FINANCE (No. 2) BILL, 2004

PROVISIONS RELATING TO DIRECT TAXES

The provisions in Finance (No. 2) Bill, 2004, 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 2004-2005; the rates at which tax will be deductible at source during the financial year 2004-2005 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 or collection 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 incomes in certain cases for the financial year 2004-2005.

(ii) Amendment of the Income-tax Act, inter-alia, with a view to provide measures for social welfare, widening of tax base, measures to promote socio-economic growth, measures to plug revenue leakages, rationalisation and simplification measures and measures to stimulate financial markets.

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

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 the current incomes and not in relation to the incomes of past years. The substance of the main provisions in the Bill relating to direct taxes is explained in the following paragraphs:-

INCOME-TAX

I. Rates of income-tax in respect of incomes liable to tax for the assessment year 2004-2005.

In respect of incomes of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2004-2005, 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, 2003, 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 2003-2004. 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.8,50,000/-, the tax so computed after rebate under Chapter VIII-A shall be enhanced by a surcharge of ten per cent. for purposes of the Union. In the case of every artificial juridical person, the tax so computed shall be increased by a surcharge of ten per cent. for purposes of the Union. Further, in case of a firm, a local authority, a co-operative society and a company, the tax so computed shall be enhanced by a surcharge of two and one-half per cent for purposes of the Union.

II. Rates for deduction of income-tax at source during the financial year 2004-05 from income other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2004-05 from incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill and 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). The rates are the same as those specified in Part II of the First Schedule to the Finance Act, 2003. The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union to be calculated 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.

An additional surcharge, to be called the Education Cess to finance the Government's commitment to universalise quality basic education, is proposed to be levied at the rate of two per cent on the amount of tax deducted or advance tax paid, inclusive of surcharge.

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 2004-2005.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2004-2005 and also for computation of "advance tax" payable during that year in the case of all categories of taxpayers have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the financial year 2004-2005 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.

An additional surcharge, to be called the Education Cess to finance the Government's commitment to universalise quality basic education, is proposed to be levied at the rate of two per cent on the amount of tax deducted inclusive of surcharge.

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. 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 where total income exceeds Rs.8,50,000/-. No surcharge would be payable by such 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/-. However, no marginal relief shall be available in respect of the Education Cess.

Clause 21 of the Bill seeks to insert a new section 88D in the Income-tax Act to provide for rebate of the entire amount of tax payable in case of a resident individual having total income upto Rs. 1,00,000/-. Consequent to the proposed amendment, resident individuals having taxable income upto Rs. 1,00,000/- will not be required to pay any income-tax.

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%[2]
Rs.60,001/- to Rs.1,50,000/-	20%	Rs.60,001/- to Rs.1,50,000/-	20%[3]
AboveRs.1,50,000/-	30%[1]	AboveRs.1,50,000/-	30%[4]

[1] *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.*

[2] *Persons in this slab would not be required to pay any income-tax on the total income after rebate under Chapter VIII-A.*

[3] *Persons in this slab having income upto Rs. 1,00,000/- would not be required to pay any income-tax on the total income after rebate under Chapter VIII-A. However, persons having income exceeding Rs. 1,00,000/- will be required to pay in addtion to income tax payable after rebate under Chapter VIII-A, the Education Cess at the rate of two per cent.*

[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, and Education Cess at the rate of two per cent.*

The impact of levy of surcharge in the case of individuals, HUFs, etc., at different income levels would be as under:-

Total income	**Existing Tax liability (Rs.)**	**New Tax liability (Rs.)**			**Additional tax liability (Rs.)**	**Aditional tax liability (%)**
		Tax liability	**Cess**	**Total**		
50,000	Nil	Nil	Nil	Nil	Nil	Nil
55,000	500	Nil	Nil	Nil	(-) 500	(-) 100
60,000	1,000	Nil	Nil	Nil	(-) 1,000	(-) 100
60,010	1,002	Nil	Nil	Nil	(-) 1,002	(-) 100
60,020	1,004	Nil	Nil	Nil	(-) 1,004	(-) 100
60,050	1,010	Nil	Nil	Nil	(-) 1,010	(-) 100
60,100	1,020	Nil	Nil	Nil	(-) 1,020	(-) 100
60,200	1,040	Nil	Nil	Nil	(-) 1,040	(-) 100
75,000	4,000	Nil	Nil	Nil	(-) 4,000	(-) 100
1,00,000	9,000	Nil	Nil	Nil	(-) 9,000	(-) 100
1,50,000	19,000	19,000	380	19,380	380	2
2,00,000	34,000	34,000	680	34,680	680	2
3,00,000	64,000	64,000	1,280	65,280	1,280	2
5,00,000	1,24,000	1,24,000	2,480	1,26,480	2,480	2
7,50,000	1,99,000	1,99,000	3,980	2,02,980	3,980	2
8,00,000	2,14,000	2,14,000	4,280	2,18,280	4,280	2
8,50,000	2,29,000	2,29,000	4,580	2,33,580	4,580	2
8,55,000	2,34,000 #	2,34,000 #	4,680	2,38,680	4,680	2
8,60,000	2,39,000 #	2,39,000 #	4,780	2,43,780	4,780	2
8,65,000	2,44,000 #	2,44,000 #	4,880	2,48,880	4,880	2
8,70,000	2,49,000 #	2,49,000 #	4,980	2,53,980	4,980	2
8,75,000	2,54,000 #	2,54,000 #	5,080	2,59,080	5,080	2
8,80,000	2,59,000 #	2,59,000 #	5,180	2,64,180	5,180	2
8,85,000	2,63,450	2,63,450	5,269	2,68,719	5,269	2
8,90,000	2,65,100	2,65,100	5,302	2,70,402	5,302	2
10,00,000	3,01,400	3,01,400	6,028	3,07,428	6,028	2
25,00,000	7,96,400	7,96,400	15,928	8,12,328	15,928	2
1,00,00,000	32,71,400	32,71,400	65,428	33,36,828	65,428	2

\# *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 purpose of the Union at the rate of two and one-half per cent. of the tax payable and the cess at the rate of two per cent. on the tax payable inclusive of surcharge.

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 and the cess at the rate of two per cent. on the tax payable inclusive of surcharge.

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 and the cess at the rate of two per cent. on the tax payable inclusive of surcharge.

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 and the cess at the rate of two per cent. on the tax payable inclusive of surcharge. [*Clause 2 & First Schedule*]

WELFARE MEASURES

Exemption of capital gains on compensation received on compulsory acquisition of agricultural land situated within specified urban limits

The existing provisions of section 45 provide for charging to tax the capital gains arising from transfer of agricultural land situated within specified urban limits. The said section also provides that where transfer of such land is by way of compulsory acquisition under any law or where the consideration for transfer of such land is determined or approved by the Central Government or the Reserve Bank of India, capital gains so arising is chargeable to tax as income of the previous year in which the compensation or enhanced compensation or consideration is received by the assessee.

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been compulsorily acquired, it is proposed to insert a new clause (37) in section 10 so as to exempt the capital gains arising to an individual or a Hindu undivided family from transfer of agricultural land by way of compulsory acquisition where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1st day of April, 2004. The exemption is available only when such land has been used for agricultural proposes during the preceeding two years by such individual or a parent of his or by such Hindu undivided family.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 5*]

Rebate for repayment of housing loans taken from an authority established under a Central or State Act

Section 88 of the Income-tax Act provides 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.

The existing provisions contained in sub-clause (c) of clause (xv) of sub-section (2) of Section 88 provide for tax rebate on repayment of loans taken for purchase or construction of a residential house property, upto a limit of Rs.20,000 in one year within the overall investment ceiling of Rs.70,000. Such loans, however, have to be from the Central Government, or any State Government, or any bank including a cooperative bank, or the LIC, or the National Housing Bank, or any public company engaged in the business of housing finance, or from an employer who is a public company, or a public sector company, or a university, or a local authority or a cooperative society.

With a view to rationalise the provision, it is proposed to amend sub-clause (c) of clause (xv) of sub-section (2) of section 88 so as to include within the purview of tax rebate under section 88, any sum paid on account of repayment of the amount borrowed by the assessee for the purchase or construction of a residential house property, from his employer being an authority, board, corporation or any other body, established under a Central or State Act.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years [*Clause 20*]

Exemption of the family pension received by the family members of armed forces (including para-military forces) personnel killed in action in certain circumstances

Under the existing provisions contained in clause (18) of section 10, the pension income received by the recipients of Param Vir Chakra, Mahavir Chakra, Vir Chakra or certain other notified gallantry awards, as well as the family pension received by specified family members of such individuals is not included in computing the total income of such individuals.

In the interest of the welfare of the personnel of the armed forces, it is proposed to insert a new clause (19) in the said section so as to provide that where the death of a member of the armed forces (including para-military forces) of the Union has occurred in the course of operational duties, in such circumstances and subject to such conditions as may be prescribed, the family pension received by the widow or children or nominated heirs, as the case may be, shall be exempt from tax.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years. [*Clause 5*]

Deduction in the case of an undertaking operating and maintaining a hospital in a rural area.

The existing provisions of Section 80-IB provide for a deduction in respect of profits and gains from certain industrial undertakings, engaged in the business of building, owning and operating multiplex theatres or convention centres, developing and building housing projects, or which are engaged in the integrated business of handling, storage and transportation of food grains or the production or refining of mineral oil.

With a view to increase the penetration of medical services in the rural areas, it is proposed to insert a new sub-section in the said section so as to provide that the profits derived by an undertaking from the business of operating and maintaining a hospital in a rural area shall be eligible for a deduction of hundred per cent of such profits and gains. The deduction shall be available for a period of five assessment years beginning from the initial assessment year in which the undertaking begins to provide medical services. The undertaking shall be eligible for the deduction if such hospital is constructed during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008, in accordance with the local regulations in force, and has at least one hundred beds for patients. Further, for claiming the deduction, the assessee has to file an audit report in the prescribed form and in the prescribed manner along with the return of income.

This amendment will take effect from 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 17*]

Deduction in respect of a person with disability or severe disability suffering from autism, cerebral palsy or multiple disabilities.

Under the existing provisions contained in section 80U, a deduction of fifty thousand rupees is allowed to a resident individual who is a ‘person with disability’, as defined under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. A deduction of seventy-five thousand rupees is allowed where such individual is a ‘person with severe disability’ suffering from eighty per cent. or more of one or more disabilities. An individual claiming deduction under this section is required to furnish a copy of the certificate issued by the medical authority along with the return of income.

The Explanation to the said section defines the expressions, “disability”, “medical authority”, “person with disability” and “person with severe disability”, with reference to the relevant provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

With a view to extend the benefits under section 80U to persons suffering from autism, cerebral palsy and multiple disability, it is proposed to substitute the said Explanation so as to expand these definitions to include the above mentioned expressions as provided for in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

The proposed amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 18*]

Deduction in respect of maintenance including medical treatment of a dependant being a person with disability or severe disability suffering from autism, cerebral palsy or multiple disabilities.

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 an amount of rupees fifty thousand, if the assessee has, during the previous year, incurred any expenditure for the medical treatment, training and rehabilitation 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. A deduction of rupees seventy-five thousand is allowed, where such dependent is a ‘person with severe disability’ suffering from eighty per cent. or more of one or more disabilities. The term ‘dependant’ has been defined 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 who has not claimed any deduction under section 80U. A person claiming deduction under this section is required to furnish a copy of the certificate issued by the medical authority along with the return of income.

The Explanation to the said section defines, inter-alia, the expressions, “disability”, “medical authority”, “person with disability” and “person with severe disability” with reference to the relevant provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

With a view to extend the benefits under section 80DD to persons suffering from autism, cerebral palsy and multiple disability, it is proposed to amend the said Explanation so as to expand these definitions to include the above mentioned expressions as provided for in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 15*]

New provision for allowing deduction from tax payable for individuals having total income upto rupees one hundred thousand.

To provide relief to assessees belonging to the lower income group, it is proposed to insert a new section 88D, providing for a rebate of the entire amount of income-tax payable by an individual, resident in India, having total income not exceeding rupees one hundred thousand.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 21*]

Provisions to give effect to the New Pension Scheme

A New Pension Scheme is applicable, to new entrants to Government service. As per the scheme, it is mandatory for persons entering the service of the Central Government on or after 1st January, 2004, to contribute ten per cent. of salary every month towards their pension account. A matching contribution is required to be made by the Government to the said account.

To give effect to the new pension scheme of the Central Government, it is proposed to insert a new section 80CCD to provide for a deduction from the total income of an individual employed by the Central Government on or after 1st January, 2004, of amounts paid or deposited by him in the pension account subject to a maximum of ten per cent. of his salary, as per the Scheme to be notified by the Central Government.

Further, the amounts standing to the credit of the assessee in the pension account, for which a deduction has already been claimed by him, and accretions to such account, shall be taxed as income in the year in which such amounts are received by the assessee or his nominee on closure of the account or his opting out of the said scheme or on receipt of pension from the annuity plan.

No rebate is proposed to be allowed under section 88 in respect of amounts on which deduction has been claimed under section 80CCD.

It is also proposed to make suitable amendments to provide that the contribution made by the Central Government in the previous year to the said Account of an employee participating in the new pension scheme, shall not be charged to tax.

The proposed amendments will take effect retrospectively from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [*Clauses 4, 7 and 14*]

WIDENING OF TAX BASE

TDS from compensation paid on acquisition of immovable property other than agricultural land

With the growing development and rapid urbanisation in the country, large areas of land and many residential buildings are being acquired by various agencies including government agencies and other local authorities from the owners who are compensated.

With a view to curb the tendency of evading taxes by not reporting the income comprised in the compensation, it is proposed to insert a new provision requiring deduction of tax at the rate of ten per cent. on the amount of compensation.

It is proposed to further provide that no deduction of tax shall be made where the immovable property is agricultural land, whether situated within municipal limits or not, and where the amount of compensation paid is less than one hundred thousand rupees.

These amendments will take effect from 1st October, 2004. [*Clauses 35, 36, 37, 38, 39, 40, 41, 44 & 45*]

Collection of tax at source in respect of parking auctions, toll auctions, mining or quarrying leases

Under the existing provisions of section 206C, collection of tax is required to be made by the seller of certain specified goods from any amount payable by the buyer to the seller at the specified percentage.

It is proposed to amend the provisions of section 206C to provide for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any parking lot or toll plaza or a mine or a quarry to another person, other than a public sector company, for the use of such parking lot or toll plaza or mine or quarry for the purposes of business.

It is proposed that tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, by every person at the rate of two per cent. at the time of debiting of the amount payable by the licencee or lessee to his account or at the time of receipt of such amount from him in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

This amendment will take effect from 1st October, 2004. [*Clauses 30 & 47*]

Obligation to furnish Annual Information Return

Under the existing provision of section 285BA, any assessee who enters into any financial transaction, as may be prescribed, with any other person, is required to 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 financial year.

The existing provisions of the said section do not cast any obligation to furnish such a return on Government agencies and other authorities, who are valuable sources of information for the purposes of the Income-tax Act. Existing provisions of this section also do not provide for a mechanism to enforce the furnishing of such a return.

It is, therefore, proposed to substitute the said section by a new section. Sub-section (1) of the proposed new section provides that an assessee or the prescribed person in the case of an office of Government or certain other authorities, who are responsible for registering or maintaining a record of, or who enter into any specified financial transaction shall furnish an annual information return in respect of such transactions registered or recorded or entered into on or after 1st April, 2004, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

Sub-section (2) of the proposed section provides that the annual information return shall be furnished within the prescribed time in such form and manner (including on floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

Sub-section (3) of the proposed section defines the expression “specified financial transaction” so as to include a transaction of purchase, sale or exchange of goods or property or right or interest in a property, or a transaction for rendering any service which may be prescribed, or a transaction under a works contract, or a transaction by way of an investment made or an expenditure incurred, or a transaction for taking or accepting any loan or deposit, where the value or the aggregate value of such transaction during a previous year exceeds fifty thousand rupees or such other higher value as may be prescribed. It is also proposed to provide that the Board may prescribe different values for different specified transactions, having regard to the nature of the financial transaction, for different persons.

Sub-section (4) of the proposed section provides that where the prescribed income-tax authority considers that the annual information return is defective he may intimate such defect to the person who has furnished such return and give him an opportunity to rectify the same within one month or such further period as allowed and if the defect is not rectified, such return shall be treated as an invalid return and the provisions of the Act shall apply as if such person had failed to furnish the annual information return.

Sub-section (5) of the proposed section provides that where a person referred to in sub-section (1) has not furnished the annual information return within the prescribed time, the prescribed income-tax authority may serve upon him a notice requiring him to furnish such return within a period of sixty days from the date of service of such notice and such person shall furnish such return within the time specified in the notice.

This amendment will take effect from 1st April, 2005, and will apply to the financial transactions entered into on or after 1st April, 2004.

To provide a penalty for not furnishing a return as required by sub-section (1) of the proposed new section 285BA, it is proposed to insert a new section 271FA so as to provide that, if a person who is required to furnish an annual information return in respect of any financial year beginning on or after the 1st April 2004, fails to furnish such return within the time prescribed, the prescribed income-tax authority under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

This amendment will take effect from 1st April, 2005. [*Clauses 52 and 58*]

MEASURES TO PROMOTE SOCIO-ECONOMIC GROWTH

Reduction in the limit for increase in installed capacity for the purposes of additional depreciation

Under the existing provisions of clause (iia) of sub-section (1) of section 32, as introduced by the Finance Act, 2002, additional depreciation at the rate of 15 per cent. is allowable on new plant and machinery acquired and installed on or after 1.4.2002. This deduction is available to -

(i) a new industrial undertaking in the previous year in which it begins manufacture or production;

(ii) an existing undertaking, in the previous year in which it achieves 25% increase in installed capacity.

"Installed capacity" has been defined to mean the capacity of production as existing on the 31st day of March, 2002.

In order to give a thrust to investment in the manufacturing sector, it is proposed to reduce the limit for increase in installed capacity from 25% to 10%.

This amendment will take effect from 1st day of April, 2005 and will, accordingly apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 8*]

Tax holiday for agro processing industry

Under the existing provisions of section 80-IB, deduction is available in respect of profits and gains of undertakings engaged in refining or production of mineral oil, undertakings engaged in developing and building housing projects and those engaged in the integrated business of handling, storage and transportation of food grains, etc.

The agro based industry in the country is an important source of employment, especially in the rural areas. The Bill, therefore, proposes to provide hundred per cent deduction for five years and twenty-five per cent for the next five years (thirty per cent. in the case of a company) from profits derived by undertakings, engaged in the business of processing, preservation and packaging of fruits and vegetables. The deduction is available from the assessment year relevant to the previous year in which the undertaking begins such business.

This amendment amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 17*]

Extension of tax benefit u/s 80-IA in the case of renovation and modernisation of transmission and distribution lines in power sector

Under the existing provisions contained in sub-section (4) of section 80-IA, an undertaking or enterprise engaged in the generation, generation and distribution, or the transmission or distribution of power which begins such generation or transmission before 1.4.2006, is allowed a hundred percent deduction of the profits for any ten out of fifteen assessment years. However, the deduction is only available to a new undertaking and not to an undertaking formed by way of reconstruction or splitting up of a business already in existence. Further, the deduction is not available in the case of the transfer of old plant and machinery to the new business.

In order to rationalise the provisions of the section, it is proposed to make these restrictions on transfer of old plant and machinery and reconstruction of business applicable to the telecom sector also.

Recognising the need to encourage investment in renovation and modernisation of the transmission and distribution network, it is proposed to extend the tax benefit under the section to an undertaking which undertakes substantial renovation and modernisation of the existing transmission or distribution lines. A hundred per cent. deduction of profits shall be allowed in such cases, for ten assessment years starting from the year in which such renovation and modernisation takes place. It is proposed to define "substantial renovation and modernisation" to mean an increase in the book value of plant and machinery by fifty per cent.

Further, in view of the ongoing reforms of the State Electricity Boards, it is proposed to provide that the restrictions imposed on the transfer of old plant and machinery and splitting up of an old business shall not apply in the case of splitting up or, reconstruction, or re-organisation of State Electricity Boards.

The proposed amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 16*]

Extension of time limit for setting up of industries in the State of Jammu and Kashmir for the purpose of tax holiday under section 80-IB

Under the existing provisions contained in sub-section (4) of section 80-IB, industrial undertakings engaged in manufacture or production or operation of a cold storage plant and set up during the period 1.4.1993 to 31.3.2004 in the industrially backward States as listed in the VIIIth Schedule, including the State of Jammu and Kashmir, are eligible for a 100% deduction of profits for a period of 5 years, followed by 25% (30% in the case of a company) for the next 5 years. The deduction is not available to industries set up after 31.3.2004.

It is proposed to extend the terminal date by one more year for setting up of industrial undertakings in the State of Jammu and Kashmir. A negative list is also proposed to be provided in the thirteenth schedule, to specify the commodities which should not be manufactured or produced by such undertakings.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 17*]

Extension of the time limit for obtaining approval of housing projects for the purpose of tax holiday under section 80-IB, and allowing deduction for redevelopment or reconstruction of existing buildings

Under the existing provisions contained in sub-section (10) of section 80-IB, a deduction equal to one hundred per cent of the profits of an undertaking developing and building housing projects is allowed if the housing project is approved by a local authority before 31st March, 2005. The deduction is subject to the conditions that the undertaking should have commenced development of the housing project after the 1st day of October, 1998, the project should be on a size of a plot of land which has a minimum area of one acre, and that the residential unit should have a maximum built-up area of one thousand square feet where such residential unit is situated in Delhi or Mumbai and one thousand and five hundred square feet at other places.

It is proposed to substitute the existing sub-section so as to rationalise the provisions and provide additional incentives. With a view to allow more housing projects to avail the tax holiday under this provision, it is proposed to extend the time limit for obtaining approval from the local authority to 31st March, 2007. However, it is also proposed to provide a time limit for the completion of the housing project within 4 years from the end of the financial year in which the project is approved by the local authority. It is proposed to take the date of approval as the date on which the building plan is first approved by the local authority and the date of completion of the housing project as the date on which the completion certificate is issued by such authority.

It is further proposed to provide that the built-up area of the shops and other commercial establishments included in the housing project shall not exceed five percent. of the aggregate built-up area of the housing project or 2000 sq. ft., whichever is less.

With a view to encourage the redevelopment of slum dwellings, it is proposed to relax the condition of minimum plot size of one acre in the case of a housing project, carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings and notified by the Board in this behalf.

It is also proposed to define the expression “built-up area” to mean the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but not including the common areas shared with other residential units.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 17*]

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

Under the existing provision of sub section (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, 2004. For this purpose, the prescribed authority is the Secretary, Department of Scientific and Industrial Research, Ministry of Science and 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, 2005.

The proposed amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to be assessment year 2005-2006 and subsequent years. [*Clause 17*]

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

Under the existing provision contained in clause (ii) of sub-section (4) of section 80-IA, 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, 2004, 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 twenty five per cent. of profits (thirty per cent. in the case of companies) for the next five years.

The terminal date for setting up new undertakings and commencement of services for the purposes of this tax benefit, is proposed to be extended by one more year.

The amendment will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years. [*Clause 16*]

MEASURES TO PLUG REVENUE LEAKAGES

Provision to prevent splitting of contracts

The existing provisions contained in sub-section (3) of section 194C, inter alia, provide that no deduction of tax is required to be made at source from any sum credited or paid in pursuance of any contract, the consideration for which does not exceed twenty thousand rupees.

It has been observed that composite contracts are split up into contracts valued at less than Rs. 20,000 each to escape the provisions of TDS. To prevent this practice, it is proposed to provide that tax will be required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds Rs. 20,000 in a single payment or Rs. 50,000 in the aggregate during a financial year.

This amendment will take effect from 1st October, 2004. [*Clause 34*]

No set-off of business loss against income from salary

Under the existing provisions of sub-section (1) of section 71, the loss computed in the current year under one head of income is allowed to be set off against income computed under any other head. However, losses under the head " Capital Gains" are not allowed to be set-off against income under any other head.

In order to prevent abuse of the provisions of set-off of losses, it is proposed to amend section 71 to provide that an assessee shall not be entitled to set-off of any loss under the head "Profits and gains of business or profession" against income under the head "Salaries".

The proposed amendment will take effect from 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 13*]

Enforcing compliance of provisions of TDS

Under the existing provisions of sub-clause (i) of clause (a) of section 40, failure to make deduction at source from payment of interest, royalty, fees for technical services or any other sum which is payable outside India, or in India to a non-resident or to a foreign company or failure to make payment to the account of the Central Government, attracts disallowance of such payments in the hands of the payer. Deduction of such sum is, however, allowed in the computation of income if tax is deducted, or after deduction, paid in any subsequent year in computing the income of that year.

With a view to augment compliance of TDS provisions, it is proposed to extend the provisions of section 40a(i) to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or sub-contractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under sub-section (1) of section 200 and in accordance with the other provisions of Chapter XVII-B. It is also proposed to provide that where in respect of payment of any sum, tax has been deducted under Chapter XVII-B or paid in any subsequent year, the sum of payment shall be allowed in computing the income of the previous year in which such tax has been paid.

The proposed amendment will take effect from 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [*Clause 11*]

Modification of the definition of income to include receipts in cash or credit otherwise than for consideration

It is proposed to insert a new sub-clause in the definition of income so as to provide that any sum received on or after the 1st day of September, 2004, by an individual or a Hindu undivided family from any person, in cash or by way of credit, otherwise than by way of consideration of goods and services shall be included within the definition of income under section 2(24) of the Income-tax Act. It is also proposed to provide a general threshold limit of Rupees twenty five thousand. In addition to this, in the case of an individual's marriage, the gifts received will not be charged to tax.

However, in order to avoid hardships in genuine cases, it is also proposed to exclude certain sums from the scope of the new definition of income under section 2(24). The sums which shall not be included in the income are: (a) the sum received by, or credited in the account of (i) any individual from a relative out of natural love and affection, or (ii) any individual or Hindu undivided family under a will or by way of inheritance, or (iii) any employee or the dependant of the deceased employee from an employer, by way of bonus, gratuity or pension or insurance or any such other sum solely in recognition of the services rendered by the employee, or (b) any sum received in contemplation of death of an individual or karta or member of a Hindu undivided family, or (c) any income referred to in section 10 of the Income-tax Act or any other income which is exempt or not included in the total income under the Act, or (d) any sum received on account of transfers referred to in section 47 under this Act.

It is also proposed to define the expression "relative" for the purposes of the new provision as (i) spouse of the individual, (ii) brother or sister of the individual, (iii) brother or sister of the spouse of the individual, (iv) brother or sister of either of the parents of the individual, (v) any lineal ascendant or descendant of the individual, (vi) any lineal ascendant or descendant of the spouse of the individual, and (vii) spouse of a person referred to in items (ii) to (vi) mentioned above.

It is also proposed to amend section 56 so as to provide that the income referred to in the new sub-clause (xiii) of section 2(24) will be chargeable as "income from other sources".

This amendment will take effect from 1stApril, 2005, and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years. [*Clauses 3, 5 and 12*]

Prosecution for falsification of books of account or documents, etc

Under the existing provisions of section 278, punishment to a person who abets or induces any other person to evade tax is linked with the tax evasion by another person and charge of the abetment in case of first person can be sustained only if tax evasion by the other person is established. Deterrence against making false books or documents with an intent to enable other persons to evade tax, penalty or interest can be effectively provided by declaring the making of such books or documents an offence under the Income-tax Act .

It is, therefore, proposed to insert a new section 277A to provide punishment with rigorous imprisonment for a term not less than three months but which may extend to three years and with fine for falsification of books or documents, etc. to induce or abet any other person to evade any tax, penalty or interest chargeable or imposable under this Act. Explanation to the proposed section clarifies that it shall be sufficient in any charge to allege the general intent to enable other person to evade any tax, penalty or interest without specifying any particular instance or sum of tax, penalty or interest which has been or would have been evaded by the other person.

This amendment will take effect from 1st October, 2004. [*Clause 56*]

Measures to curb creation of losses via dividend and bonus stripping

The existing provisions of sub-section (7) of section 94 provide that where any person buys or acquires any unit or security within a period of three months prior to the record date fixed for declaration of dividend or income in respect of such unit or share, and sells or transfers the same within a period of three months after such record date, and the dividend or income received or receivable is exempt, then, the loss, if any, arising from such sale and purchase shall be ignored to the extent such loss does not exceed the amount of such income or dividend, in computation of income chargeable to tax, of such person.

It has been noticed that the condition specified in sub-section (7) of section 94 requiring an investor to hold units for at least ninety days after the record date did not provide the desired effect. In order to provide further deterrence to tax-avoidance, it is necessary to provide for a longer period of holding of units after a record date.

It is accordingly proposed to amend the said sub-section so as to provide that where any person buys or acquires any unit within a period of three months prior to the record date and sells or transfers the same within a period of nine months after such record date, and the dividend or income received or receivable is exempt, then, the loss, if any, arising from such sale and purchase shall be ignored to the extent such loss does not exceed the amount of such income or dividend, in computation of the income, chargeable to tax, of such person.

To prevent the practice of bonus stripping, it is proposed that the loss on sale of original units where bonus units have been issued, will be ignored and the amount of such loss shall be considered as the cost of purchase or aquisition of the bonus units.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years. [*Clause 23*]

RATIONALISATION AND SIMPLIFICATION MEASURES

Additional Income-tax on income distributed by the Specified company and Mutual Funds

Under the existing provisions of sub-section (2) of section 115R, any amount of income distributed by the specified company or a mutual fund to its unit holders is chargeable to tax and they are liable to pay additional income tax on such distributed income at the rate of twelve and one-half per cent.

It is proposed to provide that the specified company or a mutual fund shall continue to pay income tax on such distributed income at the rate of twelve and one-half per cent, if distribution is made to any individual or Hindu undivided family. The rate of tax shall, however, be twenty per cent if income is distributed to any person, other than individual or HUF.

This amendment will take effect from 9thJuly, 2004. [*Clause 27*]

Exemption for European Investment Bank

Under the existing provisions, the interest payable to the European Investment Bank on developmental loans granted by it, is taxable.

To honour the commitment given under a sovereign agreement to exempt the interest payable to the European Investment Bank on loans granted in pursuance of the framework agreement for financial cooperation entered into by the Central Government with the said Bank, a new clause is proposed to be inserted in section 10 to exempt such interest.

This amendment will take effect from 1st April 2005, and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years. [*Clause 5*]

Withdrawal of approval or notification by the National Committee

Under the existing provisions of section 35AC, a deduction of the amount of expenditure incurred during the previous year by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme is allowed. Sub-section (4) of the said section provides that where the National Committee is satisfied that the project or scheme is not being carried on in accordance with all or any of the conditions, it may withdraw the approval earlier granted to the association or institution. Sub-section (5) similarly provides for withdrawal of the notification of a project or scheme, if it is not being carried out in accordance with all or any of the conditions on the basis of which such project or scheme was notified.

Certain cases have come to the notice of the Government where the projects or schemes are not implemented or have been abandoned midway. In some cases donations raised have not been used on the eligible projects and in quite a few cases gross irregularities were committed in implementing the projects or schemes.

It is proposed to substitute the existing sub-sections (4) and (5) to provide for a mechanism for withdrawal of approval or notification by the National Committee. It is proposed to provide that where an association or institution, to which approval has been granted, fails to furnish to the National Committee, after the end of each financial year, a progress report in such form and setting forth such particulars and within such time as may be prescribed, the National Committee may, at any time, after giving a reasonable opportunity of showing cause, withdraw the approval. It is also proposed to provide that a copy of the order withdrawing the approval or notification shall be forwarded to the Assessing Officer having jurisdiction over the concerned association or institution.

This amendment will take effect from 1st October, 2004. [*Clause 10*]

De-materialisation of TDS and TCS certificates

Under the existing provisions of the Income-tax Act, returns of income required to be filed under section 139 are to be accompained by TDS/TCS certificates for claiming credit of tax deducted or collected. Computerisation of TDS/TCS functions will eventually dispense with this requirement and will also pave the way for filing of returns through the internet. The Finance Bill incorporates the necessary legislative amendments required to facilitate the above process of computerisation. The Bill propose to provide that -

(i) Credit for tax deducted or collected shall be given to the assessee without production of a certificate;

(ii) returns will not be deemed to be defective if they are not accompanied by such certificates;

(iii) every person deducting or collecting tax shall be required to furnish quarterly statements to the prescribed income-tax authority who will in turn furnish an annual statement of the tax deducted or collected to the assessee;

(iv) all assessees, including non-residents, will be required to intimate the PAN to the person deducting or collecting tax as otherwise credit for TDS/TCS can be given and

(v) penalty shall be levied in case quarterly statements are not furnished in time.

These amendments will take effect from 1st April, 2005. [*Clauses 29, 30, 38, 39, 41, 43, 47, 53, 54*]

Common number for TDS and TCS

Under the existing provisions of section 203A, every person responsible for deduction of tax under the provisions of Chapter XVII-B is required to apply to the Assessing Officer for the allotment of a tax-deduction account number if he has not been allotted such number. Similarly, every person responsible for collection of tax under the provisions of section 206C is required under section 206CA to apply to the Assessing Officer for the allotment of a tax-collection account number. Penalty is provided for failure to comply with the provisions of both the sections.

As a measure of simplification and rationalisation, it is proposed to do away with the requirement of obtaining a separate tax-collection account number and to provide that persons required to collect tax at source should obtain a tax deduction account number (TAN) under section 203A .

It is also proposed to amend section 272BBB to make it inoperative after 1st October, 2004 as section 272BB already provides for levy of penalty for failure to comply with the provisions of section 203A.

These amendment will take effect from 1st October, 2004. [*Clauses 42, 48 & 55*]

Filing of TDS returns and TCS returns in computer media made mandatory for Government deductors

The existing provisions of section 206 provide for filing of TDS returns by the principal officer in the case of every company in computer readable media on or before the prescribed time in accordance with the scheme specified by the Board by notification in the Official Gazette.

With a view to aid the process of computerization of TDS functions, the scheme for electronic filing of TDS returns needs to be made applicable to all the deductors. Filing of TDS returns on computer media was made compulsory in the case of companies. It is proposed to make the same compulsory in the case of Government deductors also.

It is also proposed to make such filing compulsory in the case of TCS as well, where the persons collecting tax are companies or Government.

These amendments will take effect from 1st April, 2005. [*Clause 46 & 47*]

Filing of paper TDS returns

Under the existing provisions of sub-section (1) of section 206, the prescribed person in the case of every government office, 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 returns 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.

It is proposed to amend sub-section (1) of section 206 to provide that return of tax deduction at source can be filed with any authority or agency specified by rules made by the Central Board of Direct Taxes in accordance with a scheme to be framed in this regard.

These amendments will take effect from 1st October, 2004. [*Clause 46*]

Filing of paper TCS returns

Under the existing provisions of sub-section (5A) of section 206C, every person collecting tax at source is required to furnish half-yearly returns for the periods ending on 30th September and 31st March in each financial year.

It is proposed to provide for filing of annual return of tax-collection at source within the time, as may be prescribed.

It is also proposed that a scheme on the line of the one proposed for filing of TDS returns with any authority or agency may be prescribed to enable computerisation of TCS returns.

These amendments will take effect from 1st October, 2004. [*Clause 47*]

Income of infrastructure capital company made liable to Minimum Alternate Tax

Under the existing provisions contained in clause (23G) of section 10 any income by way of dividends, other than dividends referred to in section 115-O, interest, or long term capital gains of an infrastructure capital fund or an infrastructure capital company or a cooperative bank from investments made in any undertaking engaged in an infrastructure project or a housing project or a hotel or hospital project is excluded from the total income.

With a view to rationalise the provision, it is proposed to insert a proviso so as to provide that in the case of an infrastructure capital company the above mentioned incomes shall be taken into account in computing the book profit for the purpose of section 115-JB and for payment of tax under that section.

It is further proposed to make consequential amendments in section 115JB.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years. [*Clauses 5 and 26*]

Providing exclusion of time taken by the Authority for Advance Rulings in rejecting an application or pronouncing an advance ruling from the period of limitation for making an assessment

Under the existing provisions contained in sections 245Q and 245R the Authority for Advance Rulings on receipt of an application for advance ruling shall forward the same to the Commissioner and if necessary call for the relevant records. After examining the application and the records the said Authority may either reject the application or pronounce its advance ruling on the question specified in the application. The existing provisions of section 245RR provide that no income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made by a resident to the Authority for Advance Rulings.

It is proposed to insert new clauses (vi) and (vii) in Explanation 1 to section 153 so as to provide that the period commencing on the date on which application has been filed to the Authority for Advance Rulings and ending on the date on which the order rejecting the application or pronouncing the advance ruling, as the case may, is received by the Commissioner shall be excluded for computing the period of limitation under this section.

It is also proposed to insert new clauses (v) and (vi) in Explanation to section 153B so as to provide that the period commencing on the date on which application has been filed to the Authority for Advance Rulings and ending on the date on which the order rejecting the application or pronouncing the advance ruling, as the case may, is received by the Commissioner shall be excluded for computing the period of limitation under this section.

The proposed amendment will take effect from 1 st October, 2004. [*Clauses 32 & 33*]

Levy of Transaction tax and exemption/concession on capital gain arising from securities entered in a recognized stock exchange

Under the existing provisions of the Income-tax Act, profits or gains arising to an investor from the transfer of securities are charged to tax either as long term capital gains or short term capital gains depending on the period of holding of the said securities. Short-term capital gains arising from transfer of securities are taxed at the applicable rates. Long-term capital gains are taxed @ 20%, after adjusting for inflation by indexing the cost of acquisition. For listed securities, the taxpayer has an option to pay tax on long-term capital gains @ 10% but without indexation. For Foreign Institutional Investors (FIIs), the long-term capital gains and short-term capital gains are taxed at the rate of 10% (without indexation) and 30% respectively. In case of a trader in securities, however, the gains are taxed as any other normal business income.

With a view to simplify the tax regime on securities transactions, it is proposed to levy a tax at the rate of 0.15 per cent. on the value of all the transactions of purchase of securities that take place in a recognised stock exchange in India. This tax shall be collected by the stock exchange from the purchaser of such securities and paid to the exchequer. The provisions relating to the proposed tax are contained in Chapter VII of the Finance (No.2) Bill, 2004, and shall take effect from the date this Chapter comes into force.

Further, it is proposed to insert clause (38) in section 10 of the Income-tax Act, so as to provide exemption from long-term capital gains arising out of securities sold on the stock exchange. It is also proposed to insert a new section111A and amend section 115AD of the Income-tax Act, so as to provide that short-term capital gains arising from sale of such securities to an investor including FIIs shall be charged at the rate of ten per cent.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply to assessment year 2005-2006 and subsequent years. [*Chapter VII and Clauses 5, 24, 25*]

Punishment for offences by a company

Under the existing provisions of section 278B, where an offence has been committed by a company, the company as well as the person who was in charge of, and was responsible for the conduct of the business of the company at the time when the offence was committed will be deemed to be guilty of the offence. It is also provided that, where the offence had been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence.

In respect of the some of the offences, it is provided that the person found guilty shall be punishable with rigorous imprisonment and with fine. A company being a juristic person cannot be punished with imprisonment. It can be punished with fine only.

It is accordingly proposed to insert a new sub-section (3) in the said section so as to provide that if an offence under the Act has been committed by a person being a company, it shall be punished with fine and any other person who was in charge of and was responsible for the conduct of business of the company, or any director, manager, secretary or other officer of the company shall be liable for punishment of imprisonment and fine wherever so provided.

A similar amendment is proposed to be made in section 35HA of the Wealth-tax Act, 1957.

This amendment will take effect from 1st October, 2004. [*Clause 57*]

Estimates by valuation officer in certain cases

For determining the cost of construction of properties, an Assessing Officer has been taking the assistance of a Valuation Officer by exercising his power vested in him under section 131 of the Income-tax Act which provides that the Assessing Officer shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit. One such power is of “issuing commission” provided under clause (d) of sub-section (1) of the said section which inter-alia empowers the court “to make a local investigation” and also “to hold a scientific, technical or expert investigation”. The authority of Valuation Officer was created under the Wealth-tax Act by Taxation Laws (Amendment) Act, 1972 with effect from 15.11.1972. The scope of power under section 131 vested in an Assessing Officer to make a reference to the Valuation Officer for estimating the cost of construction of properties has been a matter of different legal interpretations.

With a view to remove any doubt in this regard, it is proposed to insert a new section 142A, with retrospective effect from 15.11.1972, so as to clarify that Assessing Officer has and always had the power to make a reference to the Valuation Officer.

Sub-section (1) of proposed section provides that where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required for the purposes of making any assessment or re-assessment, the Assessing Officer may require the Valuation Officer to make an estimate of the same and report to the Assessing Officer.

Sub-section (2) of the proposed section provides that the Valuation Officer to whom such a reference is made under sub-section (1) shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957.

Sub-section (3) of the proposed section provides that on receipt of the report from the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment.

As the intention of inserting new section 142A retrospectively is not to unsettle the cases already decided (except in cases where a reassessment is required to be made under section 153A), it is proposed to provide a proviso to the new section to the effect that the provisions of the same shall not apply in respect of an assessment made on or before the 30th day of September, 2004 and where such assessment has become final and conclusive on or before that date.

This amendment will take effect retrospectively from 15th November, 1972. [*Clause 31*]

Power to the Commissioner for cancelling registration under section 12AA

Under the existing provisions of section 12AA the procedure for registration of a trust or institution by the Commissioner of Income-tax is provided. Although the power of cancellation of registration flows from the power to register, the same has not been specifically provided in the IT Act thereby leading to unnecessary litigation.

It is proposed to provide that if the Commissioner of Income-tax is satisfied that the activities of any trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, he shall, after giving reasonable opportunity of being heard to the concerned trust or institution, pass an order in writing cancelling the registration granted under the said section.

The proposed amendment will take effect from 1st October 2004. [*Clause 6*]

Withdrawal of exemption under section 10(15A) and re-introduction of exemption under section 10(6BB)

Under the existing provisions of section 10(15A), any payment made by an Indian company engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine on lease from the Government of a foreign State or a foreign enterprise under an agreement, not being an agreement entered into between the 1st day of April, 1997 and the 31st day of March, 1999, and approved by the Central Government is not included in computing the total income.

It is proposed to withdraw the said exemption in respect of all such agreements entered into on or after the 1st day of September, 2004.

Under the existing provisions of section 10(6BB), income-tax exemption is provided in respect of tax paid by an Indian company engaged in the business of operation of aircraft on income derived by the Government of a foreign state or a foreign enterprise as consideration of acquiring an aircraft or an aircraft engine on lease under an agreement entered after the 31st day of March, 1997 but before the 1st day of April, 1999 and approved by the Central Government in this behalf and the tax on such income is payable by such Indian company under the terms of that agreement to the Central Government, is not included in computing the total income of the foreign enterprise.

It is proposed to allow the said exemption on all such agreements entered into on or after the 1st day of September, 2004.

These amendments will take effect from 1stApril, 2005, and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years. [*Clause 5*]

Sunset provision to section 10(4)(ii) relating to interest in a Non-Resident (External) Account

Under the existing provisions contained in section 10(4)(ii), in the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India shall not be included in computing his total income.

It is proposed that the exemption will stand withdrawn in respect of such income by way of interest paid to him or credited to his Non-Resident (External) account in any bank in India on or after the 1st day of September, 2004.

This amendment will take effect from 1st April, 2005, and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years. [*Clause 5*]

Sunset provision to section 10(15)(iv)(fa) relating to interest on Foreign Currency Deposits

Under the existing provisions contained in section 10(15)(iv)(fa), the interest payable by a scheduled bank to a non-resident or to a person who is not ordinarily resident on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India shall not be included in computing his total income.

It is proposed that the exemption shall stand withdrawn in respect of such interest payable on or after the 1st day of September, 2004.

This amendment will take effect from 1st April, 2005, and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years. [*Clause 5*]

Amendment in section 90

Under the existing provisions contained in the Explanation to section 90 it is declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company, where such foreign company has not made the prescribed arrangement for declaration and payment within India, of the dividends (including dividends on preference shares) payable out of its income in India.

It is proposed to omit the words "where such foreign company has not made the prescribed arrangement for declaration and payment within India, of the dividends (including dividends on preference shares) payable out of its income in India" in the Explanation, as these words are redundant in the case of a foreign company.

This amendment will take effect from 1st April, 1962, and will, accordingly, apply in relation to the assessment year 1962-1963 and subsequent assessment years. [*Clause 22*]

Modification of definition of venture capital undertaking

Under the existing provisions contained in section 10(23FB), Venture Capital Undertaking is defined to mean a domestic company whose shares are not listed in the recognized stock exchange in India and which is engaged in the business for providing services, production or manufacture of an article or thing but does not include such activities or sectors which are specified by the Securities and Exchange Board of India with the approval of Central Government by way of notification in the Official Gazette.

It is proposed to define venture capital undertaking so as to align the definition with that mentioned in the Securities and Exchange Board of India (Venture Capital Funds) Regulation, 1996 made under the Securities and Exchange Board of India Act, 1992 and which is notified in the Official Gazette by the Board.

This amendment will take effect from 1st October, 2004. [*Clause 5*]

Introduction of Tonnage Tax

To make the Indian shipping industry more competitive, a tonnage tax scheme for taxation of shipping profits is proposed to be introduced. Many maritime nations have introduced tonnage based taxation. Some of the basic features of the proposed tonnage tax scheme are as follows:-

- It is a scheme of presumptive taxation whereby the notional income arising from the operation of a ship is determined based on the tonnage of the ship.
- The notional income is taxed at the normal corporate rate applicable for the year.
- Tax is payable even if there is a loss in an year.
- A company may opt for the scheme and once such option is exercised, there is a lock in period of ten years. If a company opts out, it is debarred from re-entry for ten years.
- Since this is a preferential regime of taxation, certain conditions like creation of reserves, training etc. are required to be met.
- A company may be expelled in certain circumstances.

A new Chapter XII-G is proposed to be inserted in the Income tax Act containing sections 115V to 115VZC which provides for special provisions relating to taxation of the income of shipping companies. The Chapter is divided into 7 parts. Part A contains the meaning of certain expressions typically used in shipping business, part B gives the method of computation of tonnage income, part C specifies the procedure for option of tonnage tax scheme, part D gives the conditions for the applicability of the scheme, part E contains the provisions of amalgamation and demerger, part F contains miscellaneous provisions and part G contains the provisions relating to avoidance and exclusion from the scheme.

The salient features of the proposed scheme are as follows:

A company owning at least one qualifying ship may join. A qualifying ship is one with a minimum tonnage of 15 tons and having a valid certificate. The company has to opt for the scheme within 3 months i.e. any time between 1st October, 2004 to 31st December, 2004 by making an application in the prescribed form to the concerned Joint Commissioner who may pass an appropriate order.

Certain types of ships like fishing vessels, pleasure crafts etc are excluded in terms of section 115V-D which gives details of as to what ships will qualify for the scheme.

The business of operating qualifying ships is to be considered a separate business and separate accounts are to be maintained. Section 115VG gives the manner of computation of the daily tonnage income which when multiplied by the number of days the ship operated, will give the annual tonnage income from the ship. A company owning at least one ship may charter in ships subject to certain limits for the purpose of operation. Relevant shipping income, which replaces the actual income from the operations, is defined in section 115 V-I. Section 115VJ gives the treatment of common costs.

A company opting for the scheme is not allowed any set-off of loss nor is any depreciation allowed. However, both loss and depreciation are deemed to have been allowed and notional adjustments are made against the relevant shipping income. Although depreciation is not allowed, it is necessary to bifurcate the qualifying ships and non-qualifying ships at the time a company joins the scheme. Section 115VK lays down the method for allocating the written down value amongst qualifying and non-qualifying ships. Any income from transfer of qualifying assets is treated in the same manner as for any other business asset in terms of section 115VN.

The profits from the business of operating qualifying ships will not be taken into consideration for the purpose of MAT as per section 115 V-O.

Section 115VP lays down the procedure for the option and the manner of granting approval. Section 115VQ lays down that once a company opts for the scheme, the option remains in force for ten years except in certain circumstances. Section 115 VS provides for the circumstances in which the tonnage tax company is prohibited from opting for the scheme. Such prohibition is for a period of ten years. Sections 115VT, 115VU, 115VS and 115VW lay down the conditions for the applicability of the scheme. In terms of section 115VT, a tonnage tax company has to create a reserve of at least 20% of its book profits to be utilized for the purpose of acquisition of new ships. As per section 115VU a tonnage tax company has to comply with a minimum training requirement in accordance with the guidelines to be issued by the DG(Shipping). The company will be expelled if the training requirements are not met for 5 consecutive years. Section 115VV lays down the limit of 49 per cent. for chartering in. In terms of section 115VW, maintenance of separate books of account and the audit of the same is compulsory for a company opting for the scheme. Section 115VX lays down the details regarding valid certificate which indicates the net tonnage of ships. Sections 115 VY and 115VZ provide for the contingencies of amalgamation and demerger. Section 115VZB enjoins upon a company not to abuse the preferential tax regime and section 115VZC provides for expulsion of a company in case of abuse.

Consequential amendments have also been proposed to provide for appeal to Commissioner (Appeals) in case the option for tonnage tax scheme is rejected by the Joint Commissioner and to the Appellate Tribunal against the order of expulsion in case of abuse of the scheme.

With the introduction of the proposed tonnage tax scheme, the deduction under section 33AC is proposed to be withdrawn.

These amendments will take effect from 1st April, 2005 and will, accordingly, apply in relation to assessment year 2005-2006 and subsequent years. [*Clauses 9, 28, 50 and 51*]

MEASURES TO STIMULATE FINANCIAL MARKET

Exemption to open-ended equity oriented funds

Under the existing provisions of sub-section (2) of section 115R, no additional tax was to be levied in respect of any income distributed to the unit holders of open-ended equity oriented funds in respect of any distribution made from such funds for a period of one year commencing from 1st April, 2003.

It is proposed to continue the said exemption without any time limit.

This amendment shall take effect retrospectively from 1.4.2004 and shall be relevant for Assessment Year 2005-2006 and subsequent assessment years. [*Clause 27*]