

Corporate tax rates to be reduced to 25% over next 4 years

Surcharge increased by 2% for certain companies

Clarity on indirect transfer of shares

Medical expenses deduction

Merger exemption for mutual fund similar schemes

Stringent implications for Black money holder overseas

No MAT on FII/ share of income of AOP

GAAR deferred by 2 years

GST to be implemented by 1.4.2016

Wealth Tax abolished

Additional depreciation on asset used for less than 180 days – Next year

Fund Manager not to constitute PE

## BUDGET 2015

Domestic TP threshold increased to 20 crores

### WHAT AN AMENDMENTS SIRJI .....

Penalty for concealment applicable on MAT cases

Incentives for AP and Telangana

WHT reduction on royalty to 10%

Deduction for donation to various schemes u/s 80G

WHT on EPF payment

Cost of acquisition of asset in case of demerger

Deduction for employing new workmen > 50

Place of effective management for foreign companies

Foreign tax credit rules to be framed



## About the Presenter

The Presenter is a member of the ICAI and a Chartered Accountant

by profession. He has specialization in M&A and International tax and is the Editor of International tax Publication at Taxmann Publications, India. In his past role, he has worked with Big four organization as a Director in M&A Tax. He can be reached at [arinjay2009@gmail.com](mailto:arinjay2009@gmail.com).

# TAX RATES

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# TAX RATES OF INDIVIDUALS

Income	Other individuals	Senior Citizen	Super Senior Citizen
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	10%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	10%	10%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Above Rs. 10,00,000	30%	30%	30%

Surcharge at 12% if net income exceeds Rs. 1 Crore

Education cess and Secondary & Higher Education cess at 3% of Income Tax & Surcharge

# TAX RATES OF DOMESTIC COMPANY



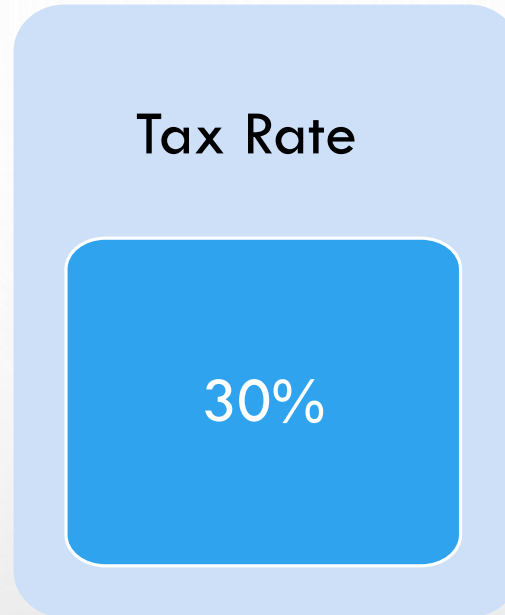
- Surcharge at 7% if net income exceeds Rs. 1 Crore and 12% if net income exceeds Rs. 10 Crores - Effective tax rate of 34.6080 if income > 10 crores
- Education cess and Secondary & Higher Education cess at 3% of Income Tax & Surcharge
- Effective DDT rate increased from 19.99 to 20.36% due to increase in surcharge

# TAX RATES OF FOREIGN COMPANY



- Surcharge at 2% if net income exceeds Rs. 1 Crore and 5% if net income exceeds Rs. 10 Crores
- Education cess and Secondary & Higher Education cess at 3% of Income Tax & Surcharge

# TAX RATES OF FIRM



- Surcharge at 12% if net income exceeds Rs. 1 Crore.
- Education cess and Secondary & Higher Education cess at 3% of Income Tax & Surcharge

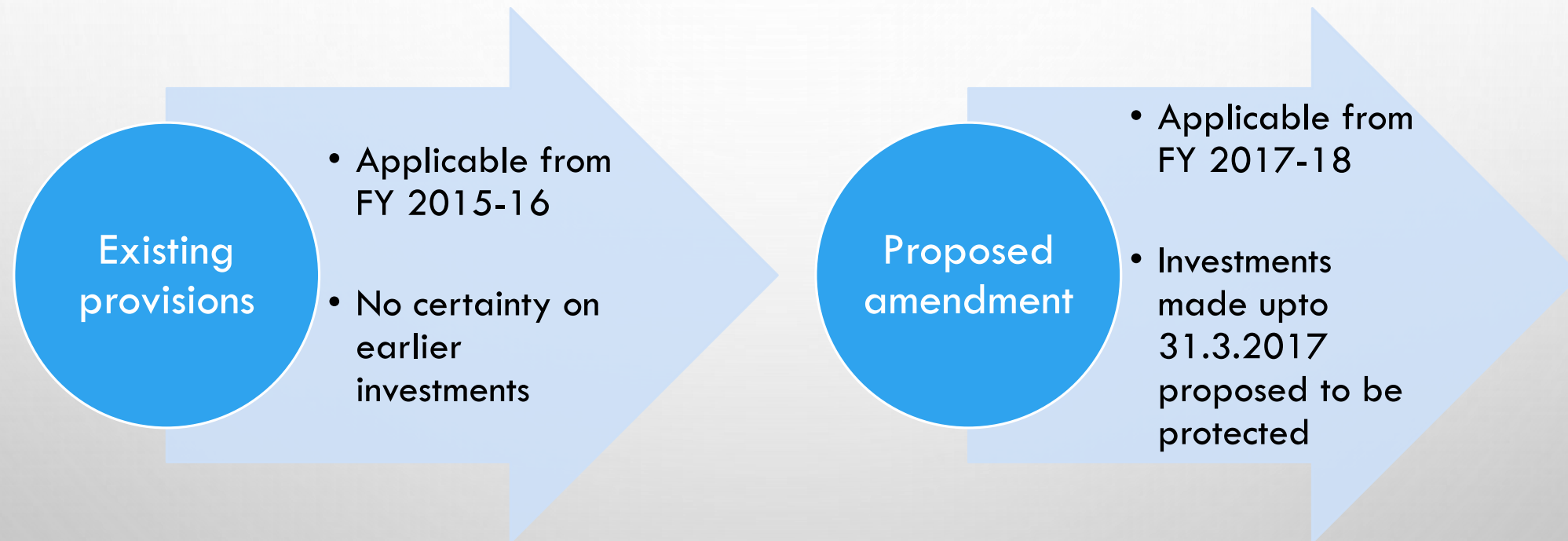
# NON RESIDENT TAXATION RELATED AMENDMENTS

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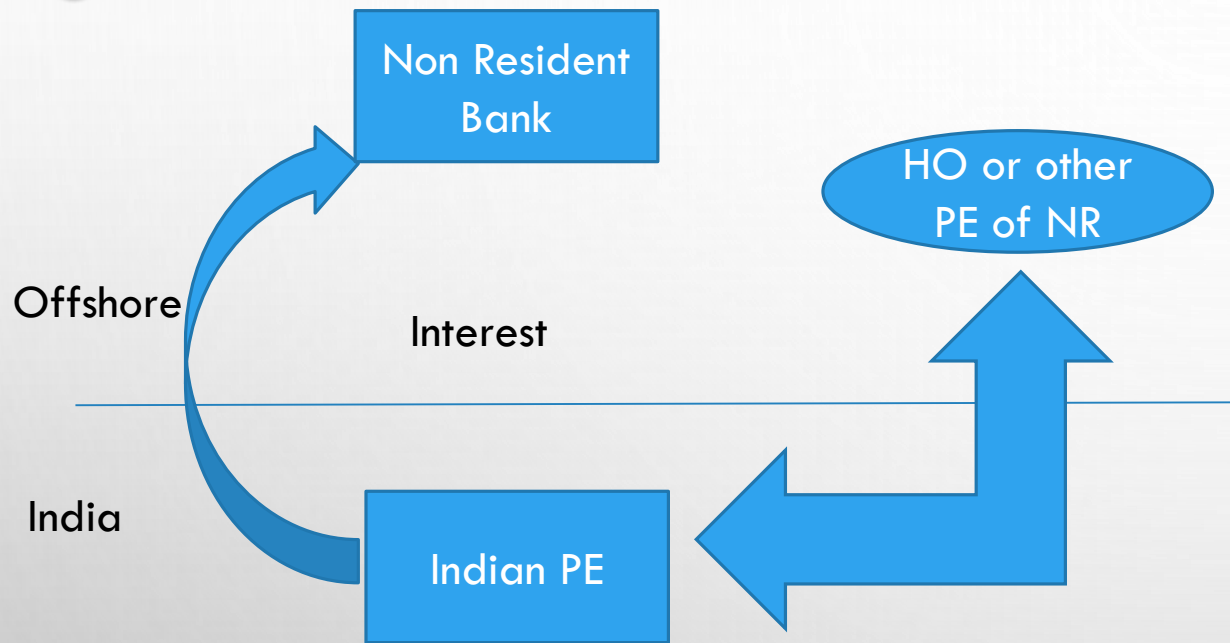
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# GAAR PROVISION DEFERRED ?



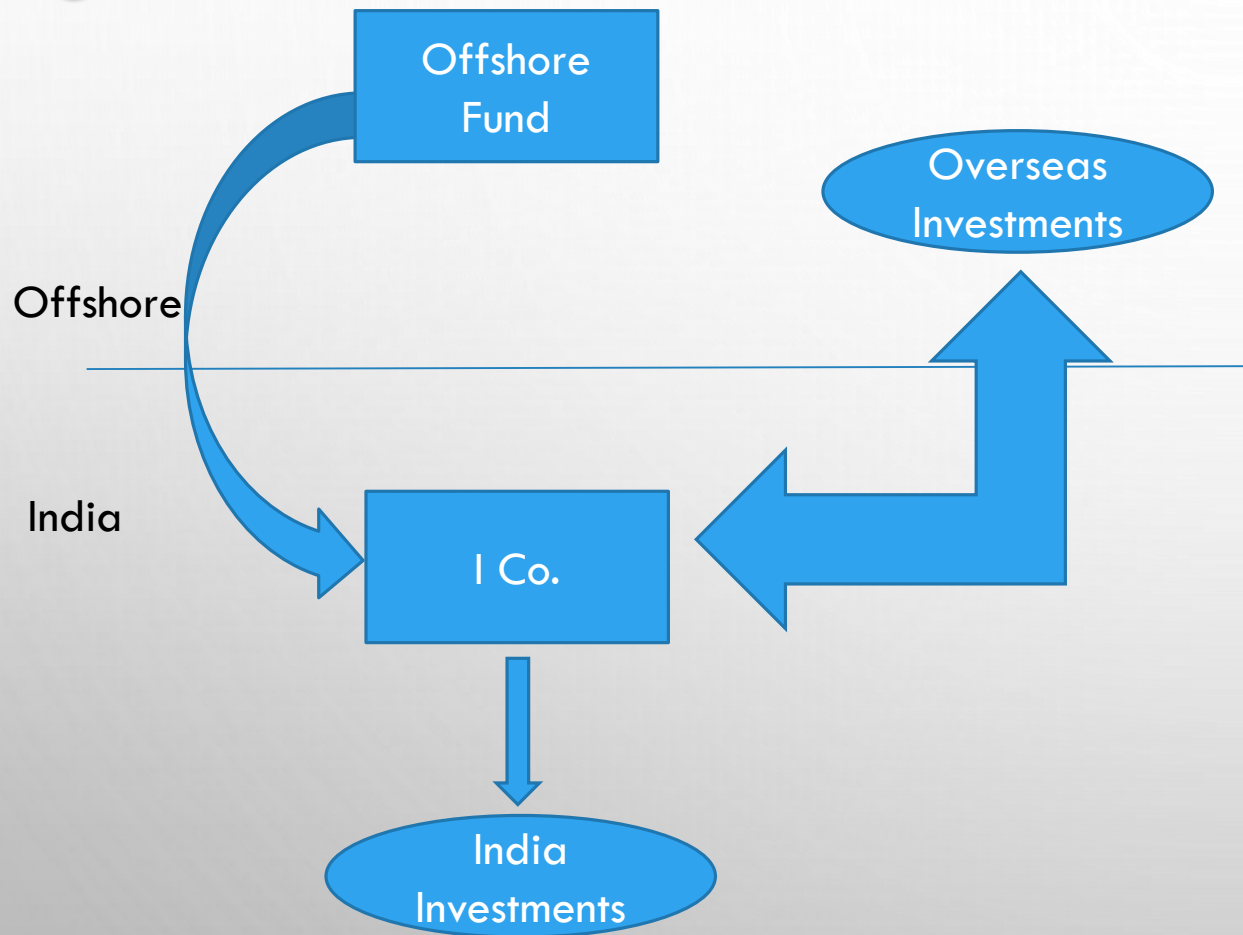
# TAXATION OF INTEREST EARNED BY NR BANK FROM INDIAN PE – AY 2016-17



**Interest by Indian PE deemed to accrue or arise in India :-**

- Paid to :-
  - NR Bank
  - HO
  - PE of bank outside India
- Indian PE to withhold taxes
  - Disallowance of interest payments if taxes not withheld

# OFFSHORE FUNDS AND FUND MANAGERS IN INDIA



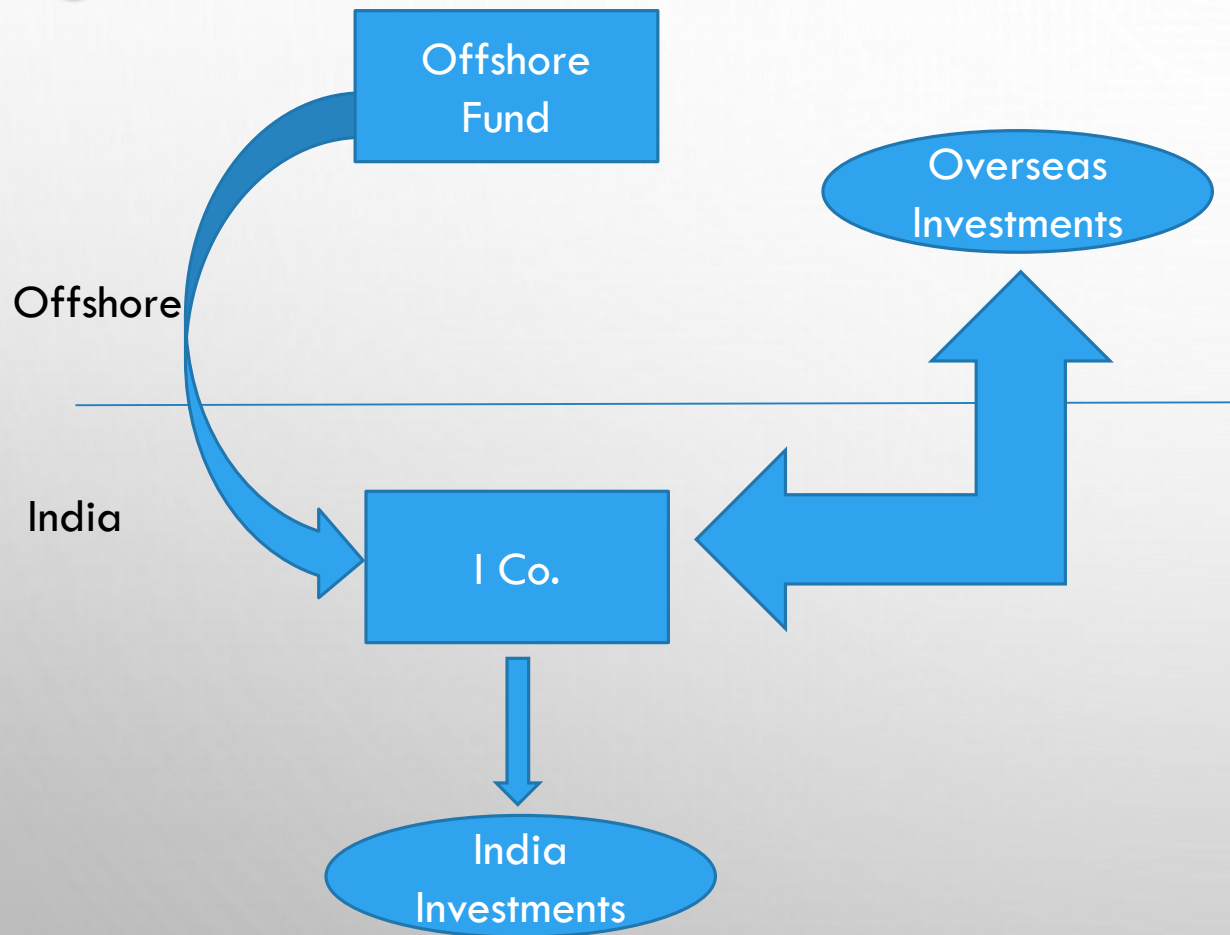
## Issue for the fund :-

- Business Connection/PE in India for the Fund
- May become resident due to “control and management” in India

## Issue for the Fund Manager :-

- Income from fund management activities outside India while being in India also taxed in India

# OFFSHORE FUNDS AND FUND MANAGERS IN INDIA - AMENDMENTS



**Subject to conditions applicable to Fund Manager and Fund : -**

- Neutral tax liability even if investment made through a fund manager in India
- Income of fund outside India not taxable solely because of location of Fund Managers activity in India

# CONDITION FOR OFFSHORE FUND

- Fund is not a person resident in India;
- Fund is a resident of a DTAA country;
- Participation of resident Indian does not exceed five percent of fund corpus;
- Fund has a minimum of 25 members;
- Any member along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10 percent.;
- Aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty percent ;

(Contd...)

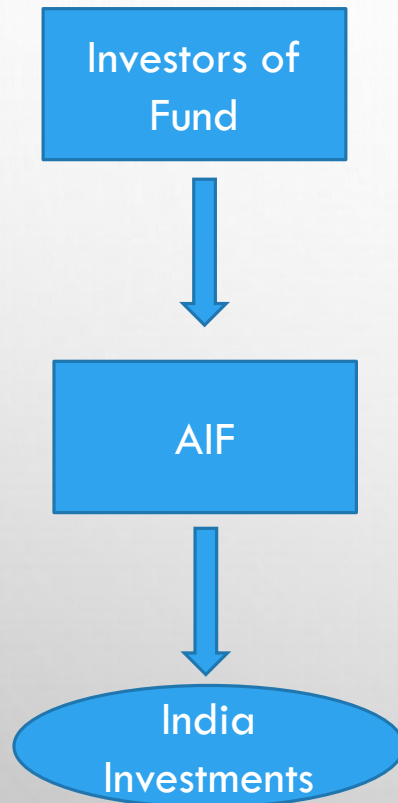
# CONDITION FOR OFFSHORE FUND

- Investment in individual entity  $< 20\%$  of fund corpus;
- No investment in its associate entity;
- Monthly average of the corpus of the fund  $> 100$  crores – New fund corpus at end of first year shall not be less than one hundred crore rupees
- Fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;
- No business connection in India other than eligible fund manager.
- Arm's length remuneration paid by the fund to an eligible fund manager

# CONDITION FOR FUND MANAGER IN INDIA

- Not an employee of the eligible investment fund or a its connected person;
- Person is registered as a fund manager or investment advisor in accordance with the specified regulations;
- Person is acting in the ordinary course of his business as a fund manager;
- Person along with his connected persons profits  $< 20\%$  of profits of fund from transactions carried out by the fund through such fund manager.

# ALTERNATE INVESTMENT FUND – CATEGORY 1 & 2



## Investor -

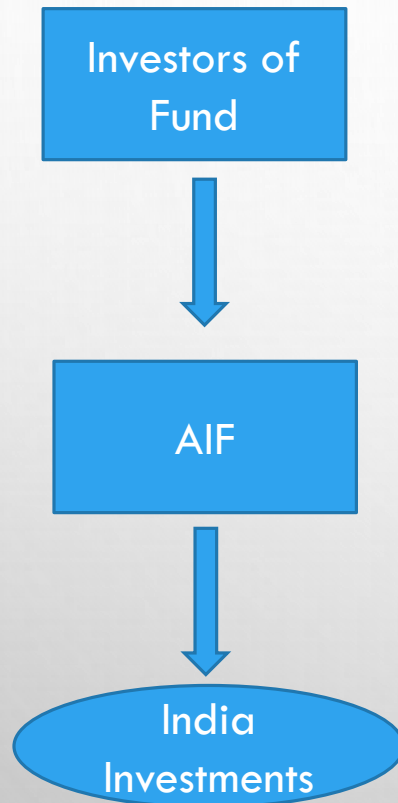
- Income of Investor taxable as if they made direct investment – Nature of income same as that of fund
- PGBP income from Fund, exempt from tax

## Investment Fund :-

- Taxability of income – Mandatory filing of return
  - Business income taxable
  - Non business income – exempt
- WHT of 10% for income which is exempt for fund
- Loss of Fund – Carry over and not transferred to investor
- Non applicability of DDT/ distributed income tax provision
- No TDS on fund income



# ALTERNATE INVESTMENT FUND – CATEGORY 1 & 2



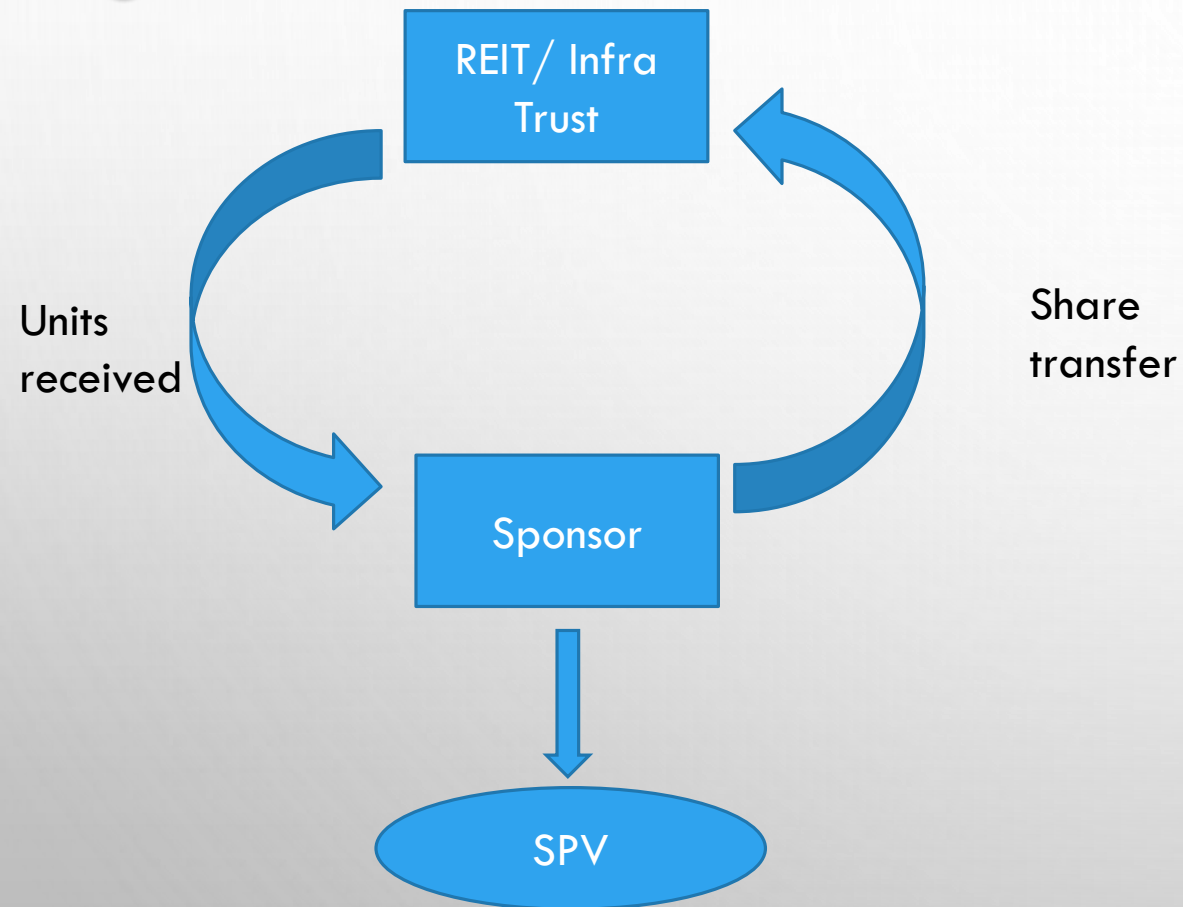
## Category 1 -

- AIFs which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the Government or regulators consider as socially or economically desirable.

## Category 2 -

- Category II AIFs are funds including private equity funds or debt funds which do not fall in Category I and III and which do not undertake leverage or borrowing other than to meet day-to-day operational requirements

# REIT AND INFRASTRUCTURE INVESTMENT TRUST –AY 16-17



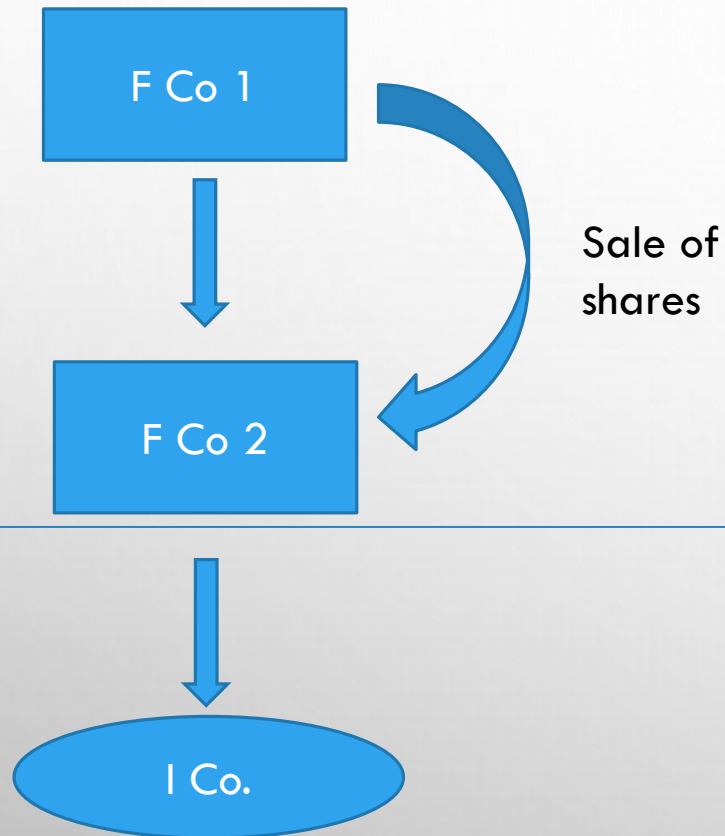
## Amendments for both : -

- Exemption from capital gains on listing of units for LTCG and concessional tax @ 15% for STCG received by Sponsor of SPV – Not available earlier
- STT shall be levied on sale of units of Trust

## For REIT

- Rental income of REIT from directly owned asset exempt – No TDS by payer
  - Such income taxable in hands of unit holder
  - REIT to withhold tax @ :-
    - 10% for resident holders
    - Rates in force for NR holders

# INDIRECT TRANSFER OF SHARES – AY 2016-17



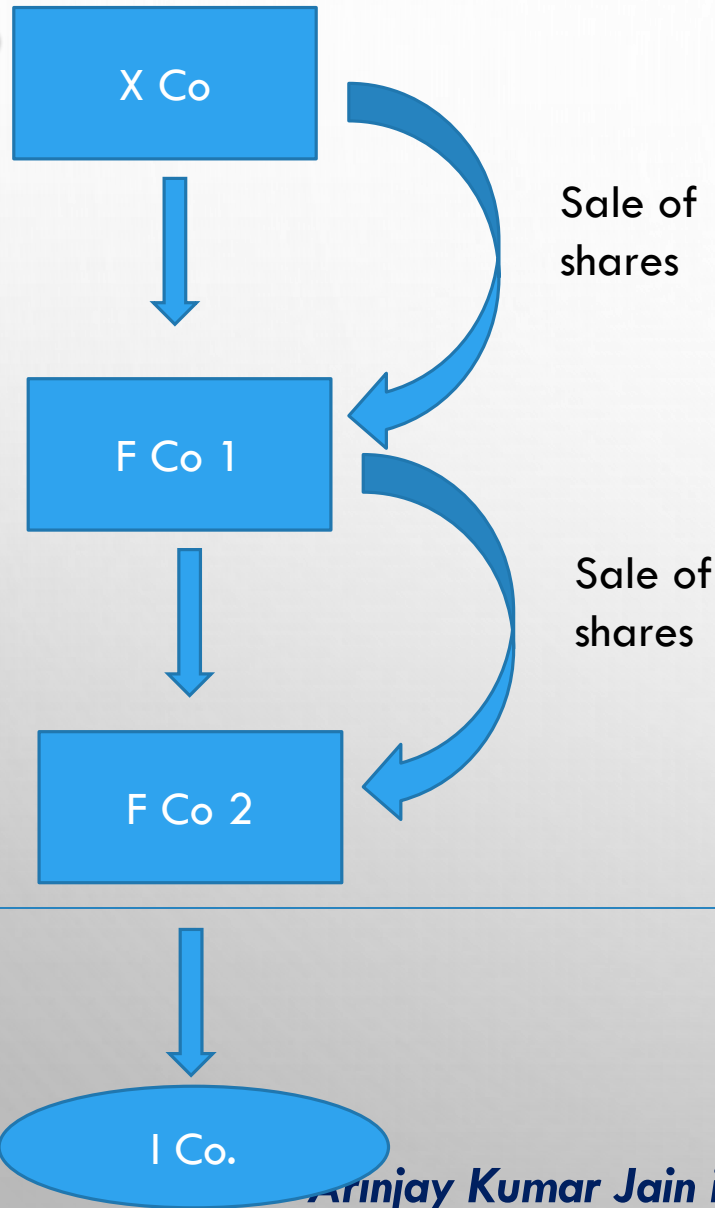
## Background -

- Taxable if substantial value of F Co. 2 derived from India

## Clarifications :-

- Value deemed to be substantially derived from India if :-
  - Value of Indian assets > 10 crores
  - > 50% of value of all assets owned by company
- Value =
  - Fair value of assets (ignore liabilities)
  - On last accounting period end date, unless BV on transfer date > BV on accounting end date by 15% (consider transfer date value)
  - Rules to be specified to compute fair value of Indian Vs Global assets
- Taxation on a proportional basis

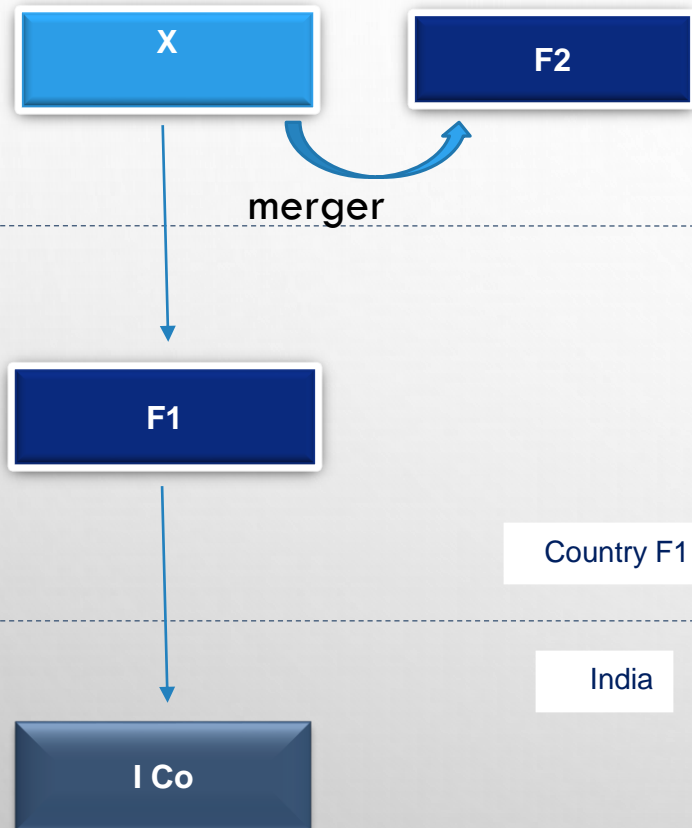
# INDIRECT TRANSFER OF SHARES



## Clarifications :-

- Control/ Management / Voting in entity holding Indian entity – Entity + AE
  - No right of control or management
  - Voting power/ shareholding < 5%
- Transfer of shares of foreign company not owning Indian entity – (Entity + AE) – In the entity owning direct shares
  - No right of control or management
  - Voting power/ shareholding < 5%

# INDIRECT TRANSFER OF SHARES – TRANSFER OF SHARES OF FOREIGN COMPANY IN AMALGAMATION, DERIVING SUBSTANTIAL VALUE FROM INDIA



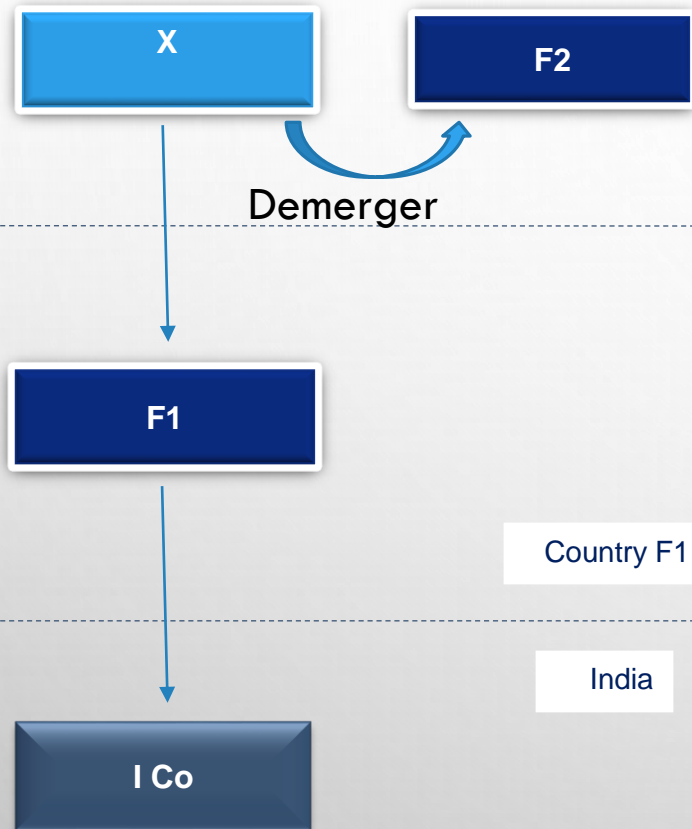
## Background :-

Whether capital gains exempt on transfer of shares of F1, if X merges, in a scheme of amalgamation, and F1 derives its substantial value from India ?

## Clarifications :-

Yes subject to conditions

# INDIRECT TRANSFER OF SHARES – TRANSFER OF SHARES OF FOREIGN COMPANY IN DEMERGER, DERIVING SUBSTANTIAL VALUE FROM INDIA



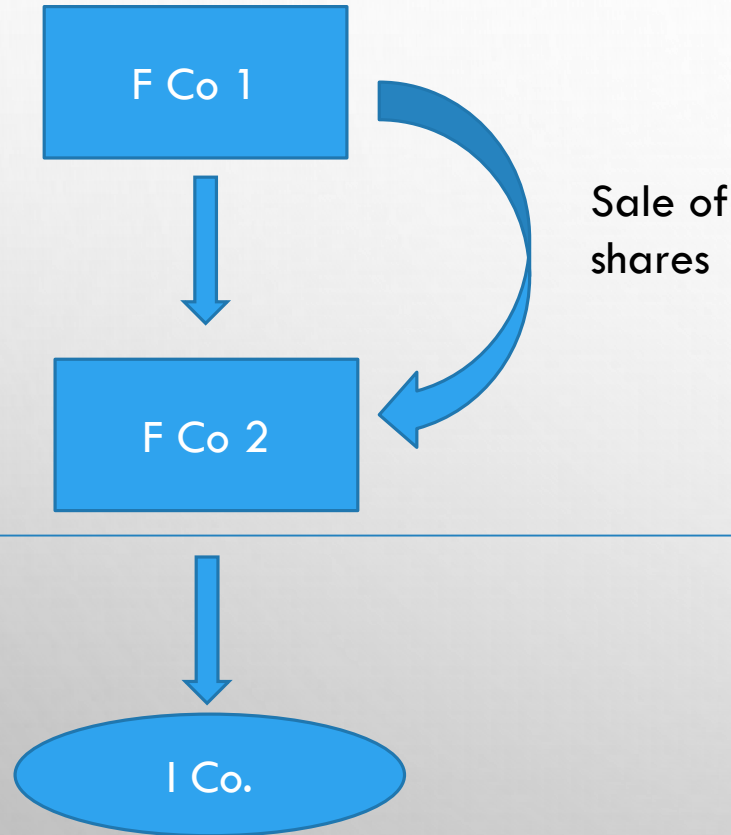
## Background :-

Whether capital gains exempt on transfer of shares of F1, if X transfers shares of F1 in demerger and F1 derives its substantial value from India ?

## Clarifications :-

Yes subject to conditions

# INDIRECT TRANSFER OF SHARES – REPORTING BY INDIAN COMPANY



## I Co to report :-

- Indian concern through or in which the Indian assets are held by the foreign company or the entity shall report : -
  - Information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity
- Failure
  - Penalty equivalent to
    - 2% of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;
    - 5,00,000 in any other case

# COMPUTING RESIDENCE OF INDIVIDUALS ..

Indian citizen leaving India as a member of crew of a foreign bound ship

Difficultly in computing number of days stay in India

To be computed in such manner as may be prescribed



# PLACE OF EFFECTIVE MANAGEMENT – AY 16-17

## EXISTING

Control and Management situated in India for whole year

## PROPOSAL

Place of effective management is in India at any time during the year

- POEM is the place where :-
  - Key managerial and commercial decision
  - Necessary to conduct business of entity as a whole
  - Guiding principle to be issued in due course

# GDR TAXATION ..

Depository Receipt  
Scheme 2014  
replaced FCCB Scheme  
1993

DRS can be issued  
against both listed/  
unlisted/private/public  
company for debt  
instruments, shares or  
units under the new  
scheme

Tax benefits proposed  
to be available only  
for (1) Ordinary shares  
of listed company; and  
(b) FCCB of issuing  
company

# REDUCTION IN WITHHOLDING TAX ?

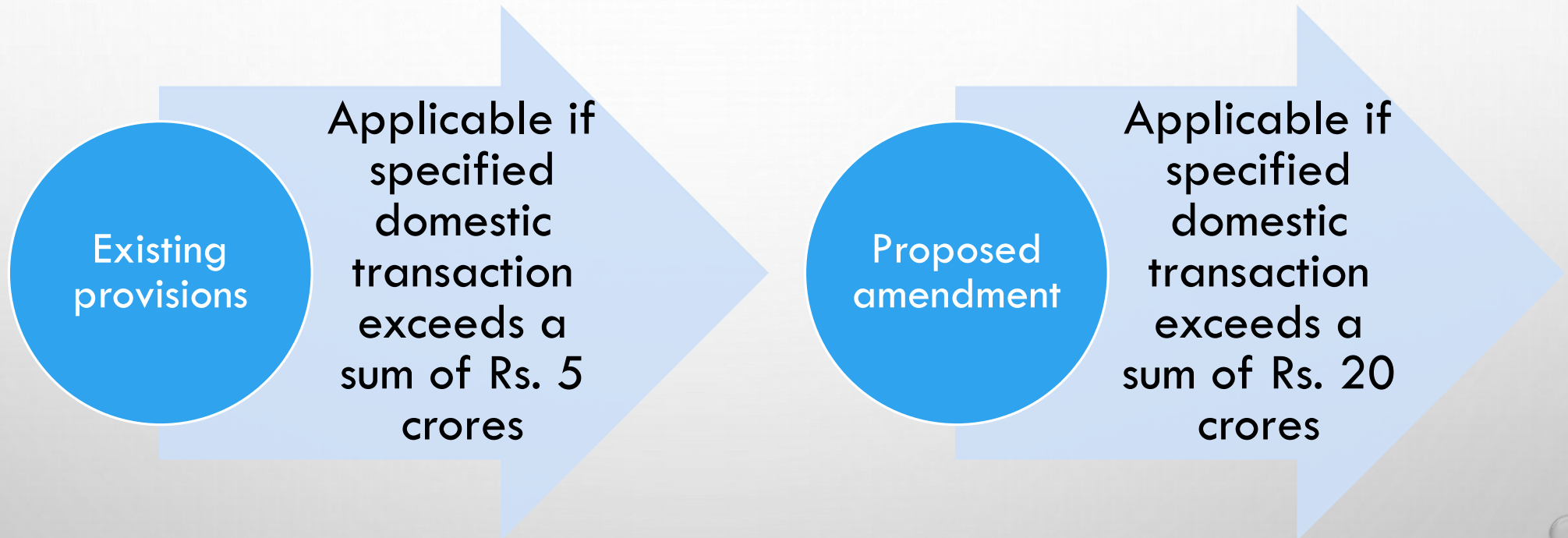
## Interest to FII and QFI u/s 194LD

- Concessional WHT of 5% on interest on Government securities and rupee denominated corporate bonds upto May 31, 2015
- Period extended to 30<sup>th</sup> June 2017

## Royalty and FTS

- Existing WHT of 25% u/s 115A
- Reduced to 10% for AY 2016-17 onwards

# DOMESTIC TRANSFER PRICING THRESHOLD INCREASED FROM AY 2016-17 ONWARDS



**MAT**

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# NO MAT ON FOREIGN INSTITUTIONAL INVESTOR FROM AY 2016-17 ONWARDS

Existing  
provisions

Controversy  
on whether  
MAT is  
applicable on  
FII

Proposed  
amendment

No MAT on FII  
(except on  
STCG  
transaction not  
liable to STT)  
– No expenses  
allowed

# NO MAT ON SHARE OF AOP INCOME - AY 2016-17 AND ONWARDS

## Existing provisions

No specific exemption from MAT on share of income of AOP

## Proposed amendment

No MAT on income of AOP exempt u/s 86 – No expenditure shall be allowed as a deduction against such income

# MEASURES TO CURB BLACK MONEY ---

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# ACCEPTING ADVANCE FOR TRANSFER OF IMMOVABLE PROPERTY

## 269 SS

Loan/ deposit/ advance for transfer of immovable property > 20,000 cannot be accepted otherwise than through cheque etc

## 269 TT

Repayment of Loan/ deposit/ advance for transfer of immovable property > 20,000 , cannot be done otherwise through specified mode

- Penalty u/s 271D for amount of taken
- Penalty u/s 271E for amount of repayment done

# KEY FEATURES OF NEW LAW ON BLACK MONEY ?

Rigorous imprisonment up to 10 years – Tax evasion for foreign assets

Penalty - 300% of asset value for foreign assets

Imprisonment - 7 years for Non-filing or Inadequate filing of return

Undisclosed income – Taxable at Maximum marginal rate

# KEY PROVISIONS ?

Prosecution and penalty – may cover even banks, financial institutions etc

Concealment of income in relation to foreign asset to be made a predicate offence under PML Act, 2002

# FOREIGN TAX CREDIT

CBDT may make rules to provide :-

- procedure for granting relief or deduction
- of any income-tax paid in any country or specified territory outside India,
- Under
  - Section 90
  - Section 90A
  - Section 91

against the income-tax payable under the Act.

# INDIVIDUALS RELATED TAX AMENDMENTS

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# TAX BENEFITS FOR INDIVIDUALS ?

## Sukanya Samridhi Scheme

- Investment eligible for deduction u/s 80C
- Interest on deposit exempt from tax – Section 10(11A)
- Withdrawal from the scheme exempt from tax – Section 10(11A)

## Health Insurance premium

- Medical insurance premium deduction increased u/s 80D :-
  - Senior citizen – From 20,000 to 30,000
  - Generally from 15,000 to 20,000
  - Very Senior citizen – 30,000 deduction allowed if no medical premium paid for medical expenses

# TAX BENEFITS FOR INDIVIDUALS ?

## Section 80DD and 80U deduction for disabled

- Deduction has been increased from :-
  - 50,000 to 75,000 for person with disability
  - 100,000 to 125,000 for person with severe disability

## Section 80DDB deduction for chronic diseases

- Requirement of obtaining a certificate from a doctor of Government Hospital removed and substituted with obtaining prescription from a specialist doctor

# TAX BENEFITS FOR INDIVIDUALS ?

## Section 80CCC payment for pension plan

- Deduction available for amount paid/deposited with LIC for receiving pension
- Deduction has been increased from 100,000 to 150,000

## Receipt under Life Insurance policy without TDS

- Existing law provides for Nil deduction if aggregate payment less than 100,000 , else 2%
- Amended to provide for self declaration for Nil withholding in Form 15G/15H to receive income without TDS instead of Section 197 certificate

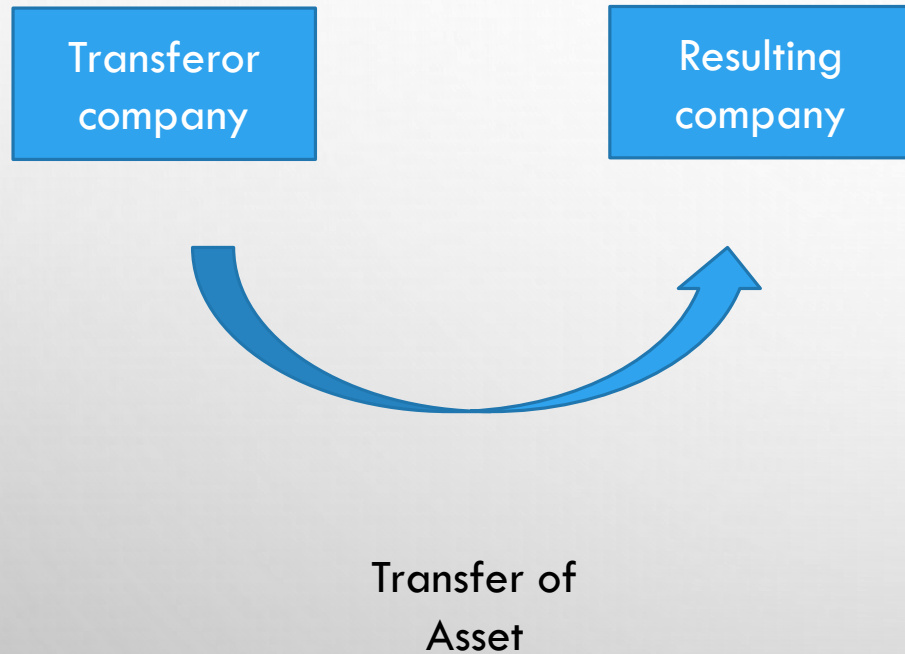


# CORPORATE REORGANIZATION

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# DEMERGER



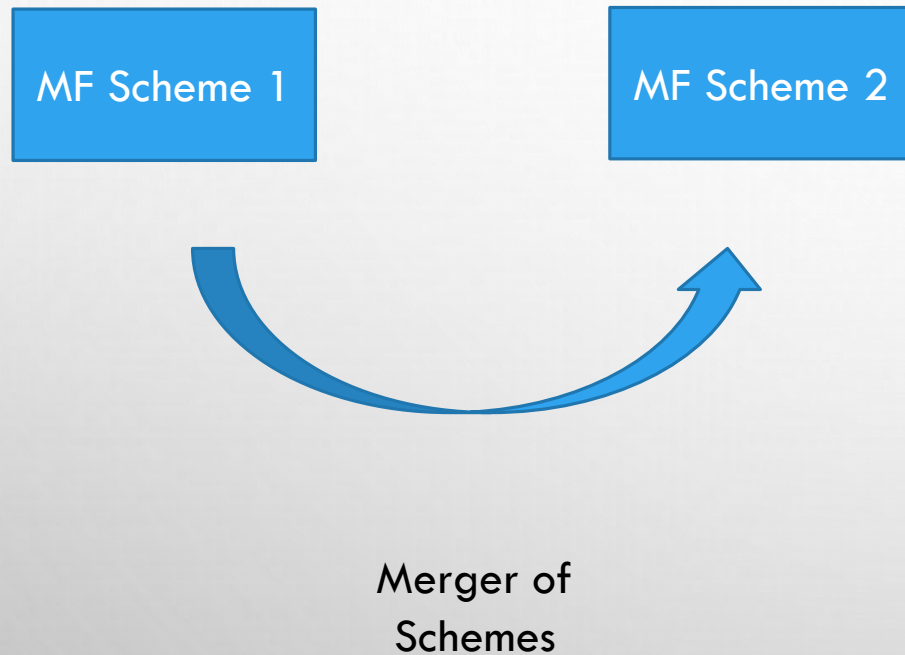
## Issue :-

- Cost of Holding in the hands of the resulting company for Asset acquired ?
- Period of Holding in the hands of the resulting company for Asset acquired ?

## Proposal

- Cost of asset in the hands of the resulting company shall be the cost in the hands of the transferor company as increased by cost of improvement

# MERGER OF SIMILAR SCHEMES OF MUTUAL FUNDS



## Unit holders :-

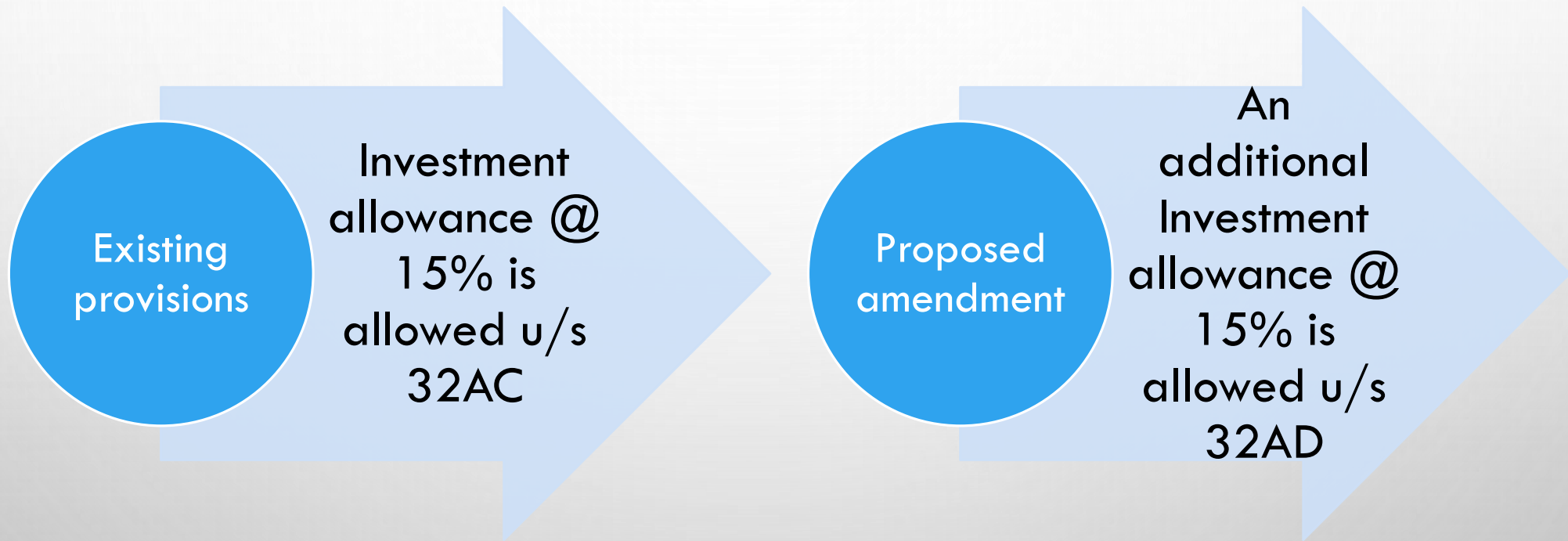
- Exempt from capital gains tax if Consolidation of two or more :-
  - Equity oriented schemes
  - Other than Equity oriented schemes
- Cost of new units and period of holding, the same as for the earlier units/ scheme

# INCENTIVES FOR ANDHRA AND TELANGANA

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# INCENTIVES FOR ANDHRA PRADESH & TELAGANA - AY 2016-17 ONWARDS



**P&M cannot be transferred for a period of 5 years**

# INCENTIVES FOR THE STATE OF ANDHRA PRADESH & TELANGANA - AY 2016-17 ONWARDS

Existing provisions

Additional depreciation @ 20% is allowed u/s 32(1)(ia)

Proposed amendment

Additional depreciation @ 35% (as against 20%) is allowed

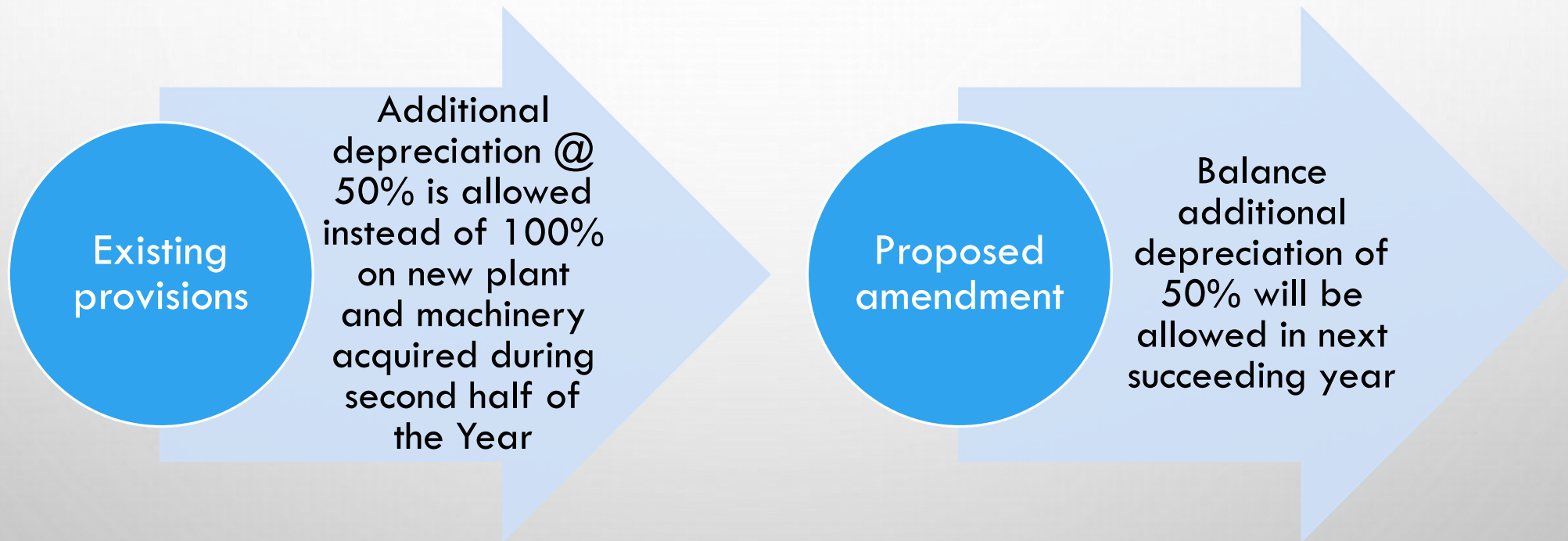
**For asset acquired for less than 180 days, balance additional depreciation shall be allowed in immediately succeeding year**

# SOME MORE DEDUCTION AND ADDITIONAL DEPRECIATION

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# ALLOWANCE OF BALANCE 50% ADDITIONAL DEPRECIATION AY 2016-17 ONWARDS





# DEDUCTION FOR THE EMPLOYMENT OF NEW WORKMEN - AY 2016-17 ONWARDS

## Existing provisions

Benefit available to corporate assessee only employing more than 100 workmen

## Proposed amendment

Benefit is available to all assessee having manufacturing entities and employing more than 50 workmen

Deduction of 30% of wages paid to new workmen in excess of 50 during the relevant previous year

# OTHER AMENDMENTS

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# OTHER AMENDMENTS ?

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# OTHER AMENDMENTS ?

Section	Key changes
Wealth Tax	Abolished w.e.f AY 2016-17 – Surcharge of 2% levied on super rich earning more than 1 crore a year
Deduction u/s 80G	<ul style="list-style-type: none"><li>• 100% deduction for contribution to National fund for control of Drug Abuse</li><li>• 100% deduction for contribution to Swachh Bharat Kosh (any donor) and domestic donor to Clean Ganga Fund –(CSR expenditure not covered here) – Income of these two funds exempt from tax</li></ul>
TDS	<ul style="list-style-type: none"><li>• Correction of TCS return permissible to collector</li><li>• TCS statement to be processed like TDS</li></ul>

# OTHER AMENDMENTS ?

Section	Key changes
TDS on non resident remittance	<ul style="list-style-type: none"><li>• Declaration of payment to non-resident, even if TDS not deducted</li><li>• Failure to disclose results in penalty of Rs. 1 lakh</li></ul>
TDS deduction on EPF – June 1, 2015	<ul style="list-style-type: none"><li>• TDS @ 10% on pre-mature withdrawal of EPFS, above Rs. 30,000</li><li>• Employee may give self declaration for NIL withholding or pay taxes as advance tax/declare to new employer</li><li>• Furnish PAN or else withholding at MMR</li></ul>
Penalty for concealment of income	<ul style="list-style-type: none"><li>• Can be levied even if concealment under normal provision, though tax payment under MAT</li></ul>
TDS on contractor	<ul style="list-style-type: none"><li>• NA if the recipient is computing income u/s 44AE</li></ul>

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