Finance (No. 2) Act, 2014 as passed by the Lok Sabha has inserted a new proviso to provide that the unlisted shares and units of a Mutual Fund (other than an equity oriented 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.

Example:

Asset	Long term /Short term Capital Asset	Explanation
A Ltd. sold a motor car, not being asset held in stock within two years of its purchase	Short term Capital Asset	Held for less than 36 months
A plot of land purchased for construction of farm house in 1992 sold on 21.07.2014	Long term Capital Asset	Held for more than 36 months
A land not being agricultural land purchased on 1.06.2014 and sold on 1.09.2014	Short term capital asset	Held for less than 36 months
Bought shares of ABC Ltd on 15 th June, 2013 and transferred them on 17 th August, 2014. (Shares being listed on recognized stock exchange)	Long term Capital Asset	Listed security held for more than 12 months
Bought shares of X Ltd. on 10 th June, 2013 and transferred them on 7 th July, 2014. (Shares are not listed on stock exchange)	Long term Capital Asset	Unlisted securities held for more than 12 months and transferred during the transitional period of April 1, 2014 to July 10, 2014. (Proviso to section 2(42A) as amended by Finance Act, 2014)
Bought shares of Y Ltd. on 15 th June, 2013 and transferred them on 17 th August, 2014. (Shares are not listed on stock exchange)	Short term Capital Asset	Unlisted security held for more than 12 months but less than 36 months and transferred after the expiry of transitional period. (Proviso to section 2(42A) as amended by Finance Act, 2014)

CAPITAL GAINS ARISING FROM TRANSFER OF AN ASSET BY WAY OF COMPULSORY ACQUISITION

The provisions contained in section 45 (5) of the Income Tax Act has been amended to provide that the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made.

COST INFLATION INDEX

The release of Consumer Price Index (CPI) for urban non-manual employees (UNME) has been discontinued. Accordingly, clause (v) of the Explanation to section 48 has been amended to provide that "Cost Inflation Index" in relation to a previous year means such index as may be notified by the Central Government having regard to seventy-five percent of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year. This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to assessment year 2016-17 and subsequent assessment years.

CAPITAL GAINS EXEMPTION IN CASE OF INVESTMENT IN A RESIDENTIAL HOUSE PROPERTY

The provisions contained in sub-section (1) of section 54 and sub-section (1) of section 54F inter alia, provide that subject to certain conditions, capital gains to the extent invested in residential house is not chargeable to tax under section 45 of the Act. Since this benefit was intended for investment in one residential house within India. Accordingly, provisions of section 54 (1) and 54F(1) has been amended vide Finance (No. 2) Act, 2014 so as to provide that the relief under the said sections are available if the investment is made in one residential house situated in India.

CAPITAL GAINS EXEMPTION ON INVESTMENT IN SPECIFIED BONDS

A proviso in sub-section (1) of section 54EC has been inserted vide Finance (No. 2) Act, 2014 so as to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees.

TRANSFER OF GOVERNMENT SECURITY BY ONE NON-RESIDENT TO ANOTHER NON-RESIDENT

With a view to facilitate listing and trading of Government securities outside India, clause (viib) has been inserted under section 47 of the Income Tax Act so as to provide that any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident shall not be considered as transfer for the purpose of charging capital gains.

TAX ON LONG-TERM CAPITAL GAINS ON UNITS

Under the existing provisions of section 112 of the Income Tax Act, where tax payable on long-term capital gains arising on transfer of a capital asset, being listed securities or unit or zero coupon bond exceeds ten percent of the amount of capital gains before allowing for indexation adjustment, then such excess shall be ignored. As long-term capital gains is not chargeable to tax in the case of transfer of a unit of an equity oriented fund which is liable to securities transaction tax.

Provisions of section 112 of the Income Tax Act has been amended vide Finance (No. 2) Act, 2014 so as to allow the concessional rate of tax of ten percent on long term capital gain to listed securities (other than unit) and zero coupon bonds.

TAXABILITY OF ADVANCE FOR TRANSFER OF A CAPITAL ASSET

Finance (No. 2) Act, 2014 has inserted a new clause (ix) in sub-section (2) of section 56 to provide for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head 'income from other sources' if such sum is forfeited and the negotiations do not result in transfer of such capital asset. A consequential amendment in clause (24) of section (2) has also been made to include such sum in the definition of the term 'income'.

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

Amendments Relating Income Under The Head Income From Business And Profession

BUSINESS OF PLYING, HIRING OR LEASING GOODS CARRIAGES

The provisions of section 44AE have been amended vide Finance (No. 2) Act, 2014 to provide for a uniform amount of presumptive income of Rs.7,500 for every month (or part of a month) for all

types of goods carriage without any distinction between Heavy goods vehicle and vehicle other than Heavy goods vehicle.

INVESTMENT ALLOWANCE TO A MANUFACTURING COMPANY

Sub section 1A has been inserted under section 32AC vide Finance (No. 2) Act, 2014, which provides that, a deduction of a sum equal to 15% shall be allowed in case of acquisition and installation of new assets (plant or machinery) on or after 1st April, 2014 provided that the amount of actual cost of such new asset acquired or installed during any previous year exceeds Rs. 25 crore.

Provided that the assessee shall not be eligible to claim deduction under sub section (1A), if he is eligible to claim deduction under sub section (1) for any of the assessment year beginning from 1.04.2015. Further, deduction under sub section (1A) shall be provided only upto Assessment Year 2017-18.

The assessee eligible to claim deduction under the existing combined threshold limit of Rs.100 crore for investment made in previous year during the period 1st April, 2013 to 31st March, 2015 shall continue to be eligible to claim deduction under the provisions of Sub section (1) of Section 32AC even if its investment for the year 2014-15 is below the new threshold limit of investment of Rs. 25 crore.

Deduction under section 32AC (1) and 32AC (1A) can be understood by way of following

Illustration

(Rs. in crore)

Sl. No.	Investment in F.Y. 2013-14	Investment in F.Y. 2014-15	Investment in F.Y. 2015-16	Investment in F.Y. 2016-17	Eligibility
1	15	85	-	-	32AC(1)
2	28	38	-	-	32AC (1A)
3	140	5	-	-	32AC (1)
4	50	15	-	-	Not eligible
5	30	30	30	40	32AC (1A)
6	150	20	70	20	32AC(1) and 32AC(1A)

DEDUCTION IN RESPECT OF CAPITAL EXPENDITURE ON SPECIFIED BUSINESS

Under the existing provisions of section 35AD of the Act, investment-linked tax incentive is provided by way of allowing a deduction in respect of the whole of any expenditure of capital nature (other than expenditure on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred. "Specified businesses" which are eligible for availing the investment-linked deduction under section 35AD are enumerated in clause (c) of sub-section (8) of the said section.

Following two new businesses are included as "specified business" vide Finance (No. 2) Act, 2014 for the purposes of the investment-linked deduction under section 35AD:

- (a) laying and operating a slurry pipeline for the transportation of iron ore;
- (b) setting up and operating a semiconductor water fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.

It is also proposed to provide that the date of commencement of operations for availing investment linked deduction in respect of the two new specified businesses shall be on or after 1st April, 2014.

Further, with a view to ensure that the capital asset on which investment linked deduction has been claimed is used for the purposes of the specified business, sub-section (7A) has been inserted under section 35AD vide Finance (No. 2) Act, 2014 to provide that any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.

Sub-section (7B) has also been inserted vide Finance (No. 2) Act, 2014 to provide that if such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used.

The provisions contained in the sub-section (7B) of the said section would, however, not apply to a company which has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 within the time period specified in sub-section (7A).

The existing provisions of sub-section (3) of the aforesaid section provide that where any assessee has claimed a deduction under this section, no deduction shall be allowed under the provisions of Chapter VIA for the same or any other assessment year. As section 10AA also provides for profit linked deduction in respect of units set-up in Special Economic Zones, Finance (No. 2) Act, 2014 amends section 35AD so as to provide that where any deduction has been availed of by the assessee on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA shall be available to the assessee in the same or any other assessment year in respect of such specified business.

As a consequence of this amendment, section 10AA stands amended so as to provide that no deduction under section 35AD shall be available in any assessment year to a specified business which has claimed and availed of deduction under section 10AA in the same or any other assessment year.

With a view to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the above provisions stands amended vide Finance (No. 2) Act, 2014 to extend the terminal date for a further period up to 31st March, 2017.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

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

It has been clarified vide Finance (No. 2) Act, 2014 that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

DISALLOWANCE OF EXPENDITURE FOR NON- DEDUCTION OF TAX AT SOURCE

Section 40(a)(i) has been amended vide Finance (No. 2) Act, 2014 to provide that the deductor shall be allowed to claim deduction for payments made to non-residents in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return under section 139(1) of the Act.

Provisions of section 40(a) (ia) has been amended to provide that in case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed.

Section 40(a)(ia) has proved to be an effective tool for ensuring compliance of TDS provisions by the payers. Therefore, in order to improve the TDS compliance in respect of payments to residents which were not specified in section 40(a)(ia), Finance (No. 2) Act, 2014 has provided that the disallowance under section 40(a)(ia) of the Act shall extend to all expenditure on which tax is deductible under Chapter XVII-B of the Act.

EXTENSION OF THE SUNSET DATE UNDER SECTION 80-IA FOR THE POWER SECTOR

Under the existing provisions of clause (iv) of sub-section (4) of section 80-IA of the Income-tax Act, a deduction of profits and gains is allowed to an undertaking which,—

- (a) is set up for the 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, 2014;
- (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 31 March, 2014;
- (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 31 March, 2014.

EXTENSION OF INCOME-TAX EXEMPTION TO SPECIAL UNDERTAKING OF UNIT TRUST OF INDIA (SUUTI)

The Special Undertaking of the Unit Trust of India (SUUTI) was created vide the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

Vide section 13(1) of the said Repeal Act, SUUTI is exempt from income-tax or any other tax or any income, profits or gains derived, or any amount received in relation to the specified undertaking for a period of five years, computed from the appointed day, i.e. 1st day of February, 2003. This exemption was to come to an end on 31st January, 2008 and the exemption was extended up to the 31st March, 2009 and thereafter, up to the 31st March, 2014.

Since some of the tasks of SUUTI are still pending closure, section 13(1) is amended so as to extend the exemption for a further period of five years that is upto 31st March, 2019.

SPECULATIVE TRANSACTION IN RESPECT OF COMMODITY DERIVATIVES

Finance (No. 2) Act, 2014 amends clause (e) of the proviso to the clause (5) of section 43 so as to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association and chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be considered to be a speculative transaction.

This amendment will take effect retrospectively from 1st April, 2014 and will accordingly apply, in relation to the assessment year 2014-15 and subsequent assessment years.

LOSSES IN SPECULATION BUSINESS

The existing provisions of section 73 of the Act provide that losses incurred in respect of a speculation business cannot be set off or carried forward and set off except against the profits of any other speculation business.

Explanation to section 73 has been amended vide Finance (No. 2) Act, 2014 so as to provide that the provision of the Explanation shall also not be applicable to a company the principal business of which is the business of trading in shares.

MUTUAL FUNDS, SECURITISATION TRUSTS AND VENTURE CAPITAL COMPANIES OR VENTURE CAPITAL FUNDS TO FILE RETURN OF INCOME

Sub-section (4C) of section 139 has been amended so as to provide that Mutual Fund referred to in clause (23D) of section 10, securitization trust referred to in clause (23DA) of section 10 and Venture Capital Company or Venture Capital Fund referred to in clause (23FB) of section 10 shall, if the total income in respect of which such fund, trust or company is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed forms and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of the Act, so far as may be, apply as if it were a return required to be furnished under sub-section (1) of section 139.

Further, in the case of the Mutual Funds and securitisation trusts referred to above, the requirement of filing of statements before an income-tax authority is dispensed with by omitting sub-section (3A) of section 115R and sub-section (3) of section 115TA.

ALTERNATE MINIMUM TAX

The existing provisions of section 115JC of the Act provide that where the regular income tax payable by a person, other than a company, for a previous year is less than the alternate minimum tax for such previous year, the person would be required to pay income tax at the rate of eighteen and one half per cent on its adjusted total income. The section further provides that the total income shall be increased by deductions claimed under Part C of Chapter VI-A and deductions claimed under section 10AA to arrive at adjusted total income.

Under the Act, the investment linked deductions have been provided in place of profit linked deductions. These profit linked deductions are subject to alternate minimum tax (AMT). Accordingly, with a view to include the investment linked deduction claimed under section 35AD in computing adjusted total income for the purpose of calculating alternate minimum tax, the section is amended vide Finance (No. 2) Act, 2014 to provide that total income shall be increased by the deduction claimed under section 35AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

Illustration

Total income :	Rs. 60
Deduction claimed under Chapter VI-A :	Rs. 40
Deduction claimed under section 35AD on a capital asset :	Rs. 100
Computation of adjusted total income for the purposes of AMT	
Total income :	Rs. 60
Add:(i) deduction under Chapter VI-A (on non-specified business):	Rs. 40
(ii) deduction under section 35AD (on specified business):	Rs. 100
Less: depreciation under section 32	(Rs. 15)
	Rs. 85
Adjusted total income under section 115JC:	Rs. 185

CREDIT OF ALTERNATE MINIMUM TAX

The existing provisions of sub-section (1) of section 115JEE of the Act provide that the provisions of Chapter-XII BA shall be applicable to any person who has claimed a deduction under part C of Chapter VI-A or claimed a deduction u/s 10AA. Further the present provisions of sub-section (2) of section 115JEE provide that the Chapter shall not be applicable to an individual or an HUF or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person if the adjusted total income does not exceed twenty lakh rupees. This has created difficulty in claim of credit of alternate minimum tax under section 115JD in an assessment year where the income is not more than twenty lakh rupees or there is no claim of any deduction under section 10AA or Chapter VI-A.

With a view to enable an assessee who has paid alternate minimum tax in any earlier previous year to claim credit of the same, in any subsequent year, this section has been amended to provide that the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD, notwithstanding the conditions mentioned in sub-section(1) or (2) of section 115JEE.

Amendments Relating to Charitable Trusts

RATIONALISATION OF TAXATION REGIME IN THE CASE OF CHARITABLE TRUSTS AND INSTITUTIONS

Sections 11, 12 and 13 of the Income tax Act are special provisions governing institutions which are being given benefit of tax exemption. Similar situation exists in the context of section 10(23C) which provides for exemption to funds, institution, hospitals, etc. which have been granted approval by the prescribed authority.

The Finance (No. 2) Act, 2014 provides specifically that where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)]. Similarly, entities which have been approved or notified for claiming benefit of exemption under section 10(23C) would not be entitled to claim any benefit

of exemption under other provisions of section 10 (except the exemption in respect of agricultural income).

The provisions of section 11 and section 10(23C) have been further amended to provide that income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year.

CLARIFICATION IN RESPECT OF SECTION 10(23C) OF THE ACT

Absence of a definition of the phrase “substantially financed by the Government” has led to litigation and varying decisions of judicial authorities who have, for this purpose, relied upon various other provisions of the Income-tax Act and other Acts. Thus, there is lack of certainty in this regard. Therefore, provisions of section 10(23C) has been amended vide Finance (No. 2) Act, 2014 by inserting following Explanation:

“Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.”

CANCELLATION OF REGISTRATION OF THE TRUST OR INSTITUTION IN CERTAIN CASES

In order to rationalise the provisions relating to cancellation of registration of a trust, section 12AA of the Income Tax Act has been amended vide Finance (No. 2) Act, 2014 to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

- (i) its income does not enure for the benefit of general public;
- (ii) it is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);
- (iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees etc.; or
- (iv) its funds are invested in prohibited modes,

then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

APPLICABILITY TO EARLIER YEARS OF THE REGISTRATION GRANTED TO A TRUST OR INSTITUTION

Section 12 A of the Income Tax Act has been amended to provide that in case where a trust or institution has been granted registration under section 12AA of the Act, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution

in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

Further, no action for reopening of an assessment under section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

However, the above benefits would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA or a registration once granted was cancelled.

ANONYMOUS DONATIONS UNDER SECTION 115BBC

Section 115BBC of the Income Tax has been amended to provide that the income-tax payable shall be the aggregate of the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of five per cent of the total donations received by the assessee or one lakh rupees, whichever is higher, and the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations which is in excess of the five per cent of the total donations received by the assessee or one lakh rupees, as the case may be.

Amendments Relating to Deductions

DEDUCTION FROM INCOME FROM HOUSE PROPERTY

The second proviso to clause (b) of the section 24 provides that in case of self occupied property where the acquisition or construction of the property is completed within three years from the end of the financial year in which the capital is borrowed, the amount of deduction under that clause shall not exceed one lakh fifty thousand rupees.

The second proviso to clause (b) of said section 24 has been amended so as to increase the limit of deduction on account of interest in respect of property referred to in sub-section (2) of section 23 to two lakh rupees.

RAISING THE LIMIT OF DEDUCTION UNDER SECTION 80C, 80CCE AND 80CCD

Under the existing provisions of section 80C of the Act, an individual or a Hindu undivided family, is allowed a deduction from income of an amount not exceeding one lakh rupees with respect to sums paid or deposited in the previous year, in certain specified instruments. The investments eligible for deduction, specified under sub-section (2) of section 80C, include life insurance premia, contributions to provident fund, schemes for deferred annuities etc. The assessee is free to invest in any one or more of the eligible instruments within the overall ceiling of Rs. 1 lakh.

The limit of above investments eligible for deduction under section 80C has been raised from the existing Rs. 1 lakh to Rs.1.5 lakhs vide Finance (No. 2) Act, 2014. In view of the same, consequential amendments are proposed in sections 80CCE and 80CCD of the Act.

EXTENSION OF TAX BENEFITS UNDER SECTION 80CCD TO PRIVATE SECTOR EMPLOYEES

Under the existing provisions contained in sub-section (1) of section 80CCD of the Act, if an individual, employed by the Central Government or any other employer on or after 1st January,

2004, has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding ten per cent. of his salary is allowed.

Similarly, the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme is also allowed as deduction under sub-section (2) of section 80CCD, to the extent it does not exceed ten per cent. of the salary of the individual in the previous year.

Considering the fact that for employees in the private sector, the date of joining the service is not relevant for joining the New Pension Scheme (NPS), the provisions of section 80CCD has been amended to provide that the condition of the date of joining the service on or after 1.1.2004 is not applicable to them for the purposes of deduction under the said section.

Amendments Relating to International Taxation

RATIONALISATION OF THE DEFINITION OF INTERNATIONAL TRANSACTION

Section 92B of the Income Tax Act has been amended to provide that where, in respect of a transaction entered into by an enterprise with a person other than an associated enterprise, there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise or, where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, and either the enterprise or the associated enterprise or both of them are non-resident, then such transaction shall be deemed to be an international transaction entered into between two associated enterprises, whether or not such other person is a non-resident.

ROLL BACK PROVISION IN ADVANCE PRICING AGREEMENT SCHEME

Finance (No. 2) Act, 2014 provides roll back mechanism in the Advance Pricing Agreement (APA) scheme. For this, under section 92CC of the Income-tax Act, after sub-section (9), the following sub-section has been inserted with effect from the 1st day of October, 2014, namely:—

“(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm’s length price or specify the manner in which arm’s length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm’s length price of such international transaction shall be determined in accordance with the said agreement.”.

Amendments Relating to Tax Authorities and Their Powers

(a) In the Income-tax Act, save as otherwise expressly provided, and unless the context otherwise requires, the reference to any income-tax authority specified in column (1) of the Table below shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2013 by reference to the authority or authorities specified in the corresponding entry in column (2) of the said Table:

Sl. No.	(1)	(2)
1.	Commissioner	Principal Commissioner or Commissioner
2.	Director	Principal Director or Director
3.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner
4.	Director General	Principal Director General or Director General

(b) Section 271G of the Income Tax Act has been amended to include TPO, as referred to in Section 92CA, as an authority competent to levy the penalty under section 271G in addition to the Assessing Officer and the Commissioner (Appeals).

(c) The provisions of section 271H of the Income Tax Act do not specify the authority which would be competent to levy the penalty under the said section. Therefore, provisions of section 271H are amended vide Finance (No. 2) Act, 2014 to provide that the penalty under section 271H of the Act shall be levied by the Assessing officer.

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

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

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

It is also proposed to provide that an income-tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. However, while acting under sub-section (2A) he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuables.

(e) With a view to enable prescribed income-tax authority to verify the information in its possession relating to any person, a new section 133C has been inserted vide Finance (No. 2) Act, 2014 so as to provide that for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him, on or before a date to be therein specified, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under this Act.

(f) Section 142A has been amended so as to provide that the Assessing Officer may, for the purposes of assessment or reassessment, require the assistance of a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him. The Assessing Officer may make a reference whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. The Valuation Officer, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957.

If the assessee does not co-operate or comply with the directions of the Valuation Officer he may, estimate the value of the asset, property or investment to the best of his judgment.

Further, the Valuation Officer shall send a copy of his estimate to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made. The Assessing Officer on receipt of the report from the Valuation Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

(g) Sections 153 and 153B of the the Income Tax Act have also been amended so as to provide that the time period beginning with the date on which the reference is made to the Valuation Officer and ending with the date on which his report is received by the Assessing Officer shall be excluded from the time limit provided under the aforesaid section for completion of assessment or reassessment.

Other Amendments in Income Tax Act, 1961

SIGNING AND VERIFICATION OF RETURN OF INCOME

The existing provisions under section 140 of the Act provide that the return under section 139 shall be signed and verified in the manner specified therein.

With a view to enable the verification of returns either by a sign in manuscript or by any electronic mode, section 140 of the Income Tax Act has been amended vide Finance (No. 2) Act, 2014 so as to provide that the return shall be verified by the persons specified therein. The manner of verification of return is prescribed under section 139 of the Act.

ASSESSMENT OF INCOME OF A PERSON OTHER THAN THE PERSON WHO HAS BEEN SEARCHED

Finance (No. 2) Act, 2014 amends section 153C of the Act to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

INCOME COMPUTATION AND DISCLOSURE STANDARDS

In order to clarify that the standards notified under section 145(2) of the Act are to be followed for computation of income and disclosure of information by any class of assesseees or for any class of income, Finance (No. 2) Act, 2014 provides that the Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of or in respect of any class of income.

It further provides that if the income has not been computed in accordance with the standards notified under section 145(2) of the Act, the Assessing Officer may make an assessment in the manner provided in section 144 of the Act.

TAX DEDUCTION AT SOURCE

Under Chapter XVII-B of the Act, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. The person deducting tax ('the deductor') is required to file a quarterly statement of tax deduction at source (TDS) containing the prescribed details of deduction of tax made during the quarter by the prescribed due date.

Currently, a deductor is allowed to file correction statement for rectification/update of the information furnished in the original TDS statement as per the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013 notified vide Notification No.03/2013 dated 15 January, 2013. However, there does not exist any express provision in the Act for enabling a deductor to file correction statement.

In order to bring clarity in the matter relating to filing of correction statement, section 200 of the Income Tax Act has been amended vide Finance (No. 2) Act, 2014 to allow the deductor to file correction statements. Consequently, provisions of section 200A of the Act have also been amended for enabling processing of correction statement filed.

Further, Clause (i) of sub-section (3) of section 201 of the Income Tax Act has been omitted vide Finance (No. 2) Act, 2014

In section 201 of the Income-tax Act, for sub-section (3), the following sub-section shall be substituted with effect from the 1st day of October, 2014, namely:—

“(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.”

INTEREST PAYABLE BY THE ASSESSEE UNDER SECTION 220

A new sub-section in section 220 has been inserted vide Finance (No. 2) Act, 2014 to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

Further, where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under section 220 is increased, the assessee shall be liable to pay interest under sub-section (2) of the said section on the amount payable as a result of such order, from the day immediately following the end of the period mentioned in the first notice of demand referred to in sub section (1) of the said section and ending with the day on which the amount is paid.

MODE OF ACCEPTANCE OR REPAYMENT OF LOANS AND DEPOSITS

Provisions of the sections 269SS and 269T of the Income Tax Act have been amended to provide that any acceptance or repayment of any loan or deposit by use of electronic clearing system through a bank account shall not be prohibited under the said sections if the other conditions regarding the quantum etc. are satisfied.

FAILURE TO PRODUCE ACCOUNTS AND DOCUMENTS

The provisions of the section 276D have been amended to provide that if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 or wilfully fails to comply with a direction issued to him under sub-section (2A) of section 142, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

PROVISIONAL ATTACHMENT UNDER SECTION 281B

The proviso to sub-section (2) section 281B of the Act has been amended vide Finance (No. 2) Act, 2014 to provide that the Chief Commissioner, Commissioner, Director General or Director may extend the period of provisional attachment so that the total period of extension does not exceed two years or upto sixty days after the date of assessment or reassessment, whichever is later.

OBLIGATION TO FURNISH STATEMENT OF INFORMATION

With a view to facilitate effective exchange of information in respect of residents and non-residents, section 285BA has been amended vide Finance (No. 2) Act, 2014 to also provide for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority, within such time, in the form and manner as may be prescribed.

It further provides that where any person, who has furnished a statement of information under sub-section (1), or in pursuance of a notice issued under sub-section (5), comes to know or discovers any inaccuracy in the information provided in the statement, then, he shall, within a period of ten days, inform the income-tax authority or other authority or agency referred to in sub-section (1) the inaccuracy in such statement and furnish the correct information in the manner as may be prescribed.

Also, that the Central Government may, by rules, specify,- (a) the persons referred to in sub-section (1) of section 285BA to be registered with the prescribed income-tax authority; (b) the nature of information and the manner in which such information shall be maintained by the persons referred to in (a) above; and (c) the due diligence to be carried out by the persons referred in (a) for the purpose of identification of any reportable account referred to in sub-section (1) of section 285BA.

Section 271FA has also been amended to provide for penalty for failure to furnish statement of information or reportable account. Further, a new section 271FAA has been inserted vide Finance (No. 2) Act, 2014 to provide that if a person referred to in clause (k) of sub-section (1) of section 285BA, who is required to furnish a statement of financial transaction or reportable account, provides inaccurate information in the statement and where, (a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section (7) of section 285BA or is deliberate on the part of the person; or (b) the person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency; or (c) the person discovers the inaccuracy after the statement of financial transaction or reportable account is furnished and fails to inform and furnish correct information within the time specified under sub-section (6) of section 285BA, then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees.

SERVICE TAX

AMENDMENTS VIDE FINANCE (NO. 2) ACT, 2014

Review of the Negative List of services

- (a) Service tax leviable on sale of space or time for advertisements in broadcast media, namely radio or television, has been extended to cover such sales on other segments like online and mobile advertising. Sale of space for advertisements in print media, however, would remain excluded from service tax. Print media is being defined in service tax law for the purpose.
- (b) Service tax to be levied on the services provided by radio taxis or radio cabs, whether or not air-conditioned. The abatement presently available to rent-a-cab service would also be made available to radio taxi service, to bring them on par.

Amendments Relating to Notification No. 25/2012-ST

Following general exemptions extended under Notification No. 25/2012-ST in exercise of powers conferred under section 93(1) of the Finance Act, 1994 has been withdrawn vide Finance (No. 2) Act, 2014

- (a) Clinical research on human participants
- (b) Air-conditioned contract carriages like buses

Rationalization of general exemptions extended under Notification No. 25/2012-ST in exercise of powers conferred under section 93(1) vide Finance (No. 2) Act, 2014 (Notification No.06/2014 - Service Tax dated 11th July 2014):

- (a) Exemption in respect of services provided to Government or local authority or governmental authority, is limited to services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation
- (b) To bring clarity, the concept of 'auxiliary educational services' and specify in the notification, the services which will be exempt when received by the educational institutions. Accordingly, in respect of services received by an eligible educational institution:
 - (i) transportation of students, faculty and staff;
 - (ii) catering service including any mid-day meals scheme sponsored by the Government;
 - (iii) security or cleaning or house-keeping services in such educational institutions; and
 - (iv) services relating to admission to such institution or conduct of examination,

are exempted from service tax. In view of this rationalization, exemption extended so far in respect of renting of immovable property service received by educational institutions, stands withdrawn.

- (c) Exemption available to accommodation services provided by hotels, dharamshalas or ashrams when they provide rooms for less than Rupees One Thousand per day, has been re-worded to bring out the intent clearly.

However, in cases of (ii) and (iii) above, where the general exemptions are withdrawn, if the aggregate value of taxable service provided in a financial year does not exceed Rupees Ten Lakh, exemption will be available in terms of Notification 33/2012-ST.

Rationalization of Service tax on service portion in Works Contracts vide Finance (No. 2) Act, 2014

In Rule 2A of the Service Tax Valuation Rules, category 'B' and 'C' of works contracts merged into one single category, with service portion as 70%

Service tax on taxable portion in respect of transportation service by vessels vide Finance (No. 2) Act, 2014

Taxable portion in respect of transport of goods by vessel reduced from 50% to 40%. Effective service tax decreased from the present 6.18% to 4.944%.

New Exemptions vide Finance (No. 2) Act, 2014

- (a) Life micro-insurance schemes for the poor, approved by IRDA, where sum assured does not exceed Rupees Fifty Thousand to be exempted from service tax.
- (b) Transport of organic manure by vessel, rail or road (by GTA) has been exempted.
- (c) Loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, has been exempted.
- (d) Services provided by common bio-medical waste treatment facility operators to clinical establishments have been exempted.
- (e) Specialized financial services received by RBI from global financial institutions in the course of management of foreign exchange reserves, e.g., external asset management, custodial services, securities lending services, etc. has been exempted.
- (f) Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India have been exempted.

Retrospective Exemptions vide Finance (No. 2) Act, 2014:

Service provided by Employees' State Insurance Corporation (ESIC) during the period prior to 1.7.2012 exempted from service tax.

Certain other amendments in Chapter V of the Finance Act, 1994 vide Finance (No. 2) Act, 2014:

- (a) In section 67A, for determination of rate of exchange, rules to be prescribed.
- (b) Section 73 to be amended to prescribe time limit for completion of adjudications; time limit to be followed, as far as possible.

- (c) Reference to first proviso to sub-section (1) of section 78, in section 80, omitted. In case of serious offences, waiver of penalty not to be available though details may be available in records.
- (d) Section 82(1) amended, along the lines of section 12F (1) of the Central Excise Act, so that Joint Commissioner or Additional Commissioner or any other officer notified by the Board can authorize any Central Excise Officer to search and seize.
- (e) Section 83 amended to include a reference to sections 5A (2A), 15A and 15B of the Central Excise Act :
- (i) Section 5A(2A) prescribes that insertion of an explanation in notifications/orders within one year shall have the effect as if it had always been part of the notification;
 - (ii) Section 15A inserted in the Central Excise Act to prescribe that specified third party sources shall furnish periodic information in the manner as may be prescribed;
 - (iii) Section 15B inserted in the Central Excise Act to prescribe that failure to provide information under section 15A would attract penalty.
- (f) Vide section 83, Section 35F of the Central Excise Act is already applicable to service tax. Section 35F of the Central Excise Act has been substituted with a new section which prescribes a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both, for filing appeal before the Commissioner (Appeals) or the Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both, for filing the second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs.10 Crore.
- (g) Sub-section (6A) of section 86 amended to omit the words “for grant of stay or”.
- (h) In section 87, power to recover dues of a predecessor from the assets of a successor purchased from the predecessor, provided, as it is available in section 11 of the Central Excise Act.
- (i) Section 94 amended to obtain rule making power:
- (a) to impose upon assessee, inter alia, the duty of furnishing information, keeping records and making returns and specify the manner in which they shall be verified;
 - (b) for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on a service provider or exporter, to check evasion of duty or misuse of CENVAT credit; and
 - (c) to issue instructions in supplemental or incidental matters.

AMENDMENTS VIDE NOTIFICATIONS

SEZ– procedural simplification (Notification No.7/ 2014-Service Tax dated 11th July, 2014)

- (a) The Central Excise Officer would issue Form A-2, within fifteen days from the date of receipt of Form A-1.
- (b) Exemption would be available from the date when list of service on which SEZ is entitled to upfront exemption is endorsed by the authorised officer of SEZ in Form A-1, provided

Form A-1 is furnished to the jurisdictional Central Excise Officer within fifteen days of its verification. If furnished later, exemption would be available from the date on which Form A-1 is so furnished.

- (c) Pending issuance of Form A-2, exemption will be available subject to condition that authorization issued by the Central Excise officer will be furnished to service provider within a period of three months from provision of service.
- (d) As regards services covered under reverse charge, the requirement of furnishing service tax registration number of service provider has been dispensed with.
- (e) A service to be treated as exclusively used for SEZ operations if the recipient of service is a SEZ unit or developer, invoice is in the name of such unit/developer and the service is used exclusively for furtherance of authorized operations in the SEZ.

Cenvat Credit (Notification No. 08/2014 - Service Tax dated 11th July, 2014)

- (a) Service tax paid under full reverse charge: the condition to pay invoice value to the service provider for availing credit of tax paid, omitted
- (b) Re-credit of Cenvat credit reversed on account of non-receipt of export proceeds within the specified period, allowed, if such export proceeds are received within one year from the specified period on the basis of documentary evidence of receipt of payment
- (c) Rent-a-cab operator and tour operator: service tax paid by sub-contractor in the same line of business allowed as eligible credit to the main service provider to avoid double taxation, subject to certain conditions
- (d) GTA service: service receiver may avail abatement, without having to obtain non-availment of Cenvat Credit certificate from service provider
- (e) Time limit for taking credit on input and input services: credit shall be taken within six months from the date of the invoice or challans or other documents specified

Service Tax Rules (Notification No. 9/2014- Service Tax dated 11th July, 2014)

- (a) Service provided by a Director to a body corporate brought under the reverse charge mechanism; service receiver, who is a body corporate will be the person liable to pay service tax.
- (b) Services provided by Recovery Agents to Banks, Financial Institutions and NBFC brought under the reverse charge mechanism; service receiver will be the person liable to pay service tax.

Simplification of partial reverse charge mechanism (Notification No. 10/2014- Service Tax dated 11th July, 2014)

In renting of motor vehicle, portion of service tax payable by service provider and service receiver be 50% each.

Simple interest rates per annum payable under section 75 vide Finance (No. 2) Act, 2014 (Notification No. 12/2014- Service Tax dated 11th July, 2014)

Up to six months 18%

From six months and upto one year 24%

More than one year 30%

Point of Taxation Rules (Notification No. 13/2014- Service Tax dated 11th July, 2014)

In case of reverse charge services, to bring certainty in the determination of point of taxation, provisions have been amended to provide that point of taxation will be the payment date or first day after three months from the date of invoice, whichever is earlier.

Place of Provision of Services Rules (Notification No. 14/2014- Service Tax dated 11th July, 2014)

- (a) Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods, omitted.
- (b) Intermediary of goods given the same treatment as is given to intermediary of services.
- (c) Vessels (excluding yachts) and aircraft excluded from Rule 9(d); hiring of vessels or aircrafts, irrespective of whether short term or long term, will be covered by the general rule, which is place of location of the service receiver.

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

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

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

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

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

‘(zfa) “specified organisation” shall mean,-

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

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

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

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

After rule 10, the following rules shall be inserted, namely:-

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

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

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

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

2. This notification shall come into force on 15th October, 2014.

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

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

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

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

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

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

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

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

CUSTOM DUTY (CUSTOMS ACT, 1962)

AMENDMENTS VIDE FINANCE (NO. 2) ACT, 2014

- Section 15(1) has been amended to provide for determination of rate of duty and tariff valuation for imports through a vehicle in cases where the Bill of Entry is filed prior to the filing of Import Report (as the Manifest is called in case of imports by land).
- Section 46(3) has been amended to allow the filing of a Bill of Entry prior to the filing of Import Report (as the Manifest
- is called in case of imports by land) for imports through land route.

- Section 127A has been amended to change the name of the 'Customs and Central Excise Settlement Commission' to the 'Customs, Central Excise and Service Tax Settlement Commission' since the scope of the functioning of the Customs and Central Excise Settlement Commission was expanded in the year 2012 so as to include settlement of Service Tax matters as well.
- Section 127B(1) has been amended to replace the reference to section 28AB with a reference to section 28AA since section 28AB has been omitted by the Finance Act, 2011 and to provide that an application for settlement of cases can also be filed in cases where a Bill of Export, Baggage Declaration, Label or Declaration accompanying the goods effected through Post or Courier have been filed.
- Section 127B has been amended so as to omit sub-section (2) since the same is redundant.
- Section 127L has been amended so as to insert an Explanation that the concealment of particulars of duty liability relates to any such concealment made from the officer of customs and not from the Settlement Commission.
- Section 129A(1) has been amended so as to increase the discretionary powers of the Tribunal to refuse admission of appeal from the existing Rs.50,000 to Rs.2 lakh.
- Section 129A(1B) has been amended to substitute the words "by notification in the official gazette" with the words "by order" so as to enable the Board to constitute a Review Committee by way of an order instead of by way of a notification.
- Section 129B(2A) has been amended to omit the first, second and third proviso in view of substitution of section 129E with a new section.
- Section 129D has been amended to insert a proviso in sub-section (3) so as to vest the Board with powers to condone delay for a period of upto 30 days, for review by the Committee of Chief Commissioners of the orders in original passed by the Commissioner of Customs.
- Section 129E has been substituted with a new section to prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing appeal with the Commissioner (Appeals) or the Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 crores.
- Section 131BA has been amended so as to enable the Commissioner (Appeal) to take into consideration the fact that a particular order being cited as a precedent decision on the issue has not been appealed against for reasons of low amount.
- Section 8B of the Customs Tariff Act, 1975 has been amended so as to provide for levy of safeguard duty on inputs/raw materials imported by an EOU and cleared into DTA as such or are used in the manufacture of final products & cleared into DTA.

- Baggage Rules has been amended to,-
 - (i) raise the free baggage allowance from Rs.35,000 to Rs.45,000.
 - (ii) reduce the duty free allowance of cigarettes from 200 to 100, of cigars from 50 to 25 and of tobacco from 250 gms to 125 gms.
- Basic Customs Duty has been reduced from 5% to 2.5% on electrolyzers and their parts/spares required by caustic soda or caustic potash units and membranes and their parts/spares required by industrial plants based on membrane cell technology. The BCD on other spares (other than membranes and parts thereof) is also being reduced from 7.5% to 2.5%.
- A provision has been made for refund of Customs duty paid at the time of import of scientific and technical instruments, apparatus, etc. by public funded and other research institutions, subject to submission of a certificate of registration from the Department of Scientific & Industrial Research (DSIR).
- Section 8B of the Customs Tariff Act, 1975 has been amended so as to provide for levy of safeguard duty on inputs/raw materials imported by an EOU and cleared into DTA as such or are used in the manufacture of final products & cleared into DTA.

AMENDMENTS VIDE NOTIFICATIONS

Notification No. 50/2014-Customs (N.T.) dated 11th July, 2014

1. In the Baggage Rules, 1998 (hereinafter referred to as the said rules), in Appendix A,-
 - (A) against clause (a) of column (1), in item (ii) under column (2), for the symbol and figures “ 35,000”, symbol and figures “ 45,000” shall be substituted;
 - (B) against clauses (b) and (c) of column (1), in item (ii) under column (2), for the symbol and figures “ 15,000”, symbol and figures “ 17,500” shall respectively be substituted.
2. In said rules, in the Annex I, for item 3, the following item shall be substituted, namely:- “3. Cigarettes exceeding 100 or cigars exceeding 25 or tobacco exceeding 125 gms.”.

Notification No. 51 /2014-Customs (N.T) dated 11th July, 2014

In exercise of the powers conferred by sub-clause (iii) of clause (c) of section 28E of the Customs Act, 1962 (52 of 1962), the Central Government hereby specifies “the resident private limited company” as class of persons for the purposes of the said clause.

Explanation.- For the purposes of this notification,-

- (a) “private limited company” shall have the same meaning as is assigned to “private company” in clause (68) of section 2 of the Companies Act, 2013 (18 of 2013);

(b) “resident” shall have the same meaning as is assigned to it in clause (42) of section 2 read with sub-section (3) of section 6 of the Income-tax Act, 1961 (43 of 1961).

Notification No. 56/2014-Customs (N.T.) dated 6th August, 2014

In exercise of the powers conferred by sections 25, 151A, 156 and 157 of the Customs Act, 1962 (52 of 1962) and of all other powers enabling it in this behalf, the Central Government hereby directs that the references to the authorities specified in column (2) of the Table below, in the rules made or deemed to have been made under the said sections or in any other notifications, instructions, regulations, decisions, orders, issued or made under the said sections or rules or under any other section of the said Act, shall, unless the context otherwise requires, be construed as references to the authorities specified in column (3) of the said Table, namely:

Sl. No.	Existing reference	Substituted reference
(1)	(2)	(3)
1.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner, as the case may be
2.	Commissioner	Principal Commissioner or Commissioner, as the case may be

Notification No.70 / 2014 – Customs (N.T.) dated 12.08.2014

In exercise of powers conferred by section 129EE of the Customs Act, 1962 (52 of 1962), the Central Government hereby fixes the rate of interest at six percent per annum for the purpose of the said Section.

Notification No. 109 /2014- Customs (N.T) dated 17th November, 2014

In the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, in rule 7, in sub-rule (1), for the words “he may within three months”, the words “he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months” shall be substituted.

CENTRAL EXCISE (CENTRAL EXCISE ACT, 1944)

AMENDMENTS VIDE FINANCE (NO. 2) ACT, 2014

- Section 31(g) and section 32(1) has been amended vide Finance (No. 2) Act, 2014 to change the name of the ‘Customs and Central Excise Settlement Commission’ to the ‘Customs, Central Excise and Service Tax Settlement Commission’ as the scope of the functioning of the Customs and Central Excise Settlement Commission was expanded in the year 2012 so as to include settlement of Service Tax matters as well.
- Section 35B(1) has been amended vide Finance (No. 2) Act, 2014 to increase the discretionary powers of the Tribunal to refuse admission of appeal from the existing Rs.50,000 to Rs.2 lakh.
- Section 35E has been amended vide Finance (No. 2) Act, 2014 to insert a proviso in sub-section (3) to vest the Board with powers to condone delay for a period upto 30 days for

review by the Committee of Chief Commissioners of the orders in original passed by the Commissioner of Central Excise.

- Section 35F has been substituted with a new section vide Finance (No. 2) Act, 2014 to prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing appeal with the Commissioner (Appeals) or the Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 crores.
- Section 35L has been amended vide Finance (No. 2) Act, 2014 so as to clarify that determination of disputes relating to taxability or excisability of goods is covered under the term 'determination of any question having a relation to rate of duty' and hence, appeal against Tribunal orders in such matters would lie before the Supreme Court.
- Section 35R has been amended vide Finance (No. 2) Act, 2014 to enable the Commissioner (Appeal) to take into consideration the fact that a particular order being cited as a precedent decision on the issue has not been appealed against for reasons of low amount.
- Full exemption from Excise Duty has been provided to goods supplied to National Technical Research Organisation (NTRO), for security threads and security fibre supplied to Security Paper Mill Corporation of India Limited (SPMCIL) and Bank Note Paper Mill India Private Limited (BNPMIPL).
- Education cess and secondary & higher education cess (customs component) has been exempted on goods cleared by an EOU into the DTA. Further, a clarification has been issued that the exemption from education cess and secondary & higher education cess under notifications No.28/2010-CE and No.29/2010-CE, both dated 22.06.2010 is applicable only in respect of the clean energy cess leviable on coal and not in respect of excise duty leviable on coal.

AMENDMENTS VIDE NOTIFICATIONS

Notification No. 18/2014-Central Excise (N.T.) dated 11th July, 2014

In exercise of the powers conferred by sub-clause (iii) of clause (c) of section 23A of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby specifies "the resident private limited company" as class of persons for the purposes of the said clause. Explanation.- For the purposes of this notification,-

(a) "private limited company" shall have the same meaning as is assigned to "private company" in clause (68) of section 2 of the Companies Act, 2013 (18 of 2013);

(b) "resident" shall have the same meaning as is assigned to it in clause (42) of section 2 read with sub-section (3) of section 6 of the Income-tax Act, 1961 (43 of 1961).

Notification No. 19/2014 - Central Excise (N.T.) dated 11th July, 2014

In rule 8 of the Central Excise Rules, 2002, -

(i) in sub-rule (1), the third proviso shall be omitted with effect from the 1st October , 2014;

(ii) after sub-rule (1A), the following sub-rule shall be inserted with effect from the 1st October , 2014 , namely : -

“ (1B) Every assessee shall electronically pay duty through internet banking : Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise , for reasons to be recorded in writing , allow an assessee payment of duty by any mode other than internet banking . ” ;

(iii) for sub-rule (3A), the following sub-rule shall be substituted, namely :—

“ (3A) If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent. on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues .

Explanation- For the purposes of this sub-rule, month“ means the period between two consecutive due dates for payment of duty specified under sub-rule (1) or the first proviso to sub-rule (1) , as the case may be . ” .

Notification No. 20/2014 – Central Excise (N.T.) dated 11th July, 2014

In the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the said rules), in rule 6, before Explanation I , the following proviso shall be inserted , namely :-

“ Provided that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.” .

Notification No. 21/2014-Central Excise (N.T.) dated 11th July, 2014

1. In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (q), the following clause shall be inserted, namely –

“(qa) “place of removal” means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;”

2. In the said rules, in rule 4, -

(a) in sub-rule (1), after the second proviso, the following proviso shall be inserted with effect from first day of September 2014, namely :-

“Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9.”;

(b) in sub-rule (7),-

(i) for the first and second provisos the following provisos shall be substituted, namely:-
“Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid: Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9: Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :”

(ii) after the fifth proviso, the following proviso shall be inserted with effect from first day of September, 2014, namely :- “Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9.”.

3. In rule 6 of the said rules, in sub-rule (8), after clause (b), the following proviso shall be inserted, namely; “Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.”.

4. In rule 12A of the said rules, in sub-rule (4), for the words “available with one of his registered manufacturing premises”, the words, figures and letter “taken, on or before the 10th July, 2014, by one of his registered manufacturing premises” shall be substituted.

Notification No. 23/2014-Central Excise (N.T.) dated 6th August, 2014

In exercise of the powers conferred by sections 5A, 37, 37A and 37B of the Central Excise Act, 1944, (1 of 1944) and of all other powers enabling it in this behalf, the Central Government hereby directs that the references to the authorities specified in column (2) of the Table below, in the rules made or deemed to have been made under the said sections or in any other notifications, instructions, decisions, or orders, issued or made under the said sections or rules or under any other section of the said Act, shall, unless the context otherwise requires, be construed as references to the authorities specified in column (3) of the said Table, namely:-

Sl. No.	Existing reference	Substituted reference
(1)	(2)	(3)
1.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner, as the case may be
2.	Commissioner	Principal Commissioner or Commissioner, as the case may be

Notification No. 24 / 2014 – CE (N.T.) dated 12.08.2014

In exercise of powers conferred by section 35FF of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby fixes the rate of interest at six percent per annum for the purpose of the said Section.

Notification No. 25/2014-Central Excise (N.T.) dated 25th August, 2014

In the CENVAT Credit Rules, 2004, in rule 12AAA, after the words “first stage and second stage dealer”, the words “provider of taxable service” shall be inserted.

Notification No. 26/2014 – Central Excise (N.T.) dated 27th August, 2014

In the CENVAT Credit Rules, 2004, in rule 9, in sub-rule (1), after clause (f), the following clause shall be inserted, namely:-

“(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or”.
