

# **A COMPLETE ANALYSIS OF THE FINANCE ACT, 2013**

## **PART - I**

**(Chapter I-III of the IT Act)**

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The Finance Bill 2013 has received the assent of the President on the 10<sup>th</sup> of May 2013. Here is a Chapter-wise detailed analysis of each of its provisions

### **1. CHAPTER I – Definitions**

**Section 2 (1A): Amendment of certain clauses in the definition of the term ‘Agricultural Income’ – “Distance measured aerially”**

#### **Amendment:**

*In section 2 of the Income-tax Act, with effect from the 1st day of April, 2014,—*

*(a) in clause (1A),—*

*(1) in sub-clause (c), in the proviso, in clause (ii),—*

*(i) in item (A), the words “according to the last preceding census of which the relevant figures have been published before the first day of the previous year” shall be omitted;*

*(ii) for item (B), the following item shall be substituted, namely:—*

*“(B) in any area within the distance, measured aerially,—*

*(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or*

*(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.”;*

*(2) after Explanation 3, the following Explanation shall be inserted, namely:—*

*‘Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;’;*

*(b) in clause (14), in sub-clause (iii),—*

*(i) in item (a), the words “according to the last preceding census of which the relevant figures have been published before the first day of the previous year” shall be omitted;*

*(ii) for item (b), the following shall be substituted, namely:—*

*‘(b) in any area within the distance, measured aerially,—*

*(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or*

*(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.*

*Explanation.—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;’.*

### **Analysis:**

Section 2 (1A) defines ‘agricultural income’. The amendment to this section seeks to modify clause (A) and (B) of proviso (ii) to the definition which is with respect to the area of land which derives agricultural income.

The reason for amendment is on account of the decisions in the following cases:-

**(1) CIT v. Lal Singh [2010] 195 Taxman 420 (Pun & Har.)**

**(2) CIT v. Satinder Pal Singh [2010] 188 Taxman 54 (Pun & Har.)**

**(3) Laukik Developers v. Dy. CIT [2007] 105 ITD 657 (Mumbai)**

In the above mentioned decisions, the Courts have held that the road distance was to be adopted as the most appropriate method in measuring the distance and not the straight line distance. To overrule the above mentioned judicial pronouncements the proposed bill has made the “the distance measured aerially” as the method to be adopted.

How this measure will be put into effect is an issue.

### **Cases referred:**

#### **(1) CIT v. Lal Singh [2010] 195 Taxman 420 (Pun & Har.)**

Report of the Tehsildar having certified that the assessee’s land was 8 kms. away from the municipal limits, the land constituted agricultural land, entitling the assessee to exemption under s. 54B.

#### **(2) CIT v. Satinder Pal Singh [2010] 188 Taxman 54 (Pun & Har.)**

Distance of the agricultural land belonging to the assessee within the meaning of s. 2(14)(iii)(b) has to be measured in terms of the approach by road and not by a straight line distance on horizontal plane or as per crow's flight.

#### **(3) Laukik Developers v. Dy. CIT [2007] 105 ITD 657 (Mumbai)**

The distance of 25 kms. for the purpose of s. 80-IB(10) has to be measured as per the road distance and not as per the straight line distance on a horizontal plain.

*[SECTION 3 OF THE FINANCE ACT, 2013]*

### **Substitution of reference of certain expression by other expression:**

#### **Amendment:**

*In the Income-tax Act, for the expression “the Foreign Exchange Regulation Act, 1973 (46 of 1973)”, wherever it occurs, the expression “the Foreign Exchange Management Act, 1999 (42 of 1999)” shall be substituted.*

#### **Analysis:**

Though the Foreign Exchange Regulation Act, 1973 (FERA) was repealed in 1998 and the new legislation Foreign Exchange Management Act, 1999 (FEMA) was enacted, the Income-tax Act, 1961 continued to make a reference to the FERA in many

of its provisions namely Sections 10(4)(ii), 10(4B), 10(15), Explanation (i) to Sec. 48, Explanation (d) to Sec. 80 HHD, and Explanation (a) to Sec. 80RRA. In order to correct this apparent mistake, the Finance Bill, 2013 provides in clause 4 that the term FERA, 1973 shall be substituted by FEMA, 1998 wherever it appears in the Income-Tax Act, 1961.

*[SECTION 4 OF THE FINANCE ACT, 2013]*

## **2. CHAPTER III – EXEMPTED INCOME**

### **a. Section 10 (10D): Exemption not available to the employee, if Keyman insurance policy is assigned to him during the term of employment**

#### **Amendment:**

*In clause (10D), with effect from the 1st day of April, 2014,—*

*(i) in sub-clause (d), after the second proviso, the following proviso shall be inserted, namely:—*

*‘Provided also that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—*

*(i) a person with disability or a person with severe disability as referred to in section 80U; or*

*(ii) suffering from disease or ailment as specified in the rules made under section 80DDB, the provisions of this sub-clause shall have effect as if for the words “ten per cent.”, the words “fifteen per cent.” had been substituted.’;*

*(ii) in Explanation 1, after the words “business of the first-mentioned person” occurring at the end, the words “and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration” shall be inserted;*

#### **Analysis:**

o Under Section 10 (10D) (d) for the words “ten per cent”, the words “fifteen per cent” has been substituted.

o The present Section 10 (10D) provides that exemption is not available to the employee, in respect of any sum received under a Keyman insurance policy. Under Section 17(3)(ii), “profits in lieu of salary” includes any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

The judiciary had interpreted section 10(10D) in **CIT vs. Rajan Nanda and others [2012] 18 taxmann.com 98 (Delhi)** that once the keyman insurance policy matures the amount received by the employee will no longer be termed as keyman insurance policy and insurance policy gets converted into an ordinary policy and therefore would not come under the exclusion clause under section 10(10D) and the exemption under sec. 10(10D) would be available to the assessee.

o The amendment seeks to plug this loophole by amending the Explanation1 to Section 10(10D), which is as follows:

*“In the Explanation1: after the words ‘business of the first-mentioned person’ occurring at the end, the words ‘and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration’ shall be inserted.”*

The amendment is effective from the 1st day of April, 2014. Hence the judicial decision will hold good till the amendment is enforced.

#### **Cases referred:**

#### **CIT vs. Rajan Nanda and others [2012] 18 taxmann.com 98 (Delhi)**

Once there is an assignment of Keyman insurance policy by employer company to employee, insurance policy gets converted into an ordinary policy and hence, in that case, maturity value received by employee would not be subjected to tax in view of section 10(10D).

#### **b. Sections 10 (23D) & 10 (35A) : Exemption in respect of the income earned from the activity of Securitisation**

#### **Amendment:**

*After clause (23D), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—*

*'(23DA) any income of a securitisation trust from the activity of securitisation.*

*Explanation.—For the purposes of this clause,—*

*(a) “securitisation” shall have the same meaning as assigned to it,—*

*(i) in clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956; or*

*(ii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India;*

*(b) “securitisation trust” shall have the meaning assigned to it in the Explanation below section 115TC;'*

*After clause (35), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—*

*'(35A) any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust.*

*Explanation.—For the purposes of this clause, the expressions “investor” and “securitisation trust” shall have the meanings respectively assigned to them in the Explanation below section 115TC;'*

### **Analysis:**

It has been proposed to insert a new section 10(23DA) to provide tax exemption in respect of the income of the Securitisation Trust earned from the activity of Securitisation. The provision has been inserted corresponding to section 115TC inserted by the Finance Bill 2013 which will be applicable from 1-6-2013.

Also it has been proposed to insert a new section 10(35A), providing an exemption to the investors in respect of the income distributed by the Securitisation Trust.

This amendment will be effective from the 1st day of April, 2014. It includes meaning of RBI by way of guidelines on securitisation of standard assets.

### **c. Section 10 (23ED): Exemption of income of the Investor Protection Fund of depository**

## **Amendment:**

*After clause (23EC), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—*

*‘(23ED) any income, by way of contributions received from a depository, of such Investor Protection Fund set up in accordance with the regulations by a depository as the Central Government may, by notification in the Official Gazette, specify in this behalf:*

*Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with a depository, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.*

*Explanation.—For the purposes of this clause,—*

- (i) “depository” shall have the same meaning as assigned to it in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;*
- (ii) “regulations” means the regulations made under the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996;’*

## **Analysis:**

The Finance Bill, 2013 proposes to introduce a new sub-section (23ED) in Section 10 to exempt income of the Investor Protection Fund of depository similar to the exemption provided under Section 10(23EA) of income received by an Investor Protection Fund set up by the recognized Stock Exchange.

The exemption will be available to such Investor Protection Fund which is set up by the depository in accordance with the regulations prescribed by SEBI. Further it has been provided that any amount standing to the credit of the Fund if it is shared wholly or partly with a depository then exemption will not be available in respect of the amount so shared and the same will be deemed to be the income in which such amount is shared.

## **d. Section 10 (23FB): Explanation of certain terms**

### **Amendment:**

*In clause (23FB), for Explanation 1, the following Explanation shall be substituted, namely:—*

*‘Explanation.—For the purposes of this clause,—*

*(a) “venture capital company” means a company which—*

*(A) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as the Venture Capital Funds Regulations) made under the Securities and Exchange Board of India Act, 1992; or*

*(B) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the Alternative Investment Funds Regulations) made under the Securities and Exchange Board of India Act, 1992, and which fulfils the following conditions, namely:—*

*(i) it is not listed on a recognised stock exchange;*

*(ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking; and*

*(iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding ten per cent. of its equity share capital) holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking;*

*(b) “venture capital fund” means a fund—*

*(A) operating under a trust deed registered under the provisions of the Registration Act, 1908, which—*

*(I) has been granted a certificate of registration, before the 21st day of May, 2012, as a Venture Capital Fund and is regulated under the Venture Capital Funds Regulations; or*



*(II) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund under the Alternative Investment Funds Regulations and which fulfils the following conditions, namely:—*

*(i) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking;*

*(ii) it has not invested in any venture capital undertaking in which its trustee or the settler holds, either individually or collectively, equity shares in excess of fifteen per cent. of the paid-up equity share capital of such venture capital undertaking; and*

*(iii) the units, if any, issued by it are not listed in any recognised stock exchange;*

*(B) operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963;*

*(c) “venture capital undertaking” means—*

*(i) a venture capital undertaking as defined in clause (n) of regulation 2 of the Venture Capital Funds Regulations; or*

*(ii) a venture capital undertaking as defined in clause (aa) of sub-regulation (1) of regulation 2 of the Alternative Investment Funds Regulations;’*

### **Analysis:**

Alternative Investment Fund under the Alternative Investment Fund regulations have been granted under Section 10(23FB) to Venture Capital Company and Venture Capital Fund from investment in a Venture Capital Undertaking.

However the income arising or received by a person out of the investment made in such Fund shall be taxable in his hands under Section 115-U of the Income Tax Act.

Under this Section 115-U, the income paid by a special fund is deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it has been received by, or had accrued or arisen to the Company or Fund during the previous year as the case may be. There is no other material change per se but for the detailed expansion of the previously existing provision under this amendment.

**e. Section 10 (34A): Exemption of income arising to an assessee (not being a company) from buy back of shares- “Special provisions relating to tax on distributed income of domestic company for buy back of shares”**

**Amendment:**

*After clause (34), the following clause shall be inserted with effect from the 1st day of April, 2014, namely:—*

*“(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares(not being listed on a recognised stock exchange) by the company as referred to in section 115QA;”*

**Analysis:**

The amendment is consequential to Section 115QA **“Special provisions relating to tax on distributed income of domestic company for buy back of shares”**

The amendment provides for exemption to the assessee. Under the existing provisions of the IT Act, income arising to shareholders on account of buy-back of shares is taxable as capital gains in their hands. The amendment is with a view to shift the incidence of tax on the company. The proposed amendment will take effect from 1 June 2013.

**f. Section 10 (48): Substitution of a term by the Finance Act 2013****Amendment:**

*In clause (48), for the words “sale of crude oil to any person”, the words “sale of crude oil, any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person” shall be substituted with effect from the 1st day of April, 2014.*

**Analysis:**

The exemption from income tax on income received in India in Indian currency by a foreign company from sale of crude oil in India, as provided for under section 10(48) of the Act, has been extended to cover income from sale of any other goods or services. This will be notified by the Central Government.

**g. Section 10 (49) :** Section 10(49) has been inserted after section 10(48) by the Finance Act, 2013, w.e.f. 1-4-2013.

**Amendment:**

*“(49) any income of the National Financial Holdings Company Limited, being a company set up by the Central Government, of any previous year relevant to any assessment year commencing on or before the 1st day of April, 2014.”.*

**Analysis:**

Income from the NFHCL (set up by the Central Government) is exempted from Income Tax.

*[SECTION 5 OF THE FINANCE ACT, 2013]*