Tax on dividends, royalty and technical service fees in the case of foreign companies.

115A. [(1) Where the total income of—

(*a*) a non-resident (not being a company) or of a foreign company, includes any income by way of—

(*i*) Dividends [other than dividends referred to in section 115-O] ; or

(*ii*) Interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency [not being interest of the nature referred to in [sub-clause (*iia*) or sub-clause (*iiaa*)]]; or

[(*iia*) interest received from an infrastructure debt fund referred to in clause (*47*) of section 10; or]

[(*iiaa*) interest of the nature and extent referred to in section 194LC; or]

The following sub-clause (*iiab*) shall be inserted in clause (*a*) of sub-section (1) of section 115A by the Finance Act, 2013, w.e.f. 1-4-2014 :

*(*iiab*)* interest of the nature and extent referred to in section 194LD; or

[(iiac) distributed income being interest referred to in sub-section (2) of section 194LBA]

(*iii*) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India,

the income-tax payable shall be aggregate of—

(*A*) the amount of income-tax calculated on the amount of income by way of dividends[other than dividends referred to in section 115-O], if any, included in the total income, at the rate of [1][ten per cent] ;

(*B*) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (*ii*), if any, included in the total income, at the rate of [2][ten per cent] ;

(*BA*) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (*iia*) or sub-clause (*iiaa*) *or sub-clause (*iiab*)*, [or sub-clause (iiac)] if any, included in the total income, at the rate of five per cent;

(*C*) the amount of income-tax calculated on the income in respect of units referred to in sub-clause (*iii*), if any, included in the total income, at the rate of twenty per cent ; and

[1] Substituted with effect from April 1, 2016
[2] Substituted with effect from April 1, 2016

(*D*) the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the amount of income referred to in sub-clause(*i*), sub-clause (*ii*), sub-clause (*iia*), sub-clause (*iiaa*), *sub-clause (*iiab*),*[sub-clause (iiac)][3] and sub-clause (*iii*) ;

(*b*) [a non-resident (not being a company) or a foreign company, includes any income by way of royalty or fees for technical services other than income referred to in sub-section (1) of section 44DA] received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy, then, subject to the provisions of sub-sections (1A) and (2), the income-tax payable shall be the aggregate of,—

[(*A*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of thirty per cent if such royalty is received in pursuance of an agreement made on or before the 31st day of May, 1997 and twenty per cent where such royalty is received in pursuance of an agreement made after the 31st day of May, 1997 [but before the 1st day of June, 2005];

[(*AA*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of ten per cent if such royalty is received in pursuance of an agreement made on or after the 1st day of June, 2005;]

(*B*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of thirty per cent if such fees for technical services are received in pursuance of an agreement made on or before the 31st day of May, 1997 and twenty per cent where such fees for technical services are received in pursuance of an agreement made after the 31st day of May, 1997 [but before the 1st day of June, 2005] ; and]

[(*BB*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of ten per cent if such fees for technical services are received in pursuance of an agreement made on or after the 1st day of June, 2005; and]

The following sub-clauses (*A*) and (*B*) shall be substituted for the existing sub-clauses (*A*), (*AA*), (*B*) and (*BB*) of clause (*b*) of sub-section (1) of section 115A by the Finance Act, 2013, w.e.f. 1-4-2014 :

*(*A*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of twenty-five per cent;*

[3] Inserted with effect from April 1, 2015

*(*B*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of twenty-five per cent; and*

(*C*) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of income by way of royalty and fees for technical services.

Explanation.—For the purposes of this section,—

(*a*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9 ;

(*b*) "foreign currency" shall have the same meaning as in the *Explanation* below item (*g*) of sub-clause (*iv*) of clause (*15*) of section 10 ;

(*c*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9 ;

(*d*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963).]

[(1A) Where the royalty referred to in clause (*b*) of sub-section (1) is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book to an Indian concern [or in respect of any computer software to a person resident in India], the provisions of sub-section (1) shall apply in relation to such royalty as if the words [[the agreement is approved by the Central Government or where it relates to a matter] included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy] occurring in the said clause had been omitted :

Provided that such book is on a subject, the books on which are permitted, according to the Import Trade Control Policy of the Government of India for the period commencing from the 1st day of April, 1977, and ending with the 31st day of March, 1978, to be imported into India under an Open General Licence :

[**Provided further** that such computer software is permitted according to the Import Trade Control Policy of the Government of India for the time being in force to be imported into India under an Open General Licence.]

[*Explanation 1*].—In this sub-section, "Open General Licence" means an Open General Licence issued by the Central Government in pursuance of the Imports (Control) Order, 1955.]

[*Explanation 2*.—In this sub-section, the expression "computer software" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 80HHE.]

(2) Nothing contained in sub-section (1) shall apply in relation to any income by way of royalty received by a foreign company from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1976, if such agreement is deemed, for the [purposes of the first proviso] to clause (*vi*) of sub-section (1) of section 9, to

have been made before the 1st day of April, 1976; and the provisions of the annual Finance Act for calculating, charging, deducting or computing income-tax shall apply in relation to such income as if such income had been received in pursuance of an agreement made before the 1st day of April, 1976.]

[(3) No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing his or its income referred to in sub-section (1).

(4) Where in the case of an assessee referred to in sub-section (1),—

(*a*) the gross total income consists only of the income referred to in clause (*a*) of that sub-section, no deduction shall be allowed to him or it under Chapter VI-A;

(*b*) the gross total income includes any income referred to in clause (*a*) of that sub-section, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—

(*a*) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]