

be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of its book profit. Issues were raised regarding the applicability of this provision to Foreign Institutional Investors (FIIs) who do not have a permanent establishment (PE) in India. Vide Finance Act, 2015 of the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back.

However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

A Committee on Direct Tax matters headed by Justice A.P. Shah, set up by the Government to look into the matter, recommended for an amendment of section 115JB to clarify the applicability of Minimum Alternate Tax (MAT) provisions to Foreign Institutional Investors/ Foreign Portfolio Investors (FIIs/FPIs) in view of the fact that FIIs and FPIs normally do not have a place of business in India.

In view of the recommendations of the committee and with a view to provide certainty in taxation of foreign companies, it is proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if -

- (i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or
- (ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

This amendment is proposed to be made effective retrospectively from the 1st day of April, 2001 and shall accordingly apply in relation to assessment year 2001-02 and subsequent years.

[Clause 53]

Tax Incentives to International Financial Services Centre

Under the existing provisions of clause (38) of section 10, income by way of long term capital gains arising from equity shares or units of an equity oriented fund or business trust is exempt where securities transaction tax is paid.

With a view to incentivise the growth of International Financial Services Centres into a world class financial services hub, it is proposed to amend the section 10 so as to provide for exemption from tax on capital gains to the income arising from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre even when securities transaction tax is not paid in respect of such transactions.

Under the existing provisions of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the Minimum Alternate Tax (MAT) payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of such book profit.

With a view to provide a competitive tax regime to International Financial Services Centre, it is proposed to amend section 115JB so as to provide that in case of a company, being a unit located in International Financial Services Centre and deriving its income solely in convertible foreign exchange, the Minimum Alternate Tax shall be chargeable at the rate of nine per cent.

Further, it is proposed to amend section 115-O so as to provide that no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

The existing provisions relating to securities transaction tax and commodities transaction tax provide for levy of tax on transactions in taxable securities and commodities respectively.

It is proposed to amend section 113A of the Finance (No.2) Act, 2004 so as to provide that the provisions of Chapter VII shall not apply to taxable securities transactions entered into by any person on a recognized stock exchange located in International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from securities transaction tax.

Further, it is proposed to insert section 132A in Chapter VII of the Finance Act, 2013 so as to provide that the provisions of chapter VII shall also not apply to taxable commodities transactions entered into by any person on a recognized association located in unit of International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from commodities transaction tax.

The above two amendments will take effect from 1st June, 2016.

[Clause 7, 53, 55, 230 & 234]

The Income Declaration Scheme, 2016

An opportunity is proposed to be provided to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

The scheme is proposed to be brought into effect from 1st June 2016 and will remain open up to the date to be notified by the Central Government in the official gazette. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year upto 2015-16.

Tax is proposed to be charged at the rate of thirty per cent on the declared income as increased by surcharge at the rate of twenty five per cent of tax payable (to be called the Krishi Kalyan cess). A penalty at the rate of twenty five per cent of tax payable is also proposed to be levied on undisclosed income declared under the scheme.

It is proposed that following cases shall not be eligible for the scheme:

- ◆ where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
- ◆ where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- ◆ where information is received under an agreement with foreign countries regarding such income,
- ◆ cases covered under the Black Money Act, 2015, or
- ◆ persons notified under Special Court Act, 1992, or
- ◆ cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

It is proposed that payment of tax, surcharge and penalty may be made on or before a date to be notified by the Central Government in the Official Gazette and non-payment up to the date so notified shall render the declaration made under the scheme void.

It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to certain conditions.

It is proposed to provide that where a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme. In cases where any declaration has been made but no tax and penalty referred to the scheme has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

It is further proposed that if any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force and such order be laid before each House of Parliament.

It is proposed that the Central Board of Direct Taxes under the control of Central Government be provided the power to make rules, by notification in the Official Gazette, for carrying out the provisions of this Scheme and such rules made be laid before each House of Parliament in the manner provided in the scheme.

[Clause 178 to 196]