



5<sup>th</sup> June, 2016

To,  
The Hon'ble Chairman  
Central Board of Direct Taxes (CBDT)  
Department of Revenue  
Ministry of Finance  
North Block  
New Delhi - 11001

**Sub: Representation on exemption from applicability of Tax Deduction at Source (TDS) in Securitisation Transactions**

Respected Sir,

**Indian Securitisation Foundation (ISF)** is a not-for-profit entity representing the securitisation industry in India. The membership of the Foundation includes banks, NBFCs, microfinance institutions, other issuers and investors and securitisation professionals for promoting interest of securitisation and fixed income securities in India.

Typical investors in securitisation include public sector banks, private sector banks, mutual funds, insurance companies and others. ISF is dedicated to the cause of promoting securitisation in India.

The regulations pertaining to securitisation transactions have undergone change in the last couple of years. The RBI's revision to the securitisation guidelines as applicable to banks and financial institutions had prescribed regulations for both bilateral assignments and securitisation transactions (through PTCs route). Post the regulations the market had seen a surge in the securitisation transaction as structurally the regulations facilitated the use of securitisation transactions over bilateral assignments.

The tax regime introduced in 2013 levied distribution tax at the level of the securitization trusts by way of introduction of a new Chapter XII EA of the Income Tax Act, 1961. In the recent Finance Act, 2016 the distribution tax was effectively replaced by obligation on the securitization trust to deduct tax at source under the provisions of Section 194 LBC of the Income Tax Act, 1961. The text of Chapter XII EA as amended after introduction of Section 115TCA, Section 194 LBC and other relevant provisions are detailed in **Annexure I** to this

**INDIAN SECURITISATION FOUNDATION**

(A Not-For-Profit Company Licensed under Section 25 of Companies Act, 1956)

Regd. Office: 601-C, Neelkanth | 98, Marine Drive  
Mumbai - 400 002

Phone: 022 22817427

Email: [info@indiansecuritisation.com](mailto:info@indiansecuritisation.com); [vinod@vinodkothari.com](mailto:vinod@vinodkothari.com)

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representation. The change in the securitization tax regime continues to ensure that the securitization transactions are tax neutral. Having said this, there are concerns with regard to tax deduction at source at various levels in the securitization transaction.

We humbly submit our representation herein below expressing the impact of tax deduction at source in case of securitization transactions and the impact it has on transaction dynamics.

### *Provisions of tax deduction at source*

The concept of TDS was introduced with an aim to collect tax from the very source of income. A person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

Further, where the deductee is a tax exempt entity or requires the tax deduction to be at a lower rate considering the taxable income assessed, the deductee – assessee can make an application to the assessing officer in Form 13 under section 197 of the Income Tax Act, 1961 to get a certificate authorising the payer to deduct tax at lower rate or deduct no tax as may be appropriate. The recipient may furnish copies of such certificate to the person responsible for paying the income for the purpose of lower/no deduction of tax at source.

In cases, where the deductee – assessee is specifically exempted from any deduction of tax at source under section 197A of the Income Tax Act, 1961 as in case of banks (excluding foreign banks), the payer is not required to deduct tax at source at all.

### *Our representation*

In a securitization transaction the receivables from the borrowers are sold to the securitization trust by the originator and the originator continues to service the receivables for and on behalf of the securitization trust. The cashflow mechanics of a typical securitization transaction using a securitisation trust are illustrated below:

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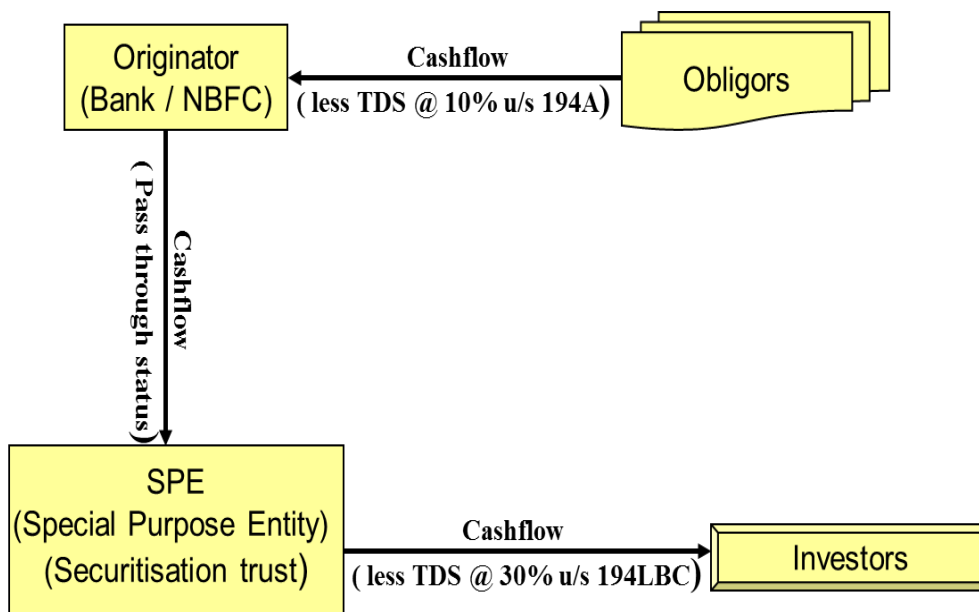
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Typically the obligors/ borrowers are not notified of the assignment of receivables to the securitization trust as the receivables are serviced by the originator only.

As illustrated, the obligors would be paying the originator after deducting tax at source. Under section 194A of the Income Tax Act, 1961, the payer will deduct TDS at the time of

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making payment to the payee on account of interest income received by the payee. The TDS is to be deducted at the rate of 10%.

The securitization trust has been granted pass-through status by way of introduction of section 115TCA whereby any income accruing or arising to or received by the investor of the securitisation trust out of investments made in securitisation trust shall be chargeable to income-tax in the same manner as if it were income accruing or arising to or received by such person had the investment be made directly by him.

Further, under Section 194 LBC, the securitization trust<sup>1</sup> shall be deducting tax at source at the following rates:

Name of the entity	Tax Rate <sup>2</sup>
In case of individual or HUF	25%
In case of any other person	30%
In case of a non-resident	30%
In case of a foreign company	40%

Therefore effectively the tax is deducted at two stages on the same income. Section 115TCA starts with a non-obstante clause and therefore, tax deduction by the securitization trusts is irrespective of any other deductions on the same stream of income at any other stage.

Therefore under the extant provisions of law, where the bank is an originator, the tax deduction is only at the securitization trust level, because the receivables realized from the borrower – obligor are not subject to tax. However in other cases, tax deduction is at two levels.

Tax deduction at source is essentially prepayment of taxes. In a securitization transaction, the effective deduction of tax at two layers is causing additional deductions, impacting tax neutrality and therefore tax inefficient.

In light of the above we represent that:

- a. In the present regime, in a securitization transaction, tax is deducted at two stages and thereby the transaction does not remain tax neutral;

<sup>1</sup> The definition of *securitisation trust* for the purpose of Income Tax Act, 1961 are provided for in Explanation to Section 115TC.

<sup>2</sup> [http://www.incometaxindia.gov.in/Pages/Deposit\\_TDS\\_TCS.aspx](http://www.incometaxindia.gov.in/Pages/Deposit_TDS_TCS.aspx)

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- b. The tax deduction at source is well imbibed under the provisions of section 115TCA read with section 194LBC, thereby ensuring there is no tax leakage at any stage;
- c. Therefore, we humbly submit that in case of sale of the receivables to the securitization trust as defined in clause (d) of the Explanation to section 115TC be exempt from tax deduction at source at the borrower level.
- d. The exemption of tax deduction at source at the borrower level will restore the tax neutrality in case of securitization transaction.
- e. The exemption may be introduced in section 197A whereby in case of securitization transactions the tax deduction at source will be exempt at the obligor – borrower stage, where the obligor has been notified about the sale of the receivables to the securitization trust as defined under clause (d) of Explanation to Section 115TC.

We humbly request to you consider our representation and oblige. Should you need any further clarification, we would be glad to provide the same.

Thanking you,  
Yours truly,  
For *Indian Securitisation Foundation*

Nidhi Bothra  
Director

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**Annexure I**

**Chapter XII EA of Income Tax, 1961**

**Chapter XII EA**

**SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME BY  
SECURITISATION TRUSTS**

**115TCA.** Tax on distributed income to investors—

1. Notwithstanding anything contained in any other provisions of the Act, any amount of income distributed by the securitisation trust to its investors shall be chargeable to tax and such securitisation trust shall be liable to pay additional income-tax on such distributed income at the rate of—
  - a. Twenty-five per cent on income distributed to any person being an individual or a Hindu undivided family;
  - b. Thirty per cent on income distributed to any other person.

**Provided** that nothing contained in this sub-section shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act.

2. The person responsible for making payment of the income distributed by the securitisation trust shall be liable to pay tax to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier
3. The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th day of September in each year, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed. **\*\*(Omitted By Finance Act 2014)\*\***
4. No deduction under any other provisions of this Act shall be allowed to the securitisation trust in respect of the income which has been charged to tax under sub-section (1).
5. *Nothing contained in this section shall apply in respect of any income distributed by a securitisation trust to its investors on or after the 1st day of June, 2016.(applicable from 1st June, 2016)*

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**115TB.** Interest payable for non-payment of tax.—

Where the person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust fails to pay the whole or any part of the tax referred to in sub-section (1) of section 115TA, within the time allowed under sub-section (2) of that section, he or it shall be liable to pay simple interest at the rate of one per cent every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

**115TC.** Securitisation trust to be assessee in default.—

If any person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust does not pay tax, as referred to in sub-section (1) of section 115TA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation- For the purposes of this Chapter,—

- a) "investor" means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust;
- b) "securities" or *security receipts* means debt securities issued by a Special Purpose Vehicle as referred to in the guidelines on securitisation of standard assets issued by the Reserve Bank of India;
- c) "securitised debt instrument" shall have the same meaning as assigned to it in clause (s) 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 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- d) "securitisation trust" means a trust, being a—
  - i. "special purpose distinct entity" as defined in clause (u) 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 (15 of 1992) and the



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Securities Contracts (Regulation) Act, 1956 (42 of 1956), and regulated under the said regulations; or

- ii. "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India, or which fulfils such conditions, as may be prescribed; or
  - iii. "Trust" set-up a securitisation company or a reconstruction company formed, for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or in pursuance of any guidelines or directions issued for the said purposes by Reserve Bank of India.
- e) Security receipt shall have the same meaning as assigned to it in clause (zg) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002.

Applicable From 1<sup>st</sup> April, 2017

## **115TCA.***Tax on Income from Securitisation trusts—*

- 1) *Notwithstanding anything contained in this Act, any income accruing or arising to, or received by, a person, being an investor of a securitisation trust, out of investments made in the securitisation trust, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person, had the investments by the securitisation trust been made directly by him.*
- 2) *The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the person referred to in sub-section (1), as if it had been received by, or had accrued or arisen to, the securitisation trust during the previous year.*
- 3) *The income accruing or arising to, or received by, the securitisation trust, during a previous year, if not paid or credited to the person referred to in sub-section (1), shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.*
- 4) *The person responsible for crediting or making payment of the income on behalf of securitisation trust and the securitisation trust shall furnish, within such period, as may be prescribed, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in such form and verified in such*

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*manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details, as may be prescribed.*

- 5) *Any income which has been included in the total income of the person referred to in sub-section (I), in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in the total income of such person in the previous year in which such income is actually paid to him by the securitisation trust.*

### **Section 194 LBC**

**194LBC.** (1) Where any income is payable to an investor, being a resident, in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rate of—

- i. twenty-five per cent., if the payee is an individual or a Hindu undivided family;
- ii. thirty per cent., if the payee is any other person.

(2) Where any income is payable to an investor, being a non-resident (not being a company) or a foreign company, in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rates in force.

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

(a) “investor” shall have the meaning assigned to it in clause (a) of the *Explanation* occurring after section 115TCA;

(b) where any income as aforesaid is credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of this section shall apply accordingly.’

### **In section 2 (37A)(iii)**

In section 2 (37A)(iii) after the words, figures and letters “section 194LBA or”, the words, figures and letters “section 194LBB or section 194LBC or” shall be inserted with effect from the 1st day of June, 2016;

**In section 10 (23DA)**

In clause (23DA), in the Explanation,— (1) in clause (a), after sub-clause (i), the following sub-clause shall be inserted, namely:—

“(ia) in clause (z) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or”;

(2) in clause (b), for the word, figures and letters “section 115TC”, the word, figures and letters “section 115TCA” shall be substituted;

**In section 10 (23FC)**

In clause (23FC), for the words “by way of interest received or receivable from a special purpose vehicle”, the following shall be substituted, namely:—

“by way of—

(a) interest received or receivable from a special purpose vehicle; or (b) dividend referred to in sub-section (7) of section 115-O”;