FINANCE (No. 2) BILL, 1998

PROVISIONS RELATING TO DIRECT TAXES

The provisions in the Finance (No. 2) Bill, 1998, in the sphere of direct taxes relate to the following matters:-

(i) Prescribing the rates of income-tax on incomes liable to tax for the assessment year 1998-99; the rates at which tax will be deductible at source during the financial year 1998-99 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, and other categories of income liable to deduction of tax at source under the Income-tax Act, rates for computation of “advance tax”, deduction of income-tax from “Salaries” and charging of income-tax on current incomes in certain cases for the financial year 1998-99.

(ii) Amendment of the Income-tax Act, 1961, interalia, with a view to promoting housing, welfare, providing incentives for infrastructure development, industrialisation, rationalisation of certain provisions, checking tax evasion and avoidance and expanding the tax base and measures to reduce litigation.

(iii) Amendment of Wealth-tax Act

(iv) Amendment of the Expenditure-tax Act,

(v) Amendment of Gift-tax Act

(vi) Amendment of the Interest-tax Act

(vii) Proposal to introduce Kar Vivad Samadhan Scheme, 1998

2.Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, the Bill follows the principle that changes in the provisions of the tax laws should ordinarily be made operative prospectively in relation to current incomes and not in relation to incomes of past years. The substance of the main provisions in the Bill relating to direct taxes is explained in the following paragraphs:-

INCOME-TAX

I. Rates of Income-tax in respect of incomes liable for tax for the assessment year 1998-99

In respect of incomes of all categories of taxpayers (corporate as well as non-corporate) liable to tax for the assessment year 1998-99, the rates of income-tax have been specified in Part I of the First Schedule to the Bill and are the same as those laid down in Part III of the First Schedule to the Finance Act, 1997, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases during the financial year 1997-98.

II. Rates for deduction of income-tax at source during the financial year 1998-99 from income other than “Salaries”

The rates for deduction of income-tax at source during the financial year 1998-99 from incomes other than “Salaries”, have been specified in Part II of the First Schedule to the Bill. These rates apply to income by way of interest on securities, interest other than “interest on securities”, insurance commission, winnings from lotteries or crossword puzzles, winnings from horse races and income of non-residents (including non-resident Indians). These rates are broadly the same as those specified in Part II of the First Schedule to the Finance Act, 1997, for the purposes of deduction of income-tax at source during the financial year 1997-98.

III. Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 1998-99

The rates for deduction of income-tax at source from “Salaries” during the financial year 1998-99 and also for computation of “advance tax” payable during that year in the case of all categories of taxpayers, have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the financial year 1998-99 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year or assessment of persons who are likely to transfer property to avoid tax, etc. The salient features of the rates specified in the said Part III are indicated in the following paragraphs.

A. Individuals, Hindu undivided families, etc.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of individuals, Hindu undivided families, association of person, etc.

The exemption limit is proposed to be raised to Rs. 50,000. No other change is proposed in the rate structure.

The Table below gives the income slabs and the rates of income-tax column (a) as specified in Paragraph A of Part I of the First Schedule to the Bill; and column (b) as specified in Paragraph A of Part III of the First Schedule to the Bill.

TABLE

(a)		(b)	
Income slab	*Rates specified in Paragraph A of Part I of the First Schedule to the Bill*	*Income Slab*	*Rates specified in Paragraph A of Part III of theFirst Schedule to the Bill*
Upto Rs.40,000	Nil	Upto Rs. 50,000	Nil
Rs.40,001 - Rs.60,000	10%	Rs. 50,001 - Rs. 60,000	10%
Rs.60,001 - Rs. 1,50,000	20%	Rs. 60,001 - Rs. 1,50,0000	20%
Above Rs. 1,50,000	30%	Above Rs. 1,50,000	30%

The impact of increase in the exemption limit in the case of individuals, HUFs, etc. at different income levels would be as under:

Total Income (Rs.)	Existing Tax Liability (Rs.)	New tax Liability (Rs.)	Proposed Relief Amount (Rs.)	Proposed Relief Percentage Relief
41,000	100	Nil	100	100
42,000	200	Nil	200	100
43,000	300	Nil	350	100
44,000	400	Nil	400	100
45,000	500	Nil	500	100
50,000	1,000	Nil	1,000	100
55,000	1,500	500	1,000	66.6
60,000	2,000	1,000	1,000	50
75,000	5,000	4,000	1,000	20
1,00,000	10,000	9,000	1,000	10
1,20,000	14,000	13,000	1,000	7.1
1,50,000	20,000	19,000	1,000	5
1,75,000	27,000	26,500	1,000	3.6
2,00,000	35,000	34,000	1,000	2.8
2,50,000	40,000	39,000	1,000	2.5
3,00,000	65,000	64,000	1,000	1.54

B. Co-operative societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates are the same as those specified in the corresponding Paragraph of Part I of the First Schedule to the Bill.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate remains at 35 per cent.

D. Local authorities

In the case of local authorities, the rate of income-tax has been specified in Paragraph D of Part III of the First Schedule to the Bill. This rate is the same as that specified in the corresponding Paragraph of Part I of the First Schedule to the Bill.

E. Companies

In the case of companies, the rates of income-tax have been specified in Paragraph E of Part III of the First Schedule to the Bill. There is no change in the existing rates of 35% for domestic companies and 48% for foreign companies.

[Clause 2 & First Schedule]

TAX INCENTIVES FOR PROMOTION OF HOUSING

Tax holiday to approved housing projects

A tax holiday is provided to enterprises carrying on the business of developing, maintaining and operating any infrastructure facility under sub-section (4A) of section 80-IA. Such a tax holiday allows a deduction of 100% of the profits for the first five assessment years of a company registered in India and which enters into an agreement with the Central or a State Government for developing, maintaining and operating a new infrastructure facility which shall be transferred to the Central/State Government within a stipulated period. Subsequently, 30% of the profits are allowed as a deduction while computing the assessable income for another period of five years. It is proposed that this deduction may be extended to housing projects approved by a prescribed authority under the scheme to be framed by the Central Government.

The proposed amendment will take effect from 1st April, 1999 and will accordingly apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 37]*

Deductions from income from house property

While computing the income from house property, a deduction equal to one-fifth of the annual value of the property is allowed in respect of repairs and collection of rent from the property under Section 24(1)(i) of the Income-tax Act. An enhancement of this deduction is expected to encourage better maintenance of the existing housing stock. Hence, it is proposed to enhance the percentage of this deduction to one-fourth of the annual value.

To provide an incentive for self-occupied housing it is proposed that the allowance for interest paid on capital borrowed for construction, repairs, renewals etc. of house property shall be raised from fifteen thousand rupees per annum to rupees thirty thousand.

The proposed amendments will take effect from 1st April, 1999 and will accordingly apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 10]*

Carry forward of loss from house property

Under the existing provisions loss from house property is not allowed to be carried forward for set-off against income arising in subsequent years. It is proposed to insert a new section 71B so that where the net result of computation under the head income from house property is a loss then such loss will be adjusted against income under other heads in the same assessment year and any balance loss remaining shall be allowed to be carried forward and set-off in subsequent assessment years upto a maximum of eight assessment years against income from house property.

The proposed amendment will take effect from 1st April, 1999 and will accordingly apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 30]*

Deduction of rents paid

It is proposed to reintroduce the deduction allowed under section 80GG in respect of any expenditure incurred by an assessee in excess of 10% of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purpose of his own residence to the extent of Rs. 2,000 per month or 25% of his total income, whichever is less.

In order to have continuity, the proposed amendment will take effect from 1st April, 1998 and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years. *[Clause 34]*

Deductions for World Bank aided housing projects in India

It is proposed to introduce a new section so as to provide that an Indian company or a non-corporate assessee resident in India will be entitled to a deduction in the computation of the taxable income of 50 per cent. of the profits and gains derived from the business of execution of housing projects aided by the World Bank and undertaken by the assessee in pursuance of a contract floated on the basis of a Global tender. It is proposed that to claim this deduction the assessee would transfer 50 per cent. of profits and gains from the business of housing project, to a housing project reserve account. This amount is to be utilised during a period of five years for the purposes of business other than for distribution by way of dividends or profits. If the money is utilised for any other non-business purpose then the income of the year in which the deduction was allowed would be re-computed after disallowing the deduction.

The proposed amendments will take effect from 1st April, 1999 and will accordingly apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 35]*

WELFARE MEASURES

Income-tax exemption to members of Scheduled Tribes residing in Ladakh

Under the existing provisions of clause (26) of section 10, any income which accrues or arises to a member of a Scheduled Tribe residing in any area specified in the clause either from any source in the areas or States specified or by way of dividend or interest on securities, is exempt from income-tax.

The Bill proposes to extend this exemption to the members of the Schedules Tribes residing in Ladakh region of the State of Jammu and Kashmir.

The proposed amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 7]*

Tax incentives for encouraging employment

The existing provisions of the Income-tax Act provide various fiscal concessions to spur growth of business and industry. The country is faced with problems relating to lack of employment opportunities. In order to encourage the employers to further generate more employment opportunities, it is proposed to insert a new section, i.e., 80JJAA to provide an incentive in the form of a special deduction against business profits of a company. This deduction would be over and above the expenditure on wages or salary, which is otherwise allowable as business expenditure to the company. The quantum of deduction is proposed to be thirty per cent. of the aggregate wages or salary paid to the new workers provided the following conditions are satisfied.

In the case of a new undertakings, the number of workers should be at least 100.

In the case of an existing undertaking, having a minimum of at least hundred employees, the total number of new employees should be at least ten per cent. more than the existing number of employees. The deduction in such cases would be allowed at the 30% of the additional wages to the new workmen.

For the purposes of claiming the benefit, the term ‘worker’ shall have the same meaning as ‘workman’ as defined in the Industrial Workers Disputes Act. Such an employee should be a regular worker and should have been employed for a period of at least 300 days in a year, and the return should be accompanied by particulars certified by the tax auditor in the prescribed form.

The proposed amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000, and subsequent years. *[Clause 39]*

Rationalisation of benefits available to parents and guardian of physically handicapped and disabled dependent

Under the existing provisions of section 80DD, a deduction of Rs. 15,000 is allowed to an individual or Hindu undivided family in respect of expenditure incurred on medical treatment of a handicapped dependent. Section 80DDA allows for a separate deduction to a parent or guardian in respect of deposits upto Rs. 20,000 made in specified schemes of Life Insurance Corporation or Unit Trust of India.

It has been felt that the parents or guardian of handicapped dependents may not have to incur expenditure on medical treatment of a handicapped dependent every year. However, the parent or the guardian would always feel the need to provide for the future maintenance of the disabled dependent. The existing provisions do not take such situations into account. In order to allow a choice to the parent or the guardian to spend either on the medical treatment of or for the future needs of the handicapped dependent, as the case may be, the Bill seeks to provide a new section 80DD. With this provision, the parent or the guardian could claim a deduction upto Rs. 40,000 for the medical treatment and for future needs of the handicapped dependent in the manner most suited to his needs. The existing sections 80DD and 80DDA would get consequentially merged with increase in overall limit of deduction from Rs. 35,000 to Rs. 40,000.

The provisions shall come into effect w.e.f. 1.4.1999 and shall, accordingly, apply to the assessment year 1999-2000 and subsequent years.. *[Clause 32]*

Redressal of tax payers grievances against delay in refunds

Under the existing provisions of sub-section (2B) of section 192, the person responsible for making payment of salary can take into account income from other heads (not being a loss) and taxes deducted thereon for the purpose of calculating and deducting tax at source from salary income. Proviso to the sub-section further provides that in no case the tax otherwise deductible from salary income can be reduced. This results in small refunds in a large number of salary cases mostly because the Drawing and Disbursing Officer cannot allow adjustment of loss from house property against salary income.

Since it is not desirable to collect taxes which are certain to be refunded, the Bill proposes to allow adjustments of loss from house property against income from salary for the purpose of determining the tax deductible from salary. The person responsible for deducting tax at source can now make the necessary adjustment and deduct appropriate amount of tax so that the claim of refund does not arise. It is hoped that this measure would go a long way to remove the hardship to a large number of salaried tax payers.

This amendment will take effect from 1st August, 1998 and will, apply in relation to the assessment year 1999-2000 and subsequent years. *[Clause 49]*

New provision for encouraging management of bio-degradable waste

Waste management is a major concern for planners in all countries. For effective waste management, the role of waste pickers of the informal sector who separate bio-degradable waste and assessees who actually collect, process and treat it, is significant in enabling local authorities in both urban and rural areas to provide better sanitation and hygiene, to the populace. The bio-degradable waste can be utilised for purposes of generating energy and also for preparing organic manure by composting, vermicompost and anaerobic digestion.

It is proposed to extend the benefit to assessees engaged in collection, processing, treatment of bio-degradable waste for generation of power, producing bio-gas, making pellets or briquettes for fuel aftg- treatment of refuse and also organic manure. With a view to providing benefits to assessees, who are engaged in such activities, a deduction of 100% of income derived from such activity or a amount of Rs. five lakh whichever is less shall be allowed.

Accordingly, a new section 80JJA is proposed to be introduced in the Bill and it shall come into effect from 1.4.1999 applicable in relation to the assessment year 1999-2000 and applicable subsequent years . *[Clause 38]*

Increase in the limits of deductions allowed in respect of income of cooperative societies.

Under the Income-tax Act, cooperative societies enjoy certain tax concessions in respect of their income. The whole of the amounts of profits and gains of co-operative societies engaged in the business of marketing of agriculture produce of its members, supply of agricultural implements, seeds etc. to the members, processing without the aid of power of the agricultural produce, cottage industries, fishing and allied activities and the primary cooperative societies engaged in the supply of milk, oilseeds, fruits or vegetables etc. are exempt from the income tax. Cooperative societies engaged in any other activities as specified above are liable to tax on their business income in excess of Rs.20,000/-. In the case of a consumers' cooperative society this limit is Rs.40,000/-.

The limit of Rs.20,000 in respect of cooperative societies was introduced by the Finance Act, 1969 whereas a separate limit of Rs.40,000 for consumers' cooperative society was inserted by the Finance Act, 1979. Over the years, there has been no increase in the exemption limit fixed for such cooperatives. With a view to encouraging and promoting growth of cooperative sector, the exemption limit of cooperative societies is proposed to be raised from Rs.20,000 to Rs.50,000 and in the case of consumer cooperative societies from Rs.40,000 to Rs.1,00,000.

The amendment shall come into force with effect from 1.4.1999 and will, accordingly, apply in relation to assessment year 1999-2000, and subsequent years. *[Clause 40]*

Modification of provisions of standard deduction for salaried tax-payers

Under the existing provisions of section 16 of the Income-tax Act, standard deduction of a sum equal to 33-1/3% of the salary or Rs. 20,000, whichever is less, is allowed to an individual having income from salary.

With a view to minimising the hardship that is likely to be caused to employees and also pensioners who are receiving salary or pension in the income slab of Rs. 5,000 to Rs. 7,500 per month the Bill proposes to raise the limit of standard deduction for assessees having salary income upto Rs.1,00,000 from Rs. 20,000 to Rs. 25,000.

The terms of employment of highly paid salaried employee provide them benefit and facilities, whereby incidental expenses are not to be borne by them, as is the case of other salary earners. The Bill seeks to withdraw the benefit of standard deduction from assessees having salary income of more than Rs. 5,00,000.

The provisions shall come into force with effect from 1.4.1999 and will, accordingly, apply in relation to assessment year 1999-2000, and subsequent years. *[Clause 8]*

Modification in the provisions relating to perquisite value of medical benefits

Under the existing provisions, any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family, other than the treatment referred to in clauses (i) and (ii) of the proviso to clause (2) of section 17 of the Income-tax Act to the extent of ten thousand rupees is not included in the 'perquisite' of the employee.

In order to meet the rising cost of medical treatment and to mitigate the hardship faced by salaried taxpayers, in such cases, the Bill proposes to enhance the limit of ten thousand rupees to fifteen thousand rupees.

The amendment will take effect from 1.4.1999 and will, accordingly, apply in relation to assessment year 1999-2000, and subsequent years. *[Clause 9]*

100% deduction to donations made to National Sports Fund for promotion of sports and games

Under the existing provisions of section 80G of the Income-tax Act, a deduction of fifty per cent. of the donation is allowed in the computation of income of the donor. However, in respect of donations to certain funds, hundred per cent. deduction is allowed.

For raising the standard of sports and games to international levels, easy access to world class facilities, sports equipments and scientific backup to sports persons is required. To facilitate availability of adequate funds for such objects for the promotion of sports and games in the country, an amendment of section 80G is being made providing a 100% deduction for donations made to National Sports Fund to be set up by Central Government.

The proposed amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000.

[Clause 33]

INCENTIVES FOR INFRASTRUCTURE DEVELOPMENT AND INDUSTRIALISATION

Tax Holiday to enterprises generating or generating and distributing power extended upto 31.3.2003.

Under the provisions of section 80-IA of the Income-tax Act, a five-year tax holiday and a deduction of 25% (30% in the case of companies) of profit in the subsequent five years is allowed, inter-alia, to an undertaking engaged in the business of generation, or generation and distribution of power or to an industrial undertaking set up in backward States/districts. The undertaking under the existing provisions should start generating power on or before 31.3.2000.

The country continues to require large investments in power. As the gestation period for such projects is long, to remove uncertainty from the minds of potential investors, the Bill proposes to extend the benefit to undertakings, which commence generation, or generation and distribution of power on or before 31.3.2003.

The proposed amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 37]*

Tax holiday in respect of undertakings set up in industrially backward States and industrially backward Districts extended upto 31.3.2000.

Under the existing provisions of section 80-IA of the Income-tax Act, 1961, deduction is allowed, in computing the taxable income, in respect of profits derived from a new industrial undertaking, or a ship or the business of a hotel.

For encouraging industrialisation in industrially backward States, the Finance Act, 1993, had provided for a five year tax holiday for industrial undertakings set up in industrially backward States specified in the Eighth Schedule, which start manufacture or production during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 1998. After the first five years, deduction of 30% in the case of companies (25% in the case of other assessees) was allowed for the subsequent five years. The undertakings which started manufacture or production after 31st March, 1998 in backward State ceased to be entitled to the two-tier benefit. Similarly, a five-year tax holiday is available to undertakings set up in notified backward districts, which begin manufacture or production after 1.10.94 but on before 31.3.1999.

The Bill proposes to extend the tax holiday to undertakings set up in industrially backward States as specified in the Eighth Schedule which start manufacture / production even after 31.3.1998 upto 31.3.2000. It is also proposed to similarly extend the tax-holiday to undertakings setup in industrially backward districts upto 31.3.2000.

The proposed amendment will take effect from 1st April, 1999, and will, accordingly, apply in relation to assessment year 1999-2000. *[Clause 37]*

Tax holiday to radio-paging and domestic satellite service

Under the existing provisions of 80-IA, a five year tax holiday in respect of profits and gains of an assessee engaged telecommunications services is allowed with a further deduction of 25% of profits from such business in the next 5 years.

The country needs to augment its telecommunication services. For this purpose, the bill seeks to extend the benefit of deduction available to telecommunication services to radio-paging and domestic satellite services. In the case of domestic satellite service, this deduction will be allowable only to those Indian companies which own and operate satellites.

This amendment shall take effect from 1.4.1999 and will apply in relation to assessment years 1999-2000 and subsequent years.

[Clause 37]

Tax holiday to Oil Refining Industries

Under the existing provisions of section 80IA, the undertakings engaged in the commercial production of mineral oil are entitled to a 7 year tax holiday benefit. With a view to encouraging oil refining within the country in view of the increased demand, it is proposed to extend the benefit of such tax holidays to undertakings engaged in refining of oil. This benefit would be available to such undertakings which commence production on or after 1.10.98. *[Clause 37]*

Inland Port and Waterways regarded as infrastructure facility

Under the existing provisions of section 80IA, roads, highways, bridge, airport, ports and rail system are regarded as infrastructure facilities and the undertakings engaged in providing or maintaing such infrastructure facility are entitled to a tax holiday for 5 years and a deduction of 30% of profits for the next 5 years. These companies have the choice of availing such benefits in any 10 consecutive years out of initial 12 years from the year in which these commence production.

The Government has identified national waterways for improving transport infrastructure in the country. The inland port is also a very important mode of transport. The Bill, therefore, proposes to include inland ports and waterways in the defination of infrastructure facility as given in section 80IA and to allow the undertakings engaged in the development of such infrastructure to the tax holiday as available to other infrastructure facilities.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years.. *[Clause 37]*

INCENTIVES TO THE PETROLEUM SECTOR

In recognition of the need to boost the production of Petroleum and Natural Gas, it is proposed to give tax incentives. The business of enterprises engaged in extraction, production and refinement of Petroleum & Natural Gas is of a unique nature and needs special tax provisions. Recognising this need, two provisions that are tailored for this sector are proposed to be introduced. *[Clause 19]*

Tax treatment of assignment expenses

A situation unique to the oil and gas industry is the assignment or farm-out of participating interest held by an assessee in a Production Sharing Contract to a third party. As the profits of the business of prospecting for or extraction or production of natural gas are computed in accordance with the provisions of section 42 of the Income-tax Act, it is proposed to insert sub-sections in section 42, and these provisions shall be applicable when interest in any such business is transferred wholly or partly in accordance with an agreement entered into by the Central Government and the assessee. It is proposed that if the proceeds of such transfer are less than the expenditure remaining unallowed under section 42, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed. If the proceeds of transfer are in excess of the amount of expenditure remaining unallowed then such excess amount shall be chargeable to tax as profits and gains of the business in the previous year in which such business or interest had been transferred. Special provisions are also proposed for amalgamation of Indian companies.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 19]*

Site Restoration Fund Scheme

To cater to the need of proper abandonment of oil wells after their economic life, a scheme is proposed to be formulated. Under this scheme oil producing companies will be allowed to set apart every year upto 20 per cent of their taxable profits in a reserve account to be maintained with the State Bank of India by the assessee in accordance with the scheme approved in this behalf by the Ministry of Petroleum and Natural Gas. The assessee would be allowed a deduction of this amount from profits. The amount transferred to the reserve account is to be utilised only for Site Restoration purposes after cessation of commercial production of oil from a particular well. It is also proposed to provide that if any withdrawals are made from such reserve account and utilised for any purpose other than site restoration as certified by the prescribed authority, then such amount would be deemed to be the profits and gains of business for that year in which such a withdrawal had been made and taxed accordingly.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years. *[Clause 12]*

MEASURES TO ACCELERATE ECONOMIC DEVELOPMENT

Exemption from levy of capital gains tax and allowance of carry forward of losses and unabsorbed depreciation in certain cases of business re-organisation

Under the existing provision of Income Tax Act, business reorganisations have definite tax implications. Transfer of assets attracts levy of capital gains tax. Similarly, carry forward of losses and that of unabsorbed depreciation are not available to successor business entities. However, in cases of amalgamation, capital gains tax is not levied and losses and unabsorbed depreciation are allowed to be carried forward under certain conditions. The Expert Group, in the draft Income Tax Bill, has recognised the need to encourage business reorgansiations when they are in consonance with the objective of economic development and are not merely devices to secure tax advantage.

The Bill proposes to allow tax benefits in cases of business reorganisation where a firm is succeeded by company in the business carried by it and a proprietary concern is succeeded by a company.

It is proposed that the transfer of any building, machinery, plant, furniture or intangible assets to the company shall not be regarded as transfer to attract levy of capital gains subject to certain conditions. The conditions are (i) all assets and liabilities of the firm become the assets and liabilities of the company. (ii) the partners of the firm become the shareholders of company in the same propotion in which they hold share in the firm, (iii) no consideration other than shares arise to partners and (iv) the aggregate share holding of the partners in the company is at least 50% for a period of 5 years from the date of succession. Similar conditions are also stipulated in the case of a sole proprietary concern being succeeded by a company.

The Bill also provides carry forward of business loss and unabsorbed depreciation to successor companies fulfilling the above mentioned conditions.

The Bill also provides that if the conditions stipulated as above are not complied with the benefit availed by the firm or by the sole proprietor shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year or years where the requirements were not complied with.

It is also proposed that the aggregate depreciation allowable to predecessor and successor shall not exceed in any previous year the deduction calculated at the prescribed rates as if the re-organisation has not taken place.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. *[Clause 23]*

Depreciation to be allowed on intangible assets

Under the existing provisions, depreciation is allowable when building, plant, machinery or furniture is used by the assessee for the purposes of his business or profession.

It is proposed to widen the scope of this section so as to provide that depreciation will also be allowed where intangible assets are owned wholly or partly by the assessee and are used by such assessee for the purposes of his business or profession. Intangible assets, such as know-how, patent rights, copyrights, trade marks, licences, franchises or any other business or commercial rights of the assessee will form a separate block of assets. As and when any capital expenditure is incurred by an assessee on acquiring such intangible assets the amount of such expenditure will be added to the block of intangible assets and depreciation will be claimed on the written down value at the end of the financial year.

As a consequence of this amendment, it is proposed to provide that any expenditure of a capital nature incurred before the 1st April, 1998 on the acquisition of patent rights or copyrights used for the purposes of business shall not qualify for deduction under the said section 35A.It is also proposed to amend sub-section (1) of section 35AB accordingly so as to restrict the provisions of that section to lumpsum payments by the assessee in any previous year relevant to assessment year 1998-99.

These amendments will take effect from 1st April, 1999 and will, accordingly, apply in relation to assessment year 1999-2000 and subsequent years. *[Clauses 4, 11, 14 & 15]*

MEASURES TO WIDEN THE TAX BASE

Addition of two more economic indicators for obligatory filing of returns and "ONE BY SIX" scheme

Under the existing provisions it is obligatory for a person not furnishing return under sub- section (1) of section 139 but residing in a specified area and fulfilling any two of the four following conditions to file return of income.

(i) occupation of an immovable property exceeding a specified floor area by way of ownership, tenancy or otherwise.

(ii) Ownership/lease of a motor vehicle.

(iii) Subscription of a telephone

(iv) Foreign travel.

The proposed amendment adds two more economic indicators, namely:-

(v) Holding of a credit card not being an add-on card.

(vi) Membership of a club where entrance fee charged is Rs. 25,000/- or more.

The proposed amendment also provides that the obligation to file a return will now arise on fulfilling any one of the above six indicators.

It is also proposed that travel to any foreign country shall not include travel to the neigbouring countries and places of pilgrimage as may be notified by Board in the Official Gazette.

The proposed amendment will take effect from 1st day of August, 1998 and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years. *[Clause 42]*

Compulsory quoting of PAN

The existing provisions of section 139A of Income-tax Act provide for compulsory quoting of Permanent Account Number in all documents pertaining to transactions as may be prescribed by Board and entered into by the concerned persons. These transactions are being notified separately.

The Bill proposes to provide that a person shall quote his Permanent Account Number or his General Index Register (GIR) Number till such time PAN is allotted. The Bill also proposes to provide that Board may notify a class or classes of persons to whom the provision regarding compulsory quoting of PAN shall not apply. The power is delegated to Board to prescribe the form and contents which shall be furnished by a person not having either General Index Register Number or Permanent Account Number.

The proposed amendment will take effect from 1st day of August, 1998. *[Clause 43]*

Providing for penalty for non-filing of returns of income

Under the existing provisions no penalty is provided for failure to file return of income. The interest chargeable under section 234A of Income-tax Act for not furnishing the return or furnishing the same after the due date is calculated on the basis of tax payable. If no taxes are payable no interest can be charged. It is seen that a large number of persons having salary income which are subject to TDS do not file their return. Since it is proposed that loss from house property shall be allowed to be adjusted against salary income at the source itself, filing of returns is absolutely necessary to check the correctness of the claim. The penal provisions are also necessary to ensure that all such persons having taxable income file their returns of income.

The Bill, therefore, proposes to provide a penalty of Rs. 1000/- for not filing of return by due date under sub-section (1) of section 139.

This amendment will take effect from 1st April, 1999 and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years. *[Clause 63]*

MEASURES TO REDUCE LITIGATION

Abolition of the appellate level at Deputy Commissioner (Appeals)

Under the existing provisions of Income-tax Act, Deputy Commissioner (Appeals) are hearing appeals against orders passed by Income tax officers and Assistant Commissioners. The Commissioner (Appeals) are also doing the identical appeal functions in other cases. In the same case, appeal in one year may be pending before Deputy Commissioner (Appeals) and in the other year before the Commissioner (Appeals) depending upon the total income assessed. Presently, only a few posts of Deputy Commissioner (Appeals) are functioning in the country.

The Bill proposes to provide that from 1.10.98 all appeals shall be heard by Commissioner (Appeals) only by omitting the reference to Deputy Commissioner (Appeals) in various sections of the Act. Henceforth, all appeals will be only with Commissioner (Appeals). At the same time it is proposed to provide that every appeal which is pending before the Deputy Commissioner (Appeals) would stand transferred to the Commissioner (Appeals) on the appointed date.

The proposed amendment will take effect from 1st day of October, 1998. *[Clause 51]*

Providing for appeal fee for filing appeals before Commissioner (Appeals) and enhancement of appeal fee payable in respect of appeals before Appellate Tribunal

Under the existing provisions of Income-tax Act unnecessary appeals are filed on decided issues and also on issues having petty tax effect as no fees is required to file appeals before Commissioner (Appeals) and the scale of for filing appeals before Appellate Tribunal is nominal. The assessees do not avail the benefit provided in Act in respect of repetitive appeals on identical issues. A large number of these unnecessary appeals take substantial time of the Appellate Authorities and consequently slow down the pace of disposal of appeals.

With a view to discouraging unnecessary appeals and appeals having small tax effect from being filed, the Bill proposes to provide for a scale of fee for filing appeal before Commissioner (Appeals) and also enhance the existing scale of fees in relation to appeals before the Appellate Tribunal. The proposed structure of appeal fee is given below.

Particulars	*Fee for filing the appeal before CIT(A)*	*Fee for filing the appeal before ITAT*
Assessed total income - Rs. 1 lakh or less	Rs. 250/-	Rs. 500/-
Assessed total income is more than 1 lakh but not more than 2 lakhs.	Rs. 500/-	Rs. 1500/-
Appeals involving total income more than 2 lakhs	Rs. 1000/-	1% of the assessed income subject to a maximum of Rs. 10,000.
Appeals under other Direct Taxes.	Rs. 250/-	Rs. 1000/-
Miscellenous applications under sec. 254(2)	-	Rs. 50/-
Stay petitions	-	Rs. 500/-

The proposed amendment will take effect in respect of appeals to be filed on or after the 1st day of October, 1998.
[Clauses 52, 54 and 55]

Direct appeal to High Courts

According to the existing provisions, appeals arising out of the order of the Appellate Tribunal lie to the High Court where substantial question of law is involved therein. The assessee or the Commissioner can request the Appellate Tribunal for reference of question of law to the High Court. If the Appellate Tribunal decides against such reference, High Court can be moved to direct the Appellate Tribunal to make such reference and state the case. This process consumes a lot of time before the decision on merits of the case is finalised. The limited scope of section 256(2) does not allow rendering of a final decision on the issue even where the relevant facts are available to give such a decision. Hon'ble Kerala High Court in the case of CIT Vs. Wandoor Jupitar Chits(P) Ltd. 213 ITR 75 has pointed out that such provisions are archaic. Similarly, after the High Court or Supreme Court have decided on the question of law, a copy of the judgement is sent to the Registrar of the Appellate Tribunal for passing such order as necessary to dispose of the case. The above provision again contributes to delay in passing the consequential order by the Assessing Officer.

The Bill proposes to provide that an appeal shall lie against the orders of the Tribunal directly to the High Court if the High Court is satisfied that the case involves a substantial question of law. The memorandum of appeal shall precisely state the substantial question of law involving the appeal and where the appeal is made by the assessee, such appeal shall be accompanied by a fee of Rs. 10,000/- (Rs. 5,000/- in the case of Wealth-tax). Where the High Court is satisfied that a substantial question of law is involved in any case, it may itself formulate that question. The appeals shall be heard on the question so formulated. However, nothing would take away or abridge the power of the Court to hear for reasons to be recorded to hear the appeal on any other substantial questions of law if it is satisfied that the case involves such questions. The High Court may, determine any issue necessary for disposal of appeal which has not been determined by the Appellate Tribunal.

Similar provisions for direct appeal to High Court have also been provided in Wealth-tax.

The proposed amendment takes effect from 1st day of October, 1998. *[Clause 60]*