FINANCE BILL, 2003

PROVISIONS RELATING TO DIRECT TAXES

The provisions in Finance Bill, 2003, 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 2003-2004; the rates at which tax will be deductible at source during the financial year 2003-2004 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games 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 or payment of tax on 'Salaries' and charging of income-tax on current income in certain cases for the financial year 2003-2004.

(ii) Amendment of the Income-tax Act, inter alia, with a view to provide incentives for infrastructure development, coffee industry, providing measures for social welfare, industrialization, measures for development of capital markets, widening of tax base, checking tax evasion and avoidance, rationalization of certain provisions and tax payer friendly measures.

(iii) Amendment of the Wealth-tax Act, 1957.

(iv) Amendment of the Gift-tax Act, 1958.

(v) Amendment of the Expenditure-tax Act, 1987.

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 provision 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 to tax for the assessment year 2003-2004.

In respect of incomes of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2003-2004, 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, 2002, 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 2002-2003. It has also been specified that in the case of individuals, Hindu undivided families, association of persons and body of individuals having total income exceeding Rs. 60,000/-, the tax so computed after rebate under Chapter VIII-A shall be enhanced by a surcharge of five per cent. for purposes of the Union. In the case of every artificial juridical person, a firm, a local authority, a co-operative society and a company, the tax so computed shall be enhanced by a surcharge of five per cent.

II. Rates for deduction of income-tax at source during the financial year 2003-2004 from income other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2003-2004 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, 2002, for the purposes of deduction of income-tax at source during the financial year 2002-2003. However, in the case of a non-resident Indian, a person who is not resident in India and a foreign company, no tax would be required to be deducted at source from capital gains arising on the transfer of units of the Unit Scheme, 1964 where the transfer takes place after 1st April, 2002 and long-term capital gains on transfer of equity shares of a company listed in a recognized stock exchange which are acquired on or after 1st March, 2003 but before 1st March, 2004. The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union as follows:

(i) in the case of every individual, Hindu undivided family, association of persons and body of individuals at the rate of ten per cent. of such tax where the income or the aggregate of such incomes paid or likely to be paid exceeds Rs.8,50,000/-;

(ii) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax; and

(iii) in the case of every artificial juridical person, at the rate of ten per cent. of such tax.

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 2003-2004.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2003-2004 and also for computation of "advance tax" payable during that year in the case of all categories of tax payers 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 2003-2004 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, assessment of persons who are likely to transfer property to avoid tax, or assessment of bodies formed for short duration, 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 persons, etc.

No change is proposed in the rate structure. However, the tax payable would be enhanced by a surcharge for purposes of the Union at the rate of ten per cent. of the tax payable (after allowing rebate under Chapter VIII-A) in cases of persons having total income exceeding Rs.8,50,000/-. No surcharge would be payable by persons having incomes of Rs.8,50,000/- or below. Marginal relief would be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs.8,50,000/- is limited to the amount by which the income is more than Rs.8,50,000/-.

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

TABLE

(a)		(b)	
Income slab	**Rates as specified in Part I of First Schedule to the Bill (i.e., existing rates)**	**Income slab**	**Rates as specified in Part III of First Schedule to the Bill (i.e., proposed rates)**
Upto Rs. 50,000/-	Nil	Upto Rs. 50,000/-	Nil
Rs.50,001/- to Rs.60,000/-	10 %	Rs.50,001/- to Rs.60,000/-	10 %
Rs.60,001/- to Rs.1,50,000/-	20 %[1]	Rs.60,001/- to Rs.1,50,000/-	20 % [2]
Above Rs.1,50,000/-	30 % [3]	Above Rs.1,50,000/-	30 %[4]

[1] *Persons in this slab would be required to pay five per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A*

[2] *Persons in this slab would be required to pay no surcharge on the total income-tax payable after rebate under Chapter VIII-A*

[3] *Persons in this slab would be required to pay five per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A*

[4] *Persons having income exceeding Rs.8,50,000/- in this slab would be required to pay ten per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A*

The impact of levy of surcharge 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.)	Additional Tax liability (Rs.)	Additional Tax (%)
50,000	Nil	Nil	Nil	Nil
55,000	500	500	Nil	Nil
60,000	1,000	1,000	Nil	Nil
60,010	1,010 *	1,002	(-)8	(-)0.79
60,020	1,020 *	1,004	(-)16	(-)1.57
60,050	1,050 *	1,010	(-)40	(-)3.81
60,100	1,071	1,020	(-)51	(-)4.76
60,200	1,092	1,040	(-)52	(-)4.76
75,000	4,200	4,000	(-)200	(-)4.76
1,50,000	19,950	19,000	(-)950	(-)4.76
2,00,000	35,700	34,000	(-)1,700	(-)4.76
3,00,000	67,200	64,000	(-)3,200	(-)4.76
5,00,000	1,30,200	1,24,000	(-)6,200	(-)4.76
7,50,000	2,08,950	1,99,000	(-)9,950	(-)4.76
8,00,000	2,24,700	2,14,000	(-)10,700	(-)4.76
8,50,000	2,40,450	2,29,000	(-)11,450	(-)4.76
8,55,000	2,42,025	2,34,000 #	(-)8,025	(-)3.31
8,60,000	2,43,600	2,39,000 #	(-)4,600	(-)1.88
8,65,000	2,45,175	2,44,000 #	(-)1,175	(-)0.47
8,70,000	2,46,750	2,49,000 #	2,250	0.91
8,75,000	2,48,325	2,54,000 #	5,675	2.28
8,80,000	2,49,900	2,59,000 #	9,100	3.64
8,85,000	2,51,475	2,63,450	11,975	4.76
8,90,000	2,53,050	2,65,100	12,050	4.76
10,00,000	2,87,700	3,01,400	13,700	4.76
25,00,000	7,60,200	7,96,400	36,200	4.76
1,00,00,000	31,22,700	32,71,400	1,48,700	4.76

* *Marginal relief would be provided to ensure that the additional income-tax payable, including surcharge, on the excess of income over Rs.60,000/- is limited to the amount by which the income is more than Rs.60,000/-.*

\# *Marginal relief would be provided to ensure that the additional income-tax payable, including surcharge, on the excess of income over Rs.8,50,000/- is limited to the amount by which the income is more than Rs.8,50,000/-.*

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. The tax payable would be enhanced by a surcharge for the purposes of the Union at the rate of two and one-half per cent. of the tax payable.

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. The tax payable by firms would be enhanced by a surcharge for the purposes of the Union at the rate of two and one-half per cent. of the tax payable.

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. The tax payable would be enhanced by a surcharge for the purposes of the Union at the rate of two and one-half per cent. of the tax payable.

E. Companies

In the case of companies, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Bill. There is no change in the existing rates of thirty-five per cent for domestic companies and forty per cent. for foreign companies. The tax payable by all companies would be enhanced by a surcharge at the rate of two and one-half per cent. of the tax payable.

[Clause 2 & First Schedule]

WELFARE MEASURES

Enhancement of threshold limit for the purpose of deduction of tax at source from dividends and income from units.

Under the existing provisions contained in section 194, no tax is required to be deducted at source by a company in the case of a shareholder, being an individual, if the dividend is paid by the company by an account payee cheque and the amount of the dividend or, as the case may be, the aggregate of the amounts of the dividend distributed or paid or likely to be distributed or paid during the financial year does not exceed one thousand rupees.

Further, under the existing provisions contained in section 194K, no tax is required to be deducted at source by the person responsible for making the payment of any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India to the account of, or to, the payee where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year does not exceed one thousand rupees.

With a view to give relief to small investors and senior citizens, it is proposed to provide that no deduction of tax at source shall be made from income by way of dividends or the income from units where the amount of dividend or income, as the case may be, does not exceed two thousand five hundred rupees.

These amendments will take effect retrospectively from 1st August, 2002, and shall apply in respect of dividends declared, distributed or paid before 1st April, 2003. *[Clauses 67 and 72]*

No deduction of tax at source to be made in certain cases on filing of self-declaration

Under the existing provisions contained in section 197A, no tax is deducted at source if an individual, who is resident in India, furnishes a declaration that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. Sub-section (1B) of the aforesaid section provides that the provisions of the section shall not apply where the amount of any income from dividends, payments in respect of deposits under national Savings Schemes, etc. or income from interest on securities or interest other than “interest on securities” or units or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.

With a view to give relief to senior citizens, it is proposed to provide that no deduction of tax shall be made under section 193 or section 194 or section 194A or section 194EE or section 194K in the case of an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year and is entitled to a deduction from the amount of income-tax on his total income referred to in section 88B, if such individual furnishes a declaration to the person responsible for paying any income of the nature referred to in those sections to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. The prohibition contained in sub-section (1B) will not be applicable in the case of senior citizens.

This amendment will take effect from 1st June, 2003. *[Clause 78]*

Tax not to be deducted at source while making payments of fees for professional services for personal purpose

Under the existing provisions contained in the second proviso of sub-section (1) of section 194J, an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB of the Income-tax Act during the financial year immediately preceding the financial year in which fees for professional or technical services is credited or paid is required to deduct tax at source while making the payment.

The Bill proposes to insert a new proviso to the said sub-section so as to provide that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax from the sum payable by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes.

This amendment will take effect from 1st June, 2003. *[Clause 71]*

Exemption of amount received under VRS Compensation allowable even if it is receivable or received in instalments

Under the existing provision contained in clause (10C) of section 10, any amount received by an employee of a public sector company or any other company or an authority established under a Central, State or Provincial Act or a local authority or a co-operative society, or a University, or Indian Institute of Technology, or State or Central Government, or an institution having national or state level importance, or a institute of management, notified by the Central Government, etc., at the time of voluntary retirement or termination of his service in accordance with any scheme or schemes of voluntary retirement, or in the case of a public sector company, a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees, is not included in computing the total income of such employee.

It is proposed to provide that any amount, not exceeding five lakh rupees, received or receivable (i.e., even if received in instalments) by an employee on his voluntary retirement or termination of his service shall not be included in computing the total income of such employee.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6(b)]*

Exemption of the income of Ex-Serviceman Corporations

At present the income of the Ex-servicemen Corporations are subject to tax.

With a view to recognise the exemplary services offered by the members of our Armed Forces, it is proposed to exempt income of the Corporations, established by a Central Act or any State Act, for the welfare and economic upliftment of the ex-servicemen from income-tax.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6(j)]*

Tax exemption to Asian Organisation of the Supreme Audit Institutions

Under the existing provision contained in clause (23BBD) of section 10, any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as “ASOSAI-SECRETARIAT” under the Societies Registration Act, 1860 is not to be included in computing its total income for three previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2004.

The organization has decided to keep its Secretariat in India upto December, 2006. It is, therefore, proposed to amend clause (23BBD) of section 10 so as to extend the exemption for a further period of four assessment years beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2008.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6(e)]*

Increasing the amount of standard deduction for salaried tax payers

Under the provisions of clause (i) of section 16, deduction of a specified amount is available to an assessee having income from salary. As per the existing provisions, the amount of deduction in case of a salaried taxpayer having salary income upto one lakh fifty thousand rupees before allowing deduction under this clause, is equal to thirty-three and one-third per cent. of the salary or thirty thousand rupees, whichever is less. In case of an assessee whose income from salary exceeds rupees 1.5 lacs but is less than rupees 3 lacs before allowing deduction under this clause, the standard deduction is rupees 25,000. In case of an assessee whose income from salary exceeds rupees 3 lacs but is less than rupees 5 lacs before allowing deduction under this clause, the standard deduction is rupees twenty thousand. No deduction is allowed in case of an assessee whose income from salary exceeds rupees 5 lacs.

It is proposed to increase the amount of deduction under this section with a view to provide tax relief to salaried taxpayers. Accordingly, an assessee, whose income from salary before allowing a deduction under this clause, does not exceed five lakh rupees, shall be allowed a deduction of a sum equal to forty per cent. of the salary or thirty thousand rupees, whichever is less. An assessee whose income from salary, before allowing a deduction under this clause, exceeds five lakh rupees, shall be allowed a deduction of a sum of twenty thousand rupees.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 11]*

Deduction in respect of maintenance including medical treatment of a dependant being a person with disability or a person with severe disability

Under the existing provisions contained in section 80DD, an assessee, who is resident in India, being an individual or a Hindu undivided family, is allowed a deduction of rupees forty thousand, if the assessee has, during the previous year, incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a handicapped dependant or paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or Unit Trust of India, for the maintenance of handicapped dependant. For this purpose, various criteria for defining the eligible level of disability are specified in Rule-11A of the Income-tax Rules, 1962. These rules are at variance with the rules for defining disability under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, under which disability means any disability over 40%.

It is proposed to substitute the existing section 80-DD with a view to harmonize the criteria for defining disability as existing under the Income-tax Rules with the criteria prescribed under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and to increase the amount of deduction. It is proposed to provide a deduction of an amount of rupees fifty thousand under this section, for the medical expenditure, etc. incurred in respect of a dependant being a person with disability, as defined under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is also proposed to provide that a higher deduction of rupees seventy-five thousand shall be allowed, where such dependant is a person with severe disability under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 having any disability over 80%. It is also proposed to define the term 'dependant' so as to include in the case of an individual, the spouse, children, parents, brothers and sisters and in the case of a Hindu Undivided Family, a member thereof, who is wholly or mainly dependant on the assessee and has not claimed any deduction under section 80U in the computation of his income.

For claiming the deduction, the assessee shall have to furnish a copy of the certificate issued by the medical authority under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with the return of income filed under section 139. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 31]*

Deduction in the case of a person with disability or a person with severe disability

Under the existing provisions contained in the section 80U, an individual, being a resident, is allowed a deduction of forty thousand rupees if he, at the end of the previous year, is suffering from a permanent physical disability (including blindness) or is subject to mental retardation, which is certified by a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in a government hospital, and which has the effect of reducing considerably such individual's capacity for normal work or engaging in a gainful employment or occupation. For this purpose, various criteria for defining the eligible level of disability are specified in Rule-11D of the Income-tax Rules, 1962. These rules are at variance with the rules for defining disability under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, under which disability means any disability over 40% and also includes in addition to physical disabilities, mental illness.

It is proposed to substitute the existing section 80U with a view to harmonize the criteria for defining disability as existing under the Income-tax Rules with the criteria prescribed under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and to increase the amount of deduction. It is proposed to provide a deduction of an amount of rupees fifty thousand under this section, in respect of a person with disability, as defined under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is also proposed to provide that a higher deduction of rupees seventy-five thousand shall be allowed in respect of a person with severe disability under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, having any disability over 80%.

For claiming the deduction, the assessee shall have to furnish a copy of the certificate issued by the medical authority under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with the return of income filed under section 139. Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 40]*

Increasing the amount of rebate of income-tax in case of individuals of sixty-five years or above

Under the existing provision, individuals in the age group of sixty-five years or more are entitled to a deduction from the amount of income-tax on their total income in any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of fifteen thousand rupees, whichever is less.

With a view to provide tax relief to the senior citizens, it is proposed to enhance the said limit of tax rebate to twenty thousand rupees. Accordingly, a senior citizen having income upto rupees one lakh fifty-three thousand and where such senior citizen is a pensioner or a salaried taxpayer having income upto rupees one lakh eighty-three thousand, shall not have to pay any income tax.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 42]*

New provision for allowing deduction upto rupees three lakhs in respect of royalty income, etc. of authors of certain books

Authors play a significant role in the development of any society by contributing to the flow of new ideas and creative streams of thought. Authoring a book is often a product of many years of hard work with associated costs, many of which are not allowable as a deductible expense from their income. On the other hand, the income stream of authors is uncertain and unevenly spread. With a view to provide tax relief to the authors in respect of their income from their profession of author, it is proposed to insert a new section 80QQB under the Income-tax Act, 1961.

The new section 80QQB proposes to provide for a deduction up to rupees three lakhs to an individual resident, being an author, in respect of any income derived from the exercise of his profession, on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book. Deduction shall be allowed in respect of any book, being a work of literary, artistic or scientific nature. However, it is proposed that the deduction shall not be available in respect of income from text books for schools, guides, commentaries, newspapers, journals, magazines, diaries, brochures, tracts, pamphlets, and other publications of a similar nature, by whatever name called. Where an assessee claims deduction under this section, no deduction in respect of the same income may be claimed under any other provision of the Income-tax Act, 1961.

It is proposed to provide that for calculating the deduction under this section, the amount of eligible income shall not exceed 15% of the value of the books sold during the previous year. However, this condition is not applicable where the royalty or copyright fees, is receivable in lump sum in lieu of all rights of the author in the book. For claiming the deduction, the assessee shall have to furnish a certificate in the prescribed manner in the prescribed format, duly verified by the person responsible for paying the income, setting forth details as may be prescribed.

Where the eligible income is earned outside India, the deduction shall be allowed on so much of the income earned in foreign exchange, which is brought in India within six months from the end of previous year or within such further period as the competent authority may allow in this behalf. For this purpose, competent authority shall mean the Reserve Bank of India or such other authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange. It is proposed to provide that in order to claim deduction in such cases, a certificate in line with similar provisions existing in the Act to the effect that the deduction has been correctly claimed in accordance with the provision of this section would be required to be furnished.

The proposed section will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 38]*

Rebate for tuition fees paid for the education of any two children

The existing provisions contained in section 88 provide for a deduction from the tax payable on the total income of an individual or a Hindu undivided family, which is equal to a fixed percentage of sums paid or deposited in specified schemes. For the purpose of this deduction, the aggregate sums paid or deposited in specified schemes eligible for the deduction under this section are limited to rupees seventy thousand. Where such sums include subscription to equity shares or debentures, or units of mutual funds forming part of an eligible issue of capital, a higher limit of eligible investment of rupees one hundred thousand is available.

In order to provide necessary fiscal support for imparting education ,it is proposed to include within the purview of tax rebate under section 88, any sum paid, as tuition fees whether at the time of admission or thereafter, to any university, college, school or other educational institution situated within India for the purpose of full-time education of any two children of an assessee, as does not exceed an amount of twelve thousand rupees in respect of each such child. However, the eligible amount shall not include any payment towards any development fees or donation or payment of similar nature. Deduction in respect of this payment shall be available within the eligible limit of rupees seventy thousand.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 41]*

MEASURES FOR RATIONALISATION AND SIMPLIFICATION

Deduction for expenditure incurred by entities established under any Central, State or Provincial Act

Entities that are created under an Act of Parliament have the basic object and function of carrying on developmental activities in the areas as specified in the said Acts. By the Finance Act, 2001 and Finance Act, 2002, tax exemption of certain bodies set up through Acts of the Parliament was withdrawn. Subsequent to the removal of the tax shield, a doubt has arisen that some of the activities having no profit motive being carried on by such entities cannot be said to be business and, therefore, expenditure incurred on such developmental activities may not be allowed as a deduction while computing the income under the head “Profits and gains of business or profession”.

The Bill proposes to insert a new clause (xii) in sub-section (1) of section 36 so as to provide that any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorized by the Act under which such corporation or body corporate was constituted or established shall be allowed as a deduction in computing the income under the head “Profits and gains of business or profession”.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent years. *[Clause 15]*

Abolition of tax on dividends and levy of additional income-tax on distributed profits

Under the existing provisions contained in section 115-O, domestic companies were liable to pay ten per cent. additional income-tax on profits distributed by them on or before the 31st March, 2002. The tax so paid by the company was treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend.

From 1.4.2002 dividend declared, distributed or paid was chargeable to income-tax in the hands of the recipients, i.e. the shareholders. Section 80L provided for deduction from the gross total income in respect of dividends received by a taxpayer.

To prevent the cascading effect in the case of a company, section 80M provided for a deduction to a domestic company which receives dividend from another domestic company and again distributes dividend out of its profits. The amount of deduction on the dividends, so received by a domestic company from another domestic company, is limited to the extent of dividends distributed by the recipient company on or before the due date of filing of return.

Under the provisions of section 194, tax is required to be deducted at source from dividends in the case of a shareholder who is resident in India. Further, section 195 provides for tax deduction at source from dividends in the case of a shareholder who is a non-resident or a foreign company at the rates in force. Tax is also required to be deducted at source under section 196C in respect of dividend income, in respect of bonds or Global Depository Receipts. Section 196D provides for deduction of tax at source in respect of securities referred to in clause (a) of sub-section (1) of section 115AD.

It has been argued that it is easier to collect tax at a single point, i.e., from the company rather than compel the company to compute the tax deductible in the hands of the shareholders.

It is, therefore, proposed to substitute sub-section (1) of section 115-O of the Income-tax Act to provide that the amounts declared, distributed or paid on or after 1st April, 2003 by a domestic company by way of dividends shall be charged to additional income-tax at the flat rate of twelve and one-half per cent., in addition to the normal income-tax chargeable on the income of the company.

It is also proposed to exempt from income-tax, dividends received from domestic companies on or after 1st April, 2003. Consequently, deductions under section 80L and 80M in respect of dividends are proposed to be discontinued. The provisions relating to tax deduction at source are also proposed to be suitably amended so as to provide for no deduction of tax at source from income by way of dividends.

Since provisions of section 115-O would now be operative, it is also proposed to insert reference to “other than dividends referred to in section 115-O” in sections 10(23FA), 10(23G), 115A, 115AC, 115ACA, 115AD and 115C.

These amendments are proposed to be made effective in respect of amounts declared, distributed or paid as dividends on or after 1st April, 2003. *[Clauses 6, 29, 36, 37, 44, 45, 46, 47, 48, 49, 67, 73, 75 and 76]*

Abolition of tax on income from units and levy of additional income-tax on income distributed by Mutual Funds

Under the existing provisions contained in section 115R, any amount of income distributed by the Unit Trust of India or a Mutual Fund to its unit holders on or before the 31st March, 2002 is chargeable to tax and the UTI or the Mutual Fund is liable to pay additional income-tax on such distributed income at the rate of ten per cent.

From 1.4.2002 income from units referred to in section 115R is chargeable to income-tax in the hands of the recipient, i.e. the unit holder. Section 80L provided for deduction from the gross total income in respect of income received in respect of units from the UTI or a Mutual Fund.

Under the provisions of section 194K, tax is required to be deducted at source from income in respect of units in the case of a unit holder who is resident in India. Tax is also required to be deducted at source under section 196A in respect of any income paid to a non-resident, not being a company, or to a foreign company, in respect of units of the UTI or a Mutual Fund at the rate of twenty per cent.

In the case of dividends distributed by a company, it has been proposed to levy additional income-tax on the domestic company and exempt dividend in the hands of the shareholder.

It is, therefore, proposed to amend section 115R of the Income-tax Act to provide that any amount of income distributed by the specified company as defined in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 or a Mutual Fund to its unit holders shall be chargeable to tax and the specified company or the Mutual Fund shall be liable to pay additional income-tax at the flat rate of twelve and one-half per cent.

It is also proposed to exempt from income-tax, income from units received by a unit holder from the administrator of the specified undertaking as defined in Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, or Mutual Fund or the specified company on or after 1st April, 2003. Consequently, deduction under section 80L in respect of income from units is proposed to be discontinued. The provisions relating to tax deduction at source from income in respect of units are also proposed to be suitably amended so as to provide for no deduction of tax at source from such income.

It is also proposed to provide that the specified company or a Mutual Fund shall be liable to pay interest at the rate of one and one-fourth per cent. every month or part thereof on amount of the additional income-tax not paid within the specified time. It is also proposed to provide that the person responsible for making payment of income distributed by the specified company or a Mutual Fund shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it in case the additional income-tax is not paid to the credit of the Central Government.

Consequential amendments are proposed in section 10(23D) of the Income-tax Act so as to provide that the exemption in respect of income of a Mutual Fund shall be subject to the provisions of Chapter XII-E of the Income-tax Act.

These amendments are proposed to be made effective in respect of income distributed on or after 1st April, 2003.

[Clauses 6, 36, 50, 51, 52, 72 and 74]

Clarification of provisions relating to presumptive income for truck owners

Under the existing provision contained in sub-section (1) of section 44AE, in the case of an assessee, who owns not more than ten goods carriages and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head “Profits and gains of business or profession” is deemed to be the aggregate of the profits and gains from all the goods carriages owned by him in the previous year.

The Bill proposes to amend the said sub-section so as to clarify that the provisions of the section shall apply in the case of an assessee who owns not more than ten goods carriages at any time during the previous year.

This amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 21]*

Rationalisation of the definition of income

Under the existing provisions contained in sub-clause (xii) of clause (24) of section 2, sums referred to in clause (vii) of section 28 are included in the definition of income.

The Bill proposes to amend the said sub-clause so as to give reference to clause (va) of section 28. The proposed amendment is consequential to the amendment of sections 2 and 28 of the Income-tax by the Finance Act, 2002.

This amendment will take effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years. *[Clause 3]*

Rationalisation of section 197 relating to certificate for tax deduction at lower rate

Section 197 of the Income-tax Act provides that where, in the case of any income of any person, tax is required to be deducted at source under the provisions of sections 192,193, 194A, 194D, 194H, 194-I, 194K, 194L and 195, and the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rate or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf give to him such certificate as may be appropriate.

The Bill proposes to include within the scope of the said section payments of any sum to contractors and sub-contractors referred to in section 194C, any income by way of commission, etc., on sale of lottery tickets referred to in section 194G and payment of any sum by way of fees for professional or technical services referred to in section 194J. The Bill also proposes to omit the reference of section 194L relating to payment of compensation on acquisition of capital asset in the said section.

The Bill also seeks to amend sections 194C, 194G and 194J of the Income-tax Act. These amendments are consequential to the proposed inclusion of the said sections within the scope of section 197.

These amendments will take effect from 1st June, 2003. *[Clauses 68, 69, 71 and 77]*

Rationalisation of provisions relating to assessment of firms

Under the existing provision contained in sub-section (5) of section184, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall be assessed in the same manner as an association of persons, and all the provisions of the Income-tax Act shall apply accordingly.

Further, the existing provisions of section 185 provide that in case a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be assessed for that assessment year in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly.

With a view to rationalize the provisions relating to assessment of firms, the Bill proposes to substitute sub-section (5) of section 184 and section 185 so as to provide that notwithstanding anything contained in any other provision of this Act, where there is on part of the firm any failure as referred to in section 144 or, a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession” and sum amount of interest, salary, bonus, commission or remuneration shall not be charged to tax in the hands of the partners under clause (v) of section 28.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clauses 63 and 64]*

Clarificatory amendments in respect of deduction of cost of repairs and current repairs

Under the existing provisions contained in sub-clause (i) and sub-clause (ii) of clause (a) of section 30 cost of repairs to the premises occupied by the assessee as a tenant and the amount paid on account of current repairs to the premises occupied by the assessee, otherwise than as the tenant, are allowable as deduction in the computation of income under the head “profits and gains of business or profession”.

Under the existing provisions contained in clause (i) of section 31, the amount paid on account of current repairs of machinery, plant or furniture is allowed as deduction in the computation of income under the head “profits and gains of business or profession”.

The existing provisions of these sections have been a subject matter of unnecessary litigation. It is, therefore, proposed to clarify that expenditure incurred on cost of repairs and current repairs shall not include any expenditure in the nature of capital expenditure.

The proposed amendments will take effect from the 1st day of April, 2004 and will, accordingly, apply in relation to assessment year 2004-2005 and subsequent years. *[Clauses 12 and 13]*

Clarificatory amendments in respect of deduction for interest on borrowed capital

Under the existing provisions contained in clause (iii) of sub-section (1) of section 36, deduction of interest is allowed in respect of capital borrowed for the purposes of business or profession in the computation of income under the head "profits and gains of business or profession".

The existing provisions have been prone to litigation.

It is, therefore, proposed to provide that no deduction will be allowed in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset for extension of existing business or profession (whether capitalized in the books of account or not) for the period beginning from the date on which the capital was borrowed for the acquisition of the asset till the date on which such asset was first put to use.

The proposed amendment will take effect from the 1st day of April, 2004 and will, accordingly apply in relation to assessment year 2004-2005 and subsequent years. *[Clause 15]*

Clarificatory amendments regarding definitions of certain terms relevant to income from profits and gains from business or profession

The existing provisions contained in clause (3) of section 43 defines the expression "plant" in an inclusive manner and further excludes tea bushes or livestock.

The coverage of the term 'plant' has been a subject matter of litigation, particularly on the issue, whether buildings or furniture and fittings constitute 'plant'

It is proposed to provide for exclusion of the assets, namely, "buildings or furniture and fittings" from the definition of the expression "plant".

Similarly, under the existing provisions of clause (6) of section 43, the use of the expression "as appearing in the books of account" was inadvertent.

It is, therefore, proposed to omit the words "as appearing in the books of account" from Explanation 2B so as to clarify that the written down value of the block of assets in the case of the resulting company will be the written down value of the transferred assets of the demerged company.

The proposed amendment will take effect from the 1st day of April, 2004 and will, accordingly apply in relation to assessment year 2004-2005 and subsequent years. *[Clause 17]*

Charging of interest on excess refund granted at the time of summary assessment

Under the provisions of section 143(4), where a regular assessment under section 143(3) or section 144 is made, any tax or interest paid under section 143(1) shall be deemed to have been paid towards such regular assessment and if no refund is due on regular assessment or the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded is deemed to be tax payable by the assessee.

In a case where an assessee claims refund of a substantial portion of advance-tax or TDS or TCS treated as paid by him on the basis of the total income as declared in his return of income furnished under section 139, such refund has to be granted to him at the time of processing of the return under section 143(1). Subsequently, if regular assessment is made on a total income much higher than the returned income, the refund earlier granted to the assessee or a substantial portion of it is treated as tax payable. But while the assessee pays interest for shortfall in payment of advance-tax with effect from the 1st day of the assessment year, nothing is charged from the assessee for having utilized the refund amount, till the date of regular assessment.

The Bill, therefore, proposes to insert a new section 234D in the Income-tax Act to charge interest on excess refund granted at the time of summary assessment.

Sub-section (1) of the proposed section provides that where any refund is granted to the assessee under sub-section (1) of section 143 and no refund is due on regular assessment, or the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment, then, the assessee shall be liable to pay simple interest at the rate of two-third per cent. on the whole or the excess amount so refunded for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

Sub-section (2) of the proposed section provides that where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 254D of the Income-tax Act, the amount of refund granted under sub-section (1) of section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then the interest chargeable under sub-section (1), shall be reduced accordingly. It has also been provided that an assessment made for the first time under section 147 or section 153A shall be regarded as a regular assessment for the purposes of aforesaid section.

This amendment will take effect from 1st June, 2003. *[Clause 84]*

Clarification regarding the Credit Guarantee Fund Trust for Small Industries

Under the existing provisions contained in clause (23EB) of section 10, the income of the Credit Guarantee Fund Trust for Small Scale Industries is exempt from tax for a period of five years relevant to the assessment years beginning on the 1st April, 2002 and ending on the 31st March, 2007.

The Bill proposes to amend the said clause so as to clarify the name of the trust as being the "Credit Guarantee Fund Trust for Small Industries".

This amendment will take effect retrospectively form 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and four subsequent years. *[Clause 6]*

Rationalisation of provisions relating to direct payment of tax by the assessee when tax not deducted at source

Under the existing provision contained in section 191, in the case of income in respect of which provision is not made under the provisions of Chapter XVII-A of the Income-tax At for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of the said Chapter, income-tax shall be payable by the assessee direct.

The Bill proposes to clarify that if the principal officer or the company referred to in section 194 or the person referred to in section 200, does not deduct the whole or any part of the tax, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default as referred to in sub-section (1) of section 201 in respect of such tax unless such income-tax has been paid directly by the assessee himself.

This amendment will take effect from 1st June, 2003. *[Clause 65]*

Clarification regarding deduction available under section 36(1)(x)

Under the existing provision contained in clause (x) of sub-section (1) of section 36, in computing the income chargeable under the head "Profits and gains of business or profession", a deduction is allowed in respect of any sum paid by a public financial institution by way of contribution towards any fund specified under clause (23E) of section 10.

The Bill proposes to amend the said clause (x) so as to provide that the deduction shall be allowable in respect of any sum paid by a public financial institution by way of contribution towards any Exchange Risk Administration Fund set up by public financial institutions, either jointly or separately. The amendment is consequential to the omission of clause (23E) of section 10 by the Finance Act, 2002.

This amendment will take effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years. *[Clause 15]*

Modification of provisions relating to deduction in respect of certain liabilities

Under the existing provisions contained in section 43B, deduction for any sum payable by the assessee as tax, duty, cess, etc. or as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, etc. is allowed in computing the income of that previous year in which the sum is actually paid. Clause (e) of the said section relates to any sum payable by the assessee as interest on any term loan from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan.

The first proviso to the said section provides that the deduction shall be allowed if the sum is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return.

The second proviso to the said section provides that no deduction shall, in respect of any sum referred to in clause (b), i.e. any sum payable as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for welfare of employees be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realized within fifteen days from the due date.

The Bill proposes to amend clause (e) of the said section so as to provide that deduction for the interest on any loan or advances from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan or advances shall be allowed as deduction in computing the income of the previous year in which such sum is actually paid.

The Bill also proposes to provide that in case of deduction of payments made by the assessee as an employer by way of contribution to any provident fund or superannuation fund or any other fund for the welfare of the employees shall be allowed in computing the income of the year in which such sum is actually paid. In case the same is paid before the due date of filing the return of income for the previous year, the allowance will be made in the year in which the liability was incurred.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 18]*

Modification of provisions of sections 17 of the Wealth-tax Act and Section 16 of the Gift-tax Act

Under the existing provisions contained in section 17 of the Wealth-tax Act, 1957, in a case where net wealth chargeable to tax has escaped assessment, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period not being less than thirty days as may be specified in the notice, a return of his net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice.

The existing provisions contained in section 16 of the Gift-tax Act, 1958 provide that, in a case where taxable gifts, in respect of which any person is assessable under the said Act, (whether made by him or by any other person) have escaped assessment, the

Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period not less than thirty days as may be specified in the notice, a return of his taxable gifts made by him or by such other person during the previous year mentioned in the notice in respect of which he is assessable.

The Bill proposes to amend section 17 of the Wealth-tax Act and section 16 of the Gift-tax Act so as to omit the time limit of not less than thirty days for furnishing of returns on lines similar to the amendment of section 148 by the Finance Act, 1996.

These amendments will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to notices issued on or after 1st April, 1989. *[Clauses 93 and 94]*

Exemption of income by way of royalty received in pursuance of an agreement for providing services in connection with the security of India

Under the existing provision contained in clause (6C), income arising to a foreign company, notified by the Central Government in the Official Gazette, by way of fees for technical services received in pursuance of an agreement entered into with the Government for providing services in or outside India in projects connected with security of India, is not included in computing its total income. Payments in the nature or royalty are, however, not covered by this provision.

It is, therefore, proposed to amend the said clause (6C) so as to extend the exemption also to the income arising to a foreign company, notified by the Central Government in the Official Gazette, by way of royalty received in pursuance of an agreement for providing services in connection with the security of India.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6(a)]*

Empowering Assessing Officers to allow inter-trust donations where a trust or institution is being dissolved

Under the existing provision contained in the proviso to sub-section (3A) of section 11, where due to circumstances beyond the control of a trust or institution in receipt of the income, the accumulated income could not be applied for the purpose for which it was accumulated or set apart, transfer of any such accumulated income to other charitable trusts / institutions is not allowed as application of income towards charitable purposes. This provision has created genuine problems for those trusts and institutions which are wound-up.

In order to remove this hardship, it is proposed to amend the proviso to sub-section (3A) of section 11 so as to empower the Assessing Officer to allow donation to another trust or institution as application of accumulated income for charitable purposes in the year in which the trust or institution claiming exemption is dissolved.

The proposed amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years. *[Clause 10]*

Removal of exemption available on the interest income of company on moneys borrowed from sources outside India for providing long term finance

Under the existing provision contained in clause (15)(iv)(g) of section 10, interest payable by a public company formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes, being a company eligible for deduction under clause (viii) of sub-section (1) of section 36 on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government is exempt. Exemptions of similar nature already stand withdrawn in respect of Government or local authority, IDBI, NHB, SIDBI, ICICI, etc. w.e.f. 01-06-2001.

It is, therefore, proposed to amend clause (15)(iv)(g) of section 10 so as to provide that this exemption, which is still available to housing finance companies, shall not be available to them, where the loan agreement is approved by the Central Government after 31st May, 2003.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6(d)]*

Change in the definition of ‘not ordinarily resident’

Under the existing provision contained in clause(6) of section 6, a person is said to be “not ordinarily resident” in India in any previous year if such person is an individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more; or is a Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more. This definition has been subject to differing legal interpretations.

In order to remove any doubts in this regard, it is proposed to substitute the existing definition with a new one to provide that a person would be “not ordinarily resident” in India in any previous year if such person is an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or is a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less. The proposed amendment is clarificatory in nature and will take effect from 1st April, 2004. *[Clause 4]*

Definition of the term 'business connection'

Under the existing provisions contained in sub-section (1) of section 9, all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India, is deemed to accrue or arise in India. The term 'business connection' has also been referred to in section 163 in relation to an agent. This term has, however, not been defined in the Income-tax Act.

In order to remove doubts regarding the expression 'business connection', it is proposed to insert two Explanations to clause (i) of the said sub-section, clarifying that the expression 'business connection' shall include a person acting on behalf of the non-resident, who:-

(i) has and habitually exercises in India an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or

(ii) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or

(iii) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident.

The "business connection", however, shall not be held to be established in cases where the non-resident carries on business through a broker, general commission agent or any other agent of an independent status, provided that such a person is acting in the ordinary course of his business.

It is further proposed to clarify that a broker, general commission agent or any other agent who does not work mainly or wholly on behalf of the non-resident or on behalf of that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident, shall be deemed to be a broker, general commission agent or an agent of an independent status.

It is proposed to give a reference of this definition in section 163 also.

The proposed amendments will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 5]*

Deduction in respect of medical treatment etc. of specified diseases to be linked to the expenditure actually incurred on such treatment

Under the existing provisions of section 80DDB, a deduction of forty thousand rupees is allowed to an assessee being an individual or Hindu undivided family, who has incurred any expenditure for the medical treatment of himself or his dependant or any member of a Hindu undivided family, in respect of any disease or ailment specified in the rules. Senior citizens are allowed a deduction of sixty thousand rupees. The assessee is required to submit a certificate form the prescribed authority and in the prescribed form. For this purpose, any doctor with post-graduate medical qualifications registered with the Indian Medical Association is the prescribed authority under Rule 11DD.

With a view to rationalise the provisions, it is proposed to substitute the said section by a new section so as to provide that the amount of deduction under this section shall be equal to the amount of expenditure actually incurred or a sum of forty thousand rupees, whichever is less, in respect of the previous year in which such expenditure was incurred. The new provision also proposes to define the term 'dependant' to include in the case of an individual, the spouse, children, parents, brothers and sisters of the individual, and in the case of a Hindu undivided family, a member of the Hindu undivided family. It is also proposed to provide that no such deduction shall be allowed unless the assessee furnishes with the return of income, a certificate in such form, as may be prescribed, from a neurologist, an oncologist, a urologist, a hematologist, an immunologist or such other specialist, as may be prescribed, working in a Government hospital. The term "Government hospital" will also include approved hospitals for the treatment of Government servants. The deduction under the section shall be reduced by the amount, if any, received under insurance from an insurer, or reimbursed by an employer, for the medical treatment of the assessee or the dependant.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 32]*

Transfer of an undertaking or enterprise which develops or develops and operates or maintains and operates a special economic zone

Under the existing provision of sub-section (2) of section 80IA, an assessee may claim deduction specified under sub-section (1) for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or enterprise develops or develops and operates or maintains and operates a special economic zone referred to in clause (iii) of sub-section (4) of the said section.

With the view to rationalise the provisions, it is proposed to provide that where an undertaking develops a special economic zone on or after 1st April, 2001 and transfers the operation and maintenance to another undertaking (transferee undertaking), the deduction to the transferee undertaking shall be available for the remaining period in the ten consecutive assessment years, in such a manner as would have been available to the transferred undertaking, as if the operation and maintenance were not so transferred to the transferee undertaking. It is also proposed to make consequential amendments in sub-section (2) by substituting the expression "or develops or develops and operates or maintains and operates a special economic zone", with "or develops a special economic zone".

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 33]*

Rationalization of the tax concessions in respect of insurance policies having the amount of premium more than twenty per cent of the actual capital sum assured

Under the existing provisions contained in clause (10D) of section 10, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, (other than any sum received under a policy for the medical treatment, training and rehabilitation of a handicapped dependant under section 80DDA or any sum received under a keyman insurance policy), is exempt.

Under the existing provisions of section 88, a deduction from the income tax payable is allowed to an individual or a Hindu undivided family (HUF), in respect of any sums paid or deposited in PPF, GPF, NSC, insurance premia, etc. The deduction is allowed at specified percentage of such sums.

The insurance polices with high premium and minimum risk cover are similar to deposits or bonds. With a view to ensure that such insurance policies are treated at par with other investment schemes, it is proposed to rationalise the tax concessions available to such policies. It is therefore, proposed to substitute the clause (10D) of section 10, so as to provide that the exemption available under the said clause shall not be allowed on any sum received under an insurance policy in respect of which the premium paid in any of the years during the term of the policy, exceeds twenty per cent. of the actual capital sum assured. However, any sum received under such policy on the death of a person shall continue to be exempt. It is also proposed to clarify that the value of any premiums agreed to be returned or of any benefit by way of bonus or otherwise, over and above the sum actually assured, which is to be or may be received under the policy by any person, shall not be taken into account for the purpose of calculating the actual capital sum assured under this clause. The new provision also provides that the amounts received under sub-section (3) of section 80DD, shall not be exempt under this clause.

It is also proposed to insert a new sub-section (2A) in section 88 which seeks to provide that the deduction in respect of the sums paid or deposited as premium under an insurance policy shall be available only on so much of the premium or other payment made on an insurance policy, other than a contract for a deferred annuity, as is not in excess of twenty per cent. of the actual sum assured.

It is also proposed to clarify that the value of any premiums agreed to be returned or of any benefit by way of bonus or otherwise, over and above the sum actually assured, which is to be or may be received under the policy by any person, shall not be taken into account for the purpose of calculating the actual capital sum assured under this clause.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clauses 6 and 41]*

Re-computation of Capital Gains in case of reduction in compensation

The existing provisions of sub-section (5) of section 45, provide for method of computation of capital gains arising from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and where the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority. The said sub-section provides that the capital gain shall be computed by taking the compensation or consideration or enhanced compensation or consideration, as the case may be, as the full value of consideration and such capital gain shall be chargeable as income of the previous year in which such compensation or consideration is received by the assessee.

The assessees in some cases are facing hardship when such compensation or consideration is subsequently reduced by any court, Tribunal or other authority, since there is no existing provision providing for re-computation of the capital gain charged in the year of receipt of the compensation or consideration.

With a view to mitigate this hardship, it is proposed to amend sub-section (5), by inserting a new clause (c) to provide that where such amount of the compensation or consideration is subsequently reduced by any court, Tribunal or other authority, the capital gain of that year, in which the compensation or consideration received was taxed, shall be recomputed accordingly.

It is also proposed to insert a new sub-section (16) in section 155 to provide that the Assessing Officer shall amend the order of assessment to revise the computation of said capital gain of that year by taking the compensation or consideration so reduced by the court, Tribunal or any other authority to be the full value of consideration.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 26 & 60]*

Clarificatory amendments in section 269T relating to mode of repayment of loans and deposits

The existing provisions of section 269T of the Income-tax Act, provide that no branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person, shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft, in cases where the amount of the loan or deposit held by such person is twenty thousand rupees or more. The term “loan” was included in the section by the Finance Act, 2002.

Most of the assessees carrying on business avail credit facilities from banks such as cash credit account, over draft account, bill account, package credit account etc. These credit facility accounts fall within the ambit of the term “loan”. Thus, the assessees cannot deposit even their cash sale proceeds into these credit facility accounts, as that would amount to repayment of loan.

With a view to mitigate the hardships faced by the assessees, it is proposed to amend the aforesaid section by inserting a second proviso so as to provide that the provisions of this section shall not apply in case of repayment of any loan or deposit taken or accepted from (i) Government; (ii) any banking company, post office savings bank or co-operative bank; (iii) any corporation established by a

Central, State or Provincial Act; (iv) any Government company as defined in section 617 of the Companies Act, 1956; (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

This amendment will take effect retrospectively from 1st June, 2002.

Section 269T was amended vide the Finance Act, 2002 and the scope of the section was extended to loans also. In view of the same, it is proposed to amend section 271E, so as to provide for levy of penalty on a person if he fails to repay any deposit or loan in accordance with the provisions of section 269T. The proposed amendment is consequential in nature.

This amendment will take effect from 1st June, 2003. *[Clause 87 & 88]*

Modification of provisions relating to survey under section 133A

Under the existing provisions of section 133A of the Income-tax Act, an income-tax authority conducting a survey is authorised to verify and make an inventory of cash, stock or other valuable article, record the statement of any person, inspect books of account or documents, place marks of identification, and also impound and retain in his custody books of account or other documents after recording reasons for doing so. Such books of account or other documents can be retained by the income-tax authority for only 15 days without the approval of Chief Commissioner or Director General or Commissioner or Director, as the case may be.

It is proposed to amend the section to provide that an income-tax authority shall not retain such books of account or other documents for more than ten days without obtaining the approval of the Chief Commissioner or Director General, as the case may be.

It is further proposed to insert a proviso after sub-section (6) of the said section and before the Explanation so as to provide that no action under sub-section (1) of the said section 133A shall be taken by the Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax except with the prior approval of the Joint Director or the Joint Commissioner, as the case may be.

It is also proposed to amend the definition of the expression “income-tax authority” in clause (a) of the Explanation to the section so as to include “Tax Recovery Officer”.

This amendment will take effect from 1st June, 2003. *[Clause 55]*

Discontinuance of assessment of income on limited issues under section 143

Under the existing provision of clause (i) of sub-section (2) of section 143, if an Assessing Officer has reason to believe that an assessee has made a claim of any loss, exemption, deduction, allowance or relief which is inadmissible, he can issue a notice under the said clause, specifying the claim and calling upon the assessee to produce evidence and particulars in support thereof. After hearing such evidence and considering such particulars, the Assessing Officer shall make an assessment of total income or loss under clause (i) of sub-section (3) of section 143.

It is proposed to discontinue the scheme of scrutiny assessment on limited issues by inserting a proviso in clause (i) of sub-section (2) of the said section so as to provide that no notice under clause (i) of the said sub-section shall be served on the assessee on or after the 1st June, 2003.

This amendment will take effect from 1st June, 2003. *[Clause 58]*

Assessment in search cases – Abolition of the special procedure in Chapter XIV-B and introduction of new provisions

The existing provisions of the Chapter XIV-B provide for a single assessment of undisclosed income of a block period, which means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted and also includes the period up to the date of the commencement of such search, and lay down the manner in which such income is to be computed. The main objectives for the introduction of the Chapter XIV-B were avoidance of disputes, early finalisation of search assessments and reduction in multiplicity of proceedings. The idea was to have a cost-effective, efficient and meaningful search assessment procedure.

However, the experience on implementation of the special procedure for search assessments (block assessment) contained in Chapter XIV-B, has shown that the new scheme has failed in its objective of early resolution of search assessments. The new procedure postulates two parallel streams of assessment, i.e., one of regular assessment and the other for block assessment during the same period, i.e., during the block period. Controversies have sprung up questioning the treatment of a particular income as ‘undisclosed’ and whether it is relatable to the material found during the course of search etc. Even where the facts are clear, litigation on procedural matters continue to persist. The new procedure has thus spawned a fresh stream of litigation.

It is proposed to provide that the provisions of this Chapter shall not apply where a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A after 31st May, 2003 by inserting a new section 158BI in the Income-tax Act.

It is also proposed to insert three new sections 153A, 153B and 153C in the Income-tax Act to provide for assessment in case of search or making requisition.

The proposed new section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after 31st May, 2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A. The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

The proposed new section 153B provides for the time limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. This section also provides the time limit for completion of assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed. It also provides that in computing the period of limitation for completion of such assessment or reassessment, the period during which the assessment proceeding is stayed by an order or injunction of any court; or the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee of being reheard under the proviso to section 129, or in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, shall be excluded. If, after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case maybe, is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation shall be deemed to be extended accordingly.

The proposed new section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A, then the books of account, or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

An appeal against the order of assessment or reassessment under section 153A shall lie with the Commissioner of Income-tax (Appeals).

Consequential amendments are also proposed in sections 132, 132B, 140A, 234A, 234B, 246A and 276CC to give reference to section 153A in these sections.

These amendments will take effect from 1st June, 2003. *[Clauses 53, 54, 57, 59, 61, 82, 83, 86 & 90]*

Stock–in-trade not to be seized during search

Section 132 of Income-tax Act, 1961, relates to search and seizure.

The existing provisions of clause (iii) in sub-section (1) of section 132 provide for seizure of any books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of search.

It is proposed to insert a proviso to the said clause so as to provide that any bullion, jewellery or other valuable article or thing being stock-in-trade of the business found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.

The existing provisions of second proviso to sub-section (1) of section 132 provide that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the same could be placed under deemed seizure whereby the Authorised Officer may serve an order on the owner or the person in immediate possession that he shall not remove or part with it except with the previous permission of the Authorised officer.

It is also proposed to insert a proviso after the second proviso to sub-section (1) of the aforesaid section so as to provide that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business.

This amendment will take effect from 1st June, 2003. *[Clause 53]*

Providing limitation of time for application for release of seized assets

The existing provision contained in the first proviso to clause (i) of sub-section (1) of the section 132B provides for release of any asset seized during search under section 132 or requisitioned under section 132A, if the nature and source of acquisition of such asset is explained to the satisfaction of the Assessing officer, after recovery therefrom of any existing tax liability, and after taking approval of the Chief Commissioner or Commissioner.

It is proposed to amend the said proviso so as to provide that the asset referred to in the first proviso shall be released, inter alia, if the concerned person makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized.

This amendment will take effect from 1st June, 2003. *[Clause 54]*

Clarification in the definition of Advance Ruling

Under the existing provision contained in sub-clause (ii) of clause (a) of section 245N, the expression “advance ruling”, inter alia, means determination of any question of law or of fact specified in the application by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident.

It is proposed to amend the said sub-clause so as to clarify that the determination of any question of law or of fact by the Authority shall be in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident and not in relation to the tax liability of the resident.

This amendment will take effect retrospectively from1st June, 2000.

It is further proposed to insert a proviso after sub-clause (iii) of clause (a) so as to provide that where an advance ruling has been pronounced, before the date on which the Finance Bill, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of the said clause (a), as it stood immediately before such date, such ruling shall be binding on persons specified in section 245S.

This amendment will take effect from the date on which the Finance Bill, 2003 receives the assent of the President.

[Clause 85]

Time limit for imposing of penalty

Under the existing provisions contained in clause (a) of sub-section (1) of the section 275, no order imposing a penalty shall be passed, in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals), or to the Appellate Tribunal after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or within six months from the end of the month in which the order of the Commissioner (Appeals), or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later.

It is proposed to insert a proviso in the said clause so as to provide that in a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A of the Income-tax Act, and the Commissioner (Appeals) passes the order on or after the 1st June, 2003, disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later.

Under the existing provisions contained in clause (b) of sub-section (1) of the said section, no order imposing a penalty shall be passed in cases where the relevant assessment or other order is the subject-matter of revision under section 263 of the Income-tax Act, after the expiry of six months from the end of the month in which the order of revision under the said section 263 is passed.

It is proposed to amend the said clause (b) to provide that in cases where the relevant assessment or other order is the subject matter of revision under section 264 of the Income-tax Act, the order imposing penalty shall be passed within six months from the end of the month in which the order of revision under section 264 is passed.

These amendments will take effect from 1st June, 2003. *[Clause 89]*

Annual Information Return

Under the existing procedure, the Central Information Branch (CIB) collects information relating to financial transactions from various sources. Information is also received through the statement submitted under Rule 114D from persons who enter into transactions in relation to which Permanent Account Number is to be compulsorily quoted. It has been noticed that there are several hurdles in the collection of information by the CIB, and often the coverage of sources is incomplete.

In view of the above factors, it has been proposed to provide a mechanism wherein the flow of information regarding the material financial transactions entered into by a taxpayer with other persons is automatic so that the same can be utilised for widening and deepening of the tax base.

It is proposed to insert a new section 285BA to provide that any assessee, who enters into any financial transaction, as may be prescribed, with any other person, shall furnish, within the prescribed time, an annual information return in such form and manner, as may be prescribed, in respect of such financial transactions entered into by him during any previous year.

This amendment will take effect from 1st April, 2004. *[Clause 91]*

Rationalisation of provisions relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

Under the existing provisions of section 206C, sellers of certain goods are required to collect tax from a buyer at the rates specified in the Table below sub-section (1). The Table specifies a rate of ten per cent. for alcoholic liquor for human consumption (other than Indian made foreign liquor) and tendu leaves.

The *Explanation* to the section provides that the “buyer” does not, inter alia, include a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

The Bill proposes to substitute the Table in sub-section (1), inter alia, to provide for collection of tax at source at the rate of ten per cent. in the case of Indian made foreign liquor and scrap.

The Bill also proposes to amend the said Explanation so as to make the provisions of the section applicable in the case of a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

These amendments will take effect from 1st June, 2003. *[Clause 80]*

PROVISIONS RELATING TO TAXATION OF NON-RESIDENTS

Rationalisation of provisions for disallowance of interest, etc. paid to non-residents if no deduction of tax at source

Under the existing provision contained in sub-clause (i) of clause (a) of section 40, any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under the Income-tax Act, which is payable outside India is not allowed as a deduction if tax thereon has not been paid or deducted at source. However, if tax is paid or deducted in respect of such amount in a subsequent year, the amount is allowed as a deduction in the subsequent year in which the tax is paid or deducted.

Under the existing provision contained in sub-clause (iii) of clause (a) of the said section, no deduction shall be allowed in respect of any payment which is chargeable under the head “Salaries” if it is payable outside India and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

The Bill proposes to substitute the said sub-clause (i) to provide that where in respect of any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable outside India or in India to a non-resident, not being a company, or to a foreign company, on which tax has not been deducted or, after deduction, has not been paid under Chapter XVII-B shall not be allowed as a deduction in computing the income under the head “Profits and gains of business or profession”. It is also provided that where in respect of any such sum tax has been deducted in accordance with Chapter XVII-B and paid before the expiry of the time prescribed under sub-section (1) of section 200, which may fall in the subsequent year such sum shall be allowed as a deduction in computing the income of the previous year in which the liability to pay such sum was incurred. Further, where in respect of any such sum, tax has been deducted under Chapter XVII-B or paid after expiry of the time limit prescribed in sub-section (1) of section 200 in any subsequent year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been deducted and paid.

The Bill also proposes to substitute sub-clause (iii) of clause (a) to provide that no deduction shall be allowed in respect of any payment which is chargeable under the head “Salaries”, if it is payable outside India or within India to a non-resident, on which tax has not been deducted or, after deduction, has not been paid under Chapter XVII-B.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 16]*

Rationalisation of certain provisions for presumptive taxation in case of non-residents

Under the existing provision contained in sub-section (1) of section 44BB of the Income-tax Act, income of a non-resident taxpayer who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at ten per cent. of the aggregate of the amounts paid or payable to the taxpayer or to any person on his behalf, whether in or out of India on account of the provisions of such services and facilities.

Further, under the existing provisions contained in section 44BBB of the Income-tax Act, the income of a foreign company engaged in the business of civil construction or erection or testing or commissioning of plant or machinery in connection with a turnkey power projects, approved by the Central Government and financed under any international aid programme, is computed at ten per cent. of the amount paid or payable to such assessee or to any person on his behalf, whether in or out of India on account of civil construction, erection, testing or commissioning of the aforesaid plant or machinery.

The Bill proposes to provide that the presumptive tax rate of 10% under section 44BBB will be applicable in those turnkey power projects also which are not financed under any international aid programme.

The Bill also proposes to provide that an assessee may claim lower profits and gains than the profits and gains specified under sub-section (1) of section 44BB or, as the case may be, section 44BBB, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143.

Consequential amendments are also proposed to be carried out in sections 44AA and 44AB so as to require such assessees to keep and maintain books of account and documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act and to require such persons to get their accounts audited.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clauses 19, 20, 22 and 23]*

Rationalisation of certain provisions of tax deduction at source from payments made to non-residents

Under the existing provisions contained in section 193 of the Income-tax Act, the person responsible for paying any income by way of interest on securities is required to deduct tax at source 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 a draft or any other mode at the rates in force. Further, under the existing provisions contained in section 194-I, any person who is responsible for paying to any person any income by way of rent is required to deduct tax at source at the specified rates. Hence, the provisions of these sections apply in relation to payments made both to non-residents as well as residents.

Under the existing provisions contained in section 195, any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest on securities) or any other sum chargeable under the provisions of the Income-tax Act (not being income chargeable under the head "Salaries") is required to deduct tax at source at the rates in force.

The Bill proposes to provide that the person responsible for deducting tax under sections 193 and 194-I from interest on securities and rent shall be required to do so in the case of payments made to residents only.

The Bill also seeks to expand the scope of section 195 so as to include payments made by way of interest on securities.

These amendments will take effect from 1st June, 2003. *[Clauses 66, 70 and 73]*

Rationalisation of provisions relating to computing income by way of royalties, etc.

Section 44D of the Income-tax Act lays down special provisions for computing income by way of royalties and fees for technical services received by foreign companies from Government or an Indian concern. Where such income is received in pursuance of an agreement made with the Indian concern or the Government before 1st April, 1976, the deduction in respect of expenses incurred for earning such income is limited to a ceiling of 20% of the gross amount of such income. In case such agreement is made after 31st March, 1976, section 44D(b) provides that no deduction will be allowed in respect of any expenditure or allowance under any of the said sections in computing such income. In other words, the gross amount of income by way of royalties or fees for technical services received by foreign companies from the Government or an Indian concern, under agreements made after 31st March, 1976 is chargeable to tax at the rates prescribed in section 115A.

Section 115A provides that royalties/fees for technical services received by foreign companies will be taxed at a concessional rate of 20% only if the agreement made with an Indian concern under which these royalties or fees for technical services are received, is approved by the Central Government or relates to a matter that is covered under the Industrial Policy.

The Bill proposes to amend clause (b) of section 44D to provide that no deduction in respect of any expenditure or allowance shall be allowed where an agreement is entered into by the foreign company with Government or with the Indian concern till 31st March, 2003.

With a view to harmonize the provisions relating to the income from royalty or fees for technical services attributable to a fixed place of profession or a permanent establishment in India with similar provisions in the various Double Taxation Avoidance Agreement, the Bill proposes to insert a new section 44DA to provide that the income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by a non-resident (not being a company) or a foreign company with Government or the Indian concern after the 31st day of March, 2003, where such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act. However, it is provided that no deduction shall be allowed, in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.

The proposed section also requires that every non-resident (not being a company), or a foreign company shall keep and maintain books of accounts and other documents in accordance with the provisions of section 44AA and get his accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income, the report of such audit duly signed and verified by such accountant.

It is also proposed to amend clause (b) of sub-section (1) of section 115A to make it applicable to a non-resident (not being a company) or to a foreign company and income by way of royalty or fees for technical services other than income referred to in sub-section (1) of section 44DD.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clauses 24, 25 and 44]*

MEASURES TO ACCELERATE ECONOMIC DEVELOPMENT

Tax incentive for coffee industry

Under the existing provision contained in sub-section (1) of section 33AB, if an assessee carrying on the business of growing and manufacturing tea in India has, during the previous year, deposited with the National Bank for Agriculture and Rural Development any amount in a special account maintained by such assessee with that Bank in accordance with the scheme approved in this behalf by the Tea Board or if an assessee opens an account, to be known as Tea Deposit Account, in accordance with a scheme framed by the Tea Board with the previous approval of the Central Government, such assessee is allowed a deduction of the amount so deposited during the previous year or forty per cent. of the profits from the business of growing or manufacturing tea in India, whichever is less.

The Bill proposes to extend the benefit available under the said section to the coffee industry also. Subsequent to the proposed amendment, if an assessee carrying on the business of growing and manufacturing coffee in India has, during the previous year, deposits with the National Bank for Agriculture and Rural Development any amount in a special account maintained by such assessee with that Bank in accordance with the scheme approved in this behalf by the Coffee Board or if an assessee opens an account, to be known as Deposit Account, in accordance with a scheme framed by the Coffee Board with the previous approval of the Central Government, such assessee shall be allowed a deduction of the amount so deposited during the previous year or forty per cent. of the profits from the business of growing or manufacturing coffee in India, whichever is less.

It has also been provided that in the case of an assessee engaged in the business of growing and manufacturing coffee in India, in case where the sum standing to the credit of the assessee is released by the National Bank for Agriculture and Rural Development or is withdrawn from the Deposit Account and is utilized for the purchase of any machinery or plant to be installed in any office premises or residential accommodation including guest houses; any office appliances other than computers; any other plant or machinery which either is installed in an undertaking producing low priority items specified in the Eleventh Schedule of the Income-tax Act or is an item of plant and machinery, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise), the whole of such amount so utilized will be treated as taxable profits of that year and taxed accordingly.

This amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 14]*

Incentive for amalgamation extended to hotel and certain banks

It is proposed to extend the benefits of carry forward and set off of accumulated losses and unabsorbed depreciation under section 72A in the case of amalgamation of a company owning a hotel with another company or an amalgamation of a banking company with a specified bank. It is proposed to insert two additional conditions for amalgamating company to be fulfilled in order to take benefit of the section. These conditions are that the amalgamating company should have been engaged in the business for at least three years during which the accumulated loss has occurred or the unabsorbed depreciation has accumulated and it has held continuously as on the date of amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation. The conditions applicable for the amalgamated company for availing benefit under this section are on the lines of existing provisions in sub-section (2). The "specified bank" means the State Bank of India constituted under the State Bank of India Act, 1955 or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 30]*

Extension of time limit for the purpose of tax holiday under section 80IB to any company carrying on scientific research and development

Under the existing provision of subsection (8A) of section 80-IB, any company carrying on scientific research and development is allowed a deduction of hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, if such company is for the time being approved by the prescribed authority after the 31st March, 2000, but before the 1st April, 2003. For this purpose, the prescribed authority is the Secretary, Department of Scientific and Industrial Research, Ministry of Science & Technology, Government of India.

With a view to give boost to the scientific research and development in the country, it is proposed to allow the deduction to companies carrying on scientific research and development, which are approved by the prescribed authority before 1st April, 2004.

The proposed amendment will take effect from the 1st April, 2004 and will, accordingly apply in relation to assessment year 2004-05 and subsequent years. *[Clause 34]*

Relaxing the conditions relating to completion and extending the time limit for obtaining approval for the purpose of tax holiday under section 80IB for approved housing projects

Under the existing provision of sub-section (10) of section 80-IB, a deduction equal to one hundred per cent of the profits of an undertaking engaged in developing and building housing projects is allowed. The deduction is available to the housing projects approved by a local authority before the 31st day of March, 2001 and which are completed before the 31st day of March, 2003.

With a view to allow housing projects to avail the benefit of tax holiday under this provision, it is proposed to extend the time limit for obtaining approval from the local authority to 31st March 2005. It is also proposed to remove the time limit for completion of the project.

The proposed amendment will take effect from the 1st April, 2004 and will, accordingly apply in relation to assessment year 2004-05 and subsequent years. *[Clause 34]*

Extension of time limit for setting up and operating a cold chain facility for agricultural produce for the purpose of tax holiday under section 80IB

Under the existing provision contained in sub-section (11) of section 80-IB, an industrial undertaking deriving profits from the business of setting up and operating a cold chain facility for agricultural produce is allowed a deduction of one hundred per cent of such profits for five years and subsequently twenty five per cent (thirty per cent in the case of companies) for the next five years, if such undertaking begins to operate such facility before 31st March, 2003.

With a view to give boost to this sector, it is proposed to extend the time limit for commencement of operation of a cold chain facility to 31st March, 2004, for the purpose of this provision.

The proposed amendment will take effect from the 1st April, 2004 and will, accordingly apply in relation to assessment year 2004-05 and subsequent years. *[Clause 34]*

Extension of time limit for providing telecommunication services, etc. for the purpose of tax holiday under section 80IA

Under the existing provision contained in clause (ii) of sub-section (4) of section 80IA, an undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services, before the 31st day of March, 2003, is allowed a deduction for any ten consecutive assessment years beginning from the year in which the undertaking starts providing telecommunication services. The amount of deduction is one hundred per cent of profits for the first five years, and thereafter at thirty per cent of profits for the next five years.

With a view to give incentives to the new telecom services or domestic satellite services, etc. to operate, it is proposed to extend the time-limit before which the eligible undertaking has to start providing telecommunication services, etc. to 31st March, 2004.

The proposed amendment will take effect from the 1st April, 2004 and will, accordingly apply in relation to assessment year 2004-05 and subsequent years. *[Clause 33]*

“Eligible issue of capital” to be allowed to be utilized in the business of development of industrial park or a special economic zone

The existing provisions of section 88 provide for a deduction from the tax payable on the total income of an individual or a Hindu undivided family, which is equal to a fixed percentage of sums paid or deposited in specified schemes. For the purpose of this deduction, the aggregate sums paid or deposited in specified schemes, eligible for the deduction under this section, are limited to rupees seventy thousand. However, as per the provisions of clauses (xvi) and (xvii) of sub-section (2), where such sums include subscription to equity shares or debentures, or units of mutual funds forming part of eligible issue of capital, a higher limit of eligible investment of rupees one hundred thousand is available.

For the purpose of this section, the term “eligible issue of capital” has been defined as an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue is utilised wholly and exclusively either for the purpose of developing, maintaining and operating an infrastructure facility or generating, or generating and distributing power or providing telecommunication services, whether basic or cellular.

With a view to giving boost to the export sector through the Special Economic Zones (SEZ), it is proposed to provide that the “eligible issue of capital” shall also include an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of developing, developing and operating, or operating and maintaining an industrial park or a special economic zone also.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 41]*

New provision for allowing deduction from the income in the nature of royalty on patents

Research & Development activities are highly cost-intensive, risky and time-taking and often have a low success rate. With a view to encouraging individual initiatives in carrying out new inventions, it is proposed to provide tax incentives in respect of royalty income from use of patents registered in India. A new section 80RRB is proposed to be inserted in this regard, which provides that where in the case of a resident individual, the gross total income of the previous year includes any income by way of royalty in respect of a patent registered on or after 1st day of April, 2003 under the Patents Act, 1970, a deduction equal to the whole of such amount or a sum of rupees three lakhs, whichever is less, shall be allowed. The deduction shall be available to any individual resident in India, who is registered under the Patents Act, 1970, as the true and first inventor in respect of an invention, including a co-owner of the patent. The proposed tax benefit is not available to patentees who are assignees or mortgagees in respect of all or any rights in the patent.

The proposed deduction shall be allowed on any royalty income from working of or use of the patent and shall include consideration for the transfer of all or any rights (including the granting of a license) in a patent, or for imparting of any information concerning the working or use thereof in India, or for rendering of any services in connection with the above. However, no deduction shall be available on any consideration for sale of product manufactured with the use of patented process or of the patented article per se for commercial use. Further, any consideration which is chargeable under the head “capital gains” shall not be eligible for deduction. Where a compulsory licence is granted in respect of any patent under the Patents Act, 1970, the income eligible for deduction under this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act.

It is also proposed to provide that where any income is earned from sources outside India on which the deduction under the proposed section is claimed, only so much of the income may be considered, as is brought into India by, or on behalf of the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf. For this purpose, competent authority shall mean the Reserve Bank of India or such other authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Where any income is earned from sources outside India, a certificate certifying that the deduction has been correctly claimed in accordance with the provision of this section, in the prescribed form, is required.

To claim deduction under this section, the assessee shall have to furnish a certificate in the prescribed form, duly signed by the prescribed authority along with the return of income setting forth such particulars as may be prescribed.

It is also proposed that in case the patent is subsequently revoked by the Controller or the High Court or the name of the assessee is subsequently excluded from the patents register as patentee in respect of that patent, the deduction relatable to royalty income in respect of the period for which the patentee's claim was not valid, shall be withdrawn and the assessment may be rectified accordingly. For this purpose, suitable amendments under section 155 are proposed.

The proposed amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 39]*

Allowing deduction under section 10A and 10B in the case of amalgamation or demerger

Under the existing provisions of sub-section (9) of Section 10A and sub-section (9) of Section 10B, the deductions under sections 10A and 10B are not allowed to the assessee where the ownership or the beneficial interest in the undertaking is transferred by any means. However, this condition is not applicable where as a result of the reorganisation of the business, a firm or sole proprietary concern is succeeded by a company, due to the provisions of sub-section (9A) of section 10A and sub-section (9A) of section 10B. The Explanation-1 below sub-section (9A) allows the continuance of the benefit, where as a result of change in ownership, the resultant entity is a public limited company or is a venture capital company.

With the view to give boost to the export-led growth, it is necessary to eliminate the hurdles in the Mergers and Acquisitions (M&A) and other modes of business restructuring. It is accordingly, proposed to insert a new sub-section (7A) in section 10A and sub-section (7A) in section 10B, to provide that where an undertaking of an Indian company is transferred to another company under a scheme of amalgamation or demerger, the deduction shall be allowable in the hands of the amalgamated or the resulting company. However no deduction shall be admissible under these sections to the amalgamating company or the demerged company for the previous year in which amalgamation or demerger takes place. As a consequence, sub-sections (9), (9A) and Explanation thereafter in sections 10A and 10B, become redundant and are proposed to be omitted, so that the tax benefit is not lost on change of ownership of the eligible undertaking.

The proposed amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years.

It is also proposed to insert the reference of sub-section (1A) in subsection (4) and the reference of "this section" instead of "sub-section (1)" in section 10A. The proposed amendments are consequential in nature and will take effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

[Clause 7 and 8]

Extending the benefit of deduction under section 10A and 10B to the business of cutting and polishing of precious and semi-precious stones

Under the existing provision contained in section 10A, a deduction is allowed on the export profits of an undertaking set up in a free trade zone, software Technology Park, electronic hardware Technology Park or a special economic zone, which is engaged in the manufacture or production of articles or things or computer software. The deduction is available to an undertaking for a period of ten consecutive assessment years. No deduction is allowable to any undertaking after the assessment year 2009-10. For a unit set up in Special Economic Zone, the deduction is equivalent to hundred per cent of export profits for five years and thereafter, fifty per cent of profits for next two years and is available even beyond the assessment year 2009-10. Under section 10B, a 100% Export Oriented Units (EOUs), which is engaged in the manufacture or production of articles or things or computer software is eligible for deduction for a period of ten consecutive assessment years up to the assessment year 2009-10.

With the view to give fiscal support to the export of precious and semi-precious stones, it is proposed to insert a new Explanation 4 at the end so as to provide that for purposes of this section, the expression, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.

The proposed amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 7 and 8]*

New provisions allowing a ten years tax holiday in respect of certain undertakings in the States of Himachal Pradesh, Sikkim, Uttaranchal and North-Eastern States

The Union Cabinet has announced a package of Fiscal and non-fiscal concessions for the special category states of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States, in order to give boost to the economy in these states. With a view to give effect to these new packages announced by the Union Cabinet in respect of these states, it is proposed to insert a new section 80-IC to allow a deduction for ten years from the profits of new undertakings or enterprises or existing undertakings or enterprises on their substantial expansion, in the States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States. For this purpose, substantial expansion is defined as increase in the investment in the plant and machinery by at least 50% of the book value of the plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.

It is proposed to provide the deduction to such undertakings or enterprises which manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth schedule and which commences operation in any Export Processing Zone, or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate, or Industrial Park, or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with schemes framed by the Central Government in this regard. Similar deduction shall be available to thrust sector industries, as specified in the Fourteenth Schedule. The amount of deduction in case of undertakings or enterprises in the States of Sikkim and the North-Eastern States shall be one hundred per cent of the profits of the undertaking for ten assessment years. The amount of deduction in case of undertakings or enterprises in the States of Uttaranchal, Himachal Pradesh shall be one hundred per cent of the profits of the undertaking for five assessment years, and thereafter twenty-five per cent (thirty per cent for companies) for five assessment years.

It is proposed to provide that no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section or under the section 80-IB or under section 10C, as the case may be, exceeds ten assessment years. It is also proposed to provide that in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in sections 10A or 10B, in relation to the profits and gains of the undertaking or enterprise.

It is also proposed to insert the Thirteenth Schedule and Fourteenth Schedule in the Income-tax Act. The said Schedules specify the list of articles and things and the States for the purposes of availing deduction under this section. Consequent to these amendments, it is proposed to make the provisions of section 10C and sub-section (4) of section 80IB inoperative in respect of the undertakings or enterprises eligible for deduction under section 80-IC with effect from the 1st day of April, 2004.

These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clauses 9, 34, 35 and 92]*

Measures to boost Tourism

The Expenditure-tax Act, 1987 presently provides for the levy of tax on the chargeable expenditure incurred in a hotel where the room charges for any unit of residential accommodation are Rs.3000 or more per day.

In order to give a boost to the tourism sector and reduce the incidence of tax on the hotel industry, it is proposed to abolish the expenditure-tax by providing that the expenditure-tax shall not be charged on the chargeable expenditure incurred in a hotel after the 31st May, 2003.

The amendment will take effect from 1st June, 2003, and will accordingly apply in relation to expenditure incurred on or after that date. *[Clause 95 & 96]*

INCENTIVE FOR FINANCIAL SECTOR

Fiscal incentive for provisioning in respect of bad and doubtful debts in case of scheduled and non-scheduled banks

Under the existing provisions contained in sub-clause (a) of clause (viia) of sub-section (1) of section 36, a scheduled bank (not being a bank incorporated outside India) or a non-scheduled bank is entitled to a deduction of an amount not exceeding seven and one-half per cent. of its gross total income before making any deduction under the said clause and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of such bank, in respect of provision for bad and doubtful debts. Under the first proviso to sub-clause (a), such banks have an option to claim deduction in respect of any provision for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it not exceeding five per cent. of the amount of such assets. The second proviso to sub-clause (a), raises the amount of the optional deduction available under the first proviso to ten per cent. of the amount of the doubtful assets or loss assets shown in the books of account of such bank on the last day of the previous year.

The Bill proposes to insert a new proviso to sub-clause (a) so as to provide that a scheduled bank or a non-scheduled bank referred to in that sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government. It is also provided that no deduction shall be allowed under the proposed third proviso unless such income has been disclosed in the return of income under the head “Profits and gains of business or profession”.

This amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 15]*

Increase in the deduction in respect of interest on certain securities, dividends, etc

Under the existing provisions of section 80L, a person being an individual or a Hindu undivided family deriving any income by way of interest on certain specified deposits or income from certain mutual funds or dividend from an Indian company, is allowed a deduction of an amount not exceeding rupees nine thousand. An additional deduction of rupees three thousand is available in respect of interest on securities of the central government or a state government.

It is proposed to increase the said limit of deduction of nine thousand rupees to twelve thousand rupees. The existing deduction of rupees three thousand in respect of interest on securities of the central government or a state government shall continue, in addition. The proposed measure is expected to benefit, in particular, small taxpayers and retired senior citizens.

The proposed amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years. *[Clause 36]*

Demutualisation and corporatisation of stock exchanges

Most of the stock exchanges in India have the concept of membership cards for their members. The twin rights of trading and undivided interest in the ownership of the stock exchange are embedded in the membership card of a stock exchange. The process of demutualization of the stock exchange would involve segregation of these two twin rights into two separate and independent rights viz., (i) the right to participate in the ownership of assets of the stock exchange by issuance of shares in the new corporate body; (ii) and the right to trade on stock exchanges. Thus, the membership card will be exchanged for the shares and the right to trade on the stock exchange.

In order to make the process of demutualization and corporatisation of stock exchanges tax neutral, amendments are proposed in section 2, section 47 and section 55 of the Income-tax Act, 1961.

Clause (xiii) of section 47 provides that any transfer of a capital asset, where an association of persons or body of individuals is succeeded by a company in the course of corporatisation of a recognised stock exchange in India in accordance with a scheme approved by the Securities and Exchange Board of India, shall not be regarded as a transfer for the purposes of capital gains.

It is proposed to insert a new clause (xiiia) in the aforesaid section so as to provide that any transfer of a capital asset, being a membership right held by a member of a recognised stock exchange in India, for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange, in accordance with a scheme for demutualization or corporatisation, which is approved by the Securities and Exchange Board of India Act 1992, shall not be regarded as transfer for the purposes of capital gains.

It is proposed to insert two new sub-clauses (h) and (ha) in Explanation 1 of clause (42A) of section 2 so as to provide that in the case of a capital asset being equity shares, or trading or clearing rights, of a stock exchange acquired by a person pursuant to demutualization or corporatisation of a recognised stock exchange in India as referred to in clause (xiii) of section 47, there shall be included while calculating the period for holding of such assets the period, for which the person was a member of the recognised stock exchange immediately prior to such demutualization or corporatisation.

The existing provisions of clause (ab) in sub-section (2) of section 55 provide the meaning of "cost of acquisition" in relation to a capital asset, being equity share or shares allotted to a shareholder of a recognised stock exchange in India under a scheme for corporatisation approved by the Securities and Exchange Board of India.

It is proposed to insert a proviso to the said clause (ab) so as to provide that the cost of a capital asset, being trading or clearing rights of a recognised stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualization or corporatisation, shall be deemed to be nil.

These amendments will take effect from 1st April, 2004 and will, accordingly apply in relation to the assessment year 2004-05 and subsequent years. [*Clause 27, 3 & 28*]

Exemption of long term capital gains on transfer of listed equity shares

In order to give incentive for investment in equity shares, it is proposed to insert a new clause (36) in Section 10 so as to provide that any income arising from transfer of a long-term capital asset, being equity share in a company listed in any recognized stock exchange in India and acquired on or after 1st March, 2003 but before 1st March, 2004, shall be exempt from tax.

This amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. [*Clause 6*]

Exemption of capital gain on transfer of a unit of Unit Scheme, 1964 (US 64)

It is also proposed to insert a new clause (33) in Section 10 so as to provide that any income arising from the transfer of a capital asset being a unit of Unit Scheme, 1964 referred to in Schedule I of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 and where the transfer of such assets takes place on or after 1st April, 2002, shall be exempt from tax.

This amendment will take effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years. *[Clause 6]*

TAXPAYER FRIENDLY MEASURES

Tax clearance certificate to be required only in certain cases

The existing provisions of sub-section (1) of section 230 provide for the requirement of tax clearance certificate in the case of a person who, leaves the territory of India by land, sea or air. Certain exceptions to this requirement have been specified by the central Government.

It is proposed to substitute sub-section (1) of section 230 so as to provide that no person, subject to such exceptions as the Central government may, by notification in the Official Gazette, specify in this behalf, who is not domiciled in India and who has come to India in connection with business, profession or employment; and who has income derived from any source in India, shall leave the territory of India by land, sea or air unless he furnishes an undertaking. The said undertaking is required to be furnished in the prescribed form from the employer of the said person or through whom such person is in receipt of the income, to the effect that tax payable by such person shall be paid by the employer or the person through whom any income is received and the prescribed authority shall, on the receipt of the undertaking, immediately give to such person a no-objection certificate, for leaving India. It is further proposed to provide that the provisions contained in the substituted sub-section (1) shall not apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

It is further proposed to insert a new sub-section (1A) so as to provide that every person, subject to such exceptions as the Central Government may, by notification in the Official Gazette specify in this behalf, who is domiciled in India at the time of his departure, shall furnish, to the income-tax authority or such other authority as may be prescribed his permanent account number allotted to him under section 139A or in case no such permanent account number has been allotted to him, or his total income is not chargeable to income-tax or who is not required to obtain permanent account number under this Act a certificate in the prescribed form; and the purpose of his visit; and the estimated period of his stay outside India.

It is also proposed to provide that no person, who is domiciled in India at the time of his departure and in respect of whom circumstances exist which, in the opinion of an income-tax authority render it necessary form him to obtain a certificate under this section, shall leave the territory of India by land, sea or air unless he obtains a certificate from the income-tax authority stating that he has no liabilities under this Act, the Wealth-tax Act, 1957, the Gift-tax Act, 1958 or the Expenditure-tax Act, 1987, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person. It is also proposed to provide that no income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Chief Commissioner of Income-tax.

This amendment will take effect from 1st June, 2003. *[Clause 81]*

Filing of TDS returns on magnetic media

Under the existing provisions contained in sub-section (1) of section 206, the prescribed person in the case of every office of Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, every private employer and every other person responsible for deducting tax is required to prepare and deliver or cause to be delivered to the prescribed income-tax authority, such return in such form and verified in such manner and setting forth such particulars as may be prescribed within the prescribed time after the end of each financial year.

Sub-section (2) of the said section further provides that the returns of tax deducted at source may be filed on computer readable media such as floppies, diskettes, magnetic cartridge tapes, etc. as may be specified by the Board and that the information in such returns shall be admitted in evidence in any proceeding under the Act.

Sub-section (3) of the said section provides for the requirement of checking and authenticating of the return by the Assessing Officer and due care by him for preservation of the return in the computer media by duplicating, transferring, mastering or storage without loss of data.

The Bill proposes to substitute sub-section (2) to provide that the person responsible for deducting tax under the provisions of Chapter XVII-B of the Income-tax Act, other than the principal officer in the case of a company, may, at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge etc, CD-ROM or any other computer media and in the manner as may be specified in that scheme.

The proposed proviso to the said sub-section further provides that the principal officer in the case of every company responsible for deducting tax shall deliver or cause to be delivered within the prescribed time after the end of each financial year, such returns on computer media under the said scheme. Filing of TDS returns on computer media is, therefore, proposed to be made compulsory for companies.

The Bill further proposes to substitute sub-section (3) to provide that a return filed on computer media shall be deemed to be a return for the purposes of this section and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

The new proposed sub-section (4) proposes that where the Assessing Officer considers that the return delivered or cause to be delivered under sub-section (2) is defective, he may intimate the defect to the person responsible for deducting tax or the principal officer in the case of company, as the case may be, and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, at his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, regardless of anything contained in any other provision of this Act, such return be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.

This amendment will take effect from 1st June, 2003. *[Clause 79]*

Measures to facilitate the filing of return by the assessee

Under the existing provisions contained in sub-section (1) of section 139, every company whether it has income or loss and every person other than a company, if the total income in respect of which he is assessable under this Act during the previous year exceeded the maximum amount not chargeable to income-tax, is required to furnish a return of such income on or before the due date in the prescribed form and manner.

In order to enable the taxpayer to file his return of income in computer readable media, without interface with the Department, it is proposed to insert a new sub-section (1B) in section 139 so as to provide that any person may, at his option, on or before the due date, furnish a return of his income in accordance with such scheme as may be specified by the Board in this behalf by notification in the Official Gazette in such form, including any computer readable media and such return shall be deemed to be a return furnished under section 139(1) and the provisions of the Act would apply accordingly.

This amendment will take effect from 1st April, 2004 and will, accordingly, apply in relation to assessment year 2004-05 an subsequent years. *[Clause 56]*

MEASURES TO STIMULATE INVESTMENT FOR INDUSTRIAL GROWTH

Incentive for construction of hotels and hospitals

Under the existing provisions contained in clause (23G) of section 10, any income by way of dividend, interest or long term capital gains of an infrastructure capital fund or infrastructure capital company or a co-operative bank from investments made by way of shares or long term finance in any infrastructure undertaking, power generation project, telecom services, housing project etc. is not included in computing its total income.

With a view to encourage investment in the hospitality and health sector, it is proposed to include the projects for construction of hotels and hospitals also in the list of eligible business under this clause. To be eligible for this purpose, a hotel project should be for constructing a hotel of not less than three-star category and a hospital project should be for constructing a hospital with at least one hundred beds for patients.

Definitions of an infrastructure capital company or an infrastructure capital fund as provided in clauses (a) & (b) of Explanation 1 are also proposed to be amended so as to align them with the provisions of the main clause. Infrastructure capital company or an infrastructure capital fund is proposed to be defined as such company or fund as has made investments by way of acquiring shares or providing long term finance to an enterprise wholly engaged in the business referred to in this clause, i.e. business referred to in sub-section (4) of section 80-IA, a housing project, a hotel project or a hospital project.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause 6]*

Double Taxation Avoidance Agreements – extending the scope to include agreements for developing mutual trade and investment

Under the existing section 90, the Central Government may enter into an agreement with the Government of any country outside India for granting of relief in respect of income on which have been paid both income-tax under the Income-tax Act and income-tax in that country, or for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, etc.

In order to encourage international trade and commerce, it is proposed to insert a new clause in sub-section (1) of the section 90 so as to provide that the Central Government may also enter into an agreement with the Government of any country outside India for granting relief in respect of income-tax chargeable under this Act or under the corresponding law in that country to promote mutual economic relations, trade and investment.

Certain terms used in the Double Taxation Avoidance Agreements (DTAAs) have not been defined either in the agreements or in the Income-tax Act. In order to address the problems arising due to conflicting interpretations of such terms, it is proposed to insert a new provision empowering the Central Government to define such terms by way of notification in the Official Gazette.

The proposed amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. *[Clause43]*