

MEASURES FOR ADDITIONAL REVENUE MOBILISATION

Increase in the rates of Tax on distributed profits in certain cases

Under sub-section (1) of section 115-O, *inter alia*, any amount declared, distributed or paid by a domestic company by way of dividends on or after the 1st day of April, 2003, whether out of current or accumulated profits, shall be charged to additional income-tax (also called "tax on distributed profits") at the rate of twelve and one-half per cent.

It is proposed to increase the rate of such tax on distributed profits from twelve and one-half per cent. to fifteen per cent.

This amendment will take effect from 1st April, 2007.

Under sub-section (2) of section 115R in Chapter XII-E, *inter alia*, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual fund shall be liable to pay additional income-tax on such distributed income at the rate of twelve and one-half per cent. on income distributed to any person, being an individual or a Hindu undivided family, and twenty per cent. on income distributed to any other person. No tax is payable on income distributed by an equity oriented mutual fund.

It is proposed to amend the said sub-section so as to provide that where the income is distributed by a money market mutual fund or a liquid fund, such fund shall be liable to pay additional income-tax on such distributed income at the rate of twenty-five per cent. For this purpose, it is proposed to provide definitions of "money market mutual fund" and "liquid fund" in the *Explanation* after section 115T. The existing rates of tax on income distributed by a fund other than a money market mutual fund or a liquid fund shall remain the same.

These amendments will take effect from 1st April, 2007.

[Clauses 27,28 and 29]

MEASURES TO PLUG REVENUE LEAKAGES

Tax benefit only for new units in special economic zones

Sections 10AA of the Income-tax Act provides that in computing the total income of an entrepreneur, from his unit in the special economic zone, the following deduction shall be allowed:—

- (i) hundred per cent. of profits and gains derived from the export made in eligible business for a period of five consecutive assessment years beginning from the year in which such business commences;
- (ii) fifty per cent. of such profits and gains for further five assessment years and thereafter;
- (iii) an amount not exceeding fifty per cent of the profit debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be created and utilized for the purposes of the business in the specified manner, for the next five consecutive assessment years

Under the existing provisions contained in sub-section (4) of the said section, it is provided that section 10AA is applicable to any undertaking being the unit, which has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.

Considering the fact that the special economic zones are intended to promote new industry and new investment and not to facilitate migration of existing industries to avail of tax concessions, it is proposed to substitute sub-section (4) of section 10AA so as to provide that section 10AA is applicable to any undertaking, being the unit, which fulfils all the following conditions, namely:-

- (i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence;
- (iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

It is also proposed to provide that the conditions of (ii) shall not apply in respect of any undertaking, being the unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section.

It is also proposed to provide that the provisions of *Explanation 1* and *Explanation 2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii).

This amendment will take effect retrospectively from 10th February, 2006.

[Clause 7]

Strengthening the provisions of section 40A(3)

The existing provisions of sub-section (3) of section 40A provide for disallowance of twenty per cent of the expenditure incurred, payment in respect of which is made in a sum exceeding twenty thousand rupees, otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft.

The said sub-section was inserted by the Finance Act, 1968 providing for disallowance of hundred per cent of the expenditure, if payment was made in contravention of its provisions. Subsequently, the Finance Act, 1995 amended this sub-section with effect from 1st April, 1996 to restrict the disallowance to twenty per cent of the expenditure, payment against which is made in violation of its provisions.

The provisions of the said sub-section were to act as an anti-evasion measure. It has come to notice that substitution of the disallowance of hundred per cent. by twenty per cent. has diluted the deterrence potential of the provisions. Therefore, to re-strengthen

the deterrence potential, it is proposed to amend sub-section (3) of section 40A to provide for hundred per cent disallowance of payments which are made in violation of its provisions.

There are occasions when deduction of expenditure is claimed in one year and the payment against such expenditure is made in any subsequent year in violation of the provisions of the said sub-section. In such cases, the existing first proviso to the said sub-section provides for re-computation of the total income of the previous year in which the liability to pay against the expenditure was incurred. Such re-computation is allowed to be made under the provisions in section 154 and the limitation of four years in respect of such re-computation is reckoned from the end of the assessment year next following the previous year in which the payment in contravention of provisions of sub-section (3) of section 40A was made. In many cases, violation is noticed after expiry of four years when no remedy is available. Rectification of past assessments involves inconvenience to the assessee and increases paper work for the Department. The amendment, therefore, proposes to substitute the present method of disallowance in an earlier year with a simplified method of contemporaneous disallowance by deeming the payments made in contravention of law in any subsequent year as profits and gains of business or profession of such year in which payment is made in violation of law. This method of deeming the income in the year of payment, will cast an obligation on the assessee to declare this deemed income in terms of the existing requirement under law to affirm that the amount of total income and other particulars in his return of income are truly stated.

It is further proposed to provide that no disallowance shall be made or no payment shall be deemed to be the profits or gains of business or profession if any payment exceeding twenty thousand rupees is made otherwise than by specified instruments, in such cases and under such circumstances as may be prescribed, having regard to - (i) the nature and extent of banking facilities available, (ii) business expediency considerations and (iii) other relevant factors.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years. [Clause 13]

Rationalisation of provisions relating to penalty for concealment of or furnishing inaccurate particulars of income

Under the existing provisions of clause (b) of Explanation 4 to sub-section (1) of section 271, it has been provided that in a case to which Explanation 3 to the said sub-section (1) applies, the amount of tax sought to be evaded shall mean the tax on the total income assessed.

It has been proposed to amend said Explanation 4 so as to provide that in a case to which said Explanation 3 applies, the amount of tax sought to be evaded shall mean the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self assessment tax paid before the issue of notice under section 148.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to assessment year 2003-04 and subsequent years.

Under the existing provisions of Explanation 5 to sub-section (1) of section 271, it has been provided that where in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (referred to as assets in this Explanation) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income – (i) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or (ii) for any previous year which is to end on after the date of the search, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of section 271, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income. However, penalty shall not be levied if certain conditions prescribed therein are fulfilled.

It has been proposed to amend said Explanation 5 so as to provide that provisions of said Explanation shall be applicable only in a case where search under section 132 was initiated before 1st June, 2007.

This amendment will take effect from 1st June, 2007 and will be applicable to cases where search under section 132 is initiated on or after 1st June, 2007.

It has also been proposed to insert a new Explanation 5A to sub-section (1) of section 271 so as to provide that where in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of – (i) any money, bullion, jewellery or other valuable article or thing (referred to as assets in the proposed new Explanation) or (ii) any income based on any entry in any books of account or other documents or transactions and claims that such assets or entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year; which has ended before the date of the search and the due date for filing the return of income for such year has expired and the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

This amendment will take effect from 1st June, 2007 and will be applicable to cases where search under section 132 is initiated on or after 1st June, 2007.

It is also proposed to insert a new section 271AAA so as to provide that, in a case where search has been initiated under section 132 on or after 1st June, 2007, the assessee shall be liable to pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year. However, provisions of this section shall not be applicable if the assessee— (i) in a statement under sub-section (4) of section 132 in the course of the search, admits the undisclosed income and specifies the manner in which such income has been derived; (ii) substantiates the manner in which the undisclosed income was derived; and (iii) pays the tax, together with interest, if any, in respect of the undisclosed income. It is further proposed to provide that no penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be levied or imposed

upon the assessee in respect of the undisclosed income referred to in proposed new section. It is also proposed to provide that the provisions of section 274 and section 275 shall, so far as may be, apply in relation to the penalty leviable under the proposed new section.

For the purposes of this section it has been proposed to define undisclosed income so as to mean— (i) any income of the specified previous years represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or which has otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of the search; or (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

For the purposes of this section, it has also been proposed to define specified previous year so as to mean the previous year— (i) which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or (ii) in which search was conducted.

It is also proposed to provide an appeal to the Commissioner against levy of penalty under the proposed new section 271AAA.

This amendment will take effect from 1st April, 2007 and will accordingly apply in relation to assessment year 2007-2008 and subsequent years in cases where search under section 132 is initiated on or after 1st June, 2007.

[Clauses 62, 67 and 68]

RATIONALISATION AND SIMPLIFICATION OF ADMINISTRATIVE AND COMPLIANCE PROCEDURES

Clarificatory amendment to the definition of 'Assessing Officer' and definition of certain other Income-tax Authorities

Under the existing provisions of clause (7A) to section 2, the expression "Assessing Officer" has been defined to include Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act. The Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of section 120 can also exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under this Act. The Income-tax authorities- "Additional Commissioner" and "Additional Director" were not specifically mentioned in the said definition as "Additional Commissioner" and "Additional Director" were included in the definition of Joint Commissioner and Joint Director under clauses (28C) and (28D) of the said section respectively.

With a view to clarify the meaning of the expression "Assessing Officer", it is proposed to amend said clause (7 A) so as to include Additional Commissioner in the said clause. This amendment will take effect retrospectively from 1st June, 1994.

With a view to clarify the meaning of the expression "Assessing Officer", it is further proposed to amend the said clause (7 A) so as to include Additional Director in the said clause. This amendment will take effect retrospectively from 1st October, 1996.

It is also proposed to insert clause (IC) in the said section so as to provide that "Additional Commissioner" means a person appointed to be an Additional Commissioner of Income-tax under sub-section (1) of section 117. It is further proposed to insert clause (ID) in the said section so as to provide that "Additional Director" means a person appointed to be an Additional Director of Income-tax under sub-section (1) of section 117. The said amendment is clarificatory in nature. This amendment will take effect retrospectively from 1st June, 1994.

It is also proposed to bring similar amendments in the Wealth-tax Act so as to provide that Assessing Officer shall include Additional Commissioner and Additional Director.

It is also proposed to insert clause (9B) in the said section so as to provide that "Assistant Director" means a person appointed to be an Assistant Director of Income-tax under sub-section (1) of section 117. This amendments will take effect retrospectively from 1st April, 1988.

[Clauses 3 and 74]

Substitution of the power of notification of certain charitable and religious entities by power of approval by the prescribed authority

Sub-clause (iv) of clause (23C) of section 10 provides that the income of any fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States, shall be exempt. Sub-clause (v) of clause (23C) of section 10 provides that the income of any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government in the Official Gazette, shall be exempt.

It is proposed to amend the said sub-clauses (iv) and (v) so as to provide that such exemption shall be available to the entities referred to therein, if they are approved by the prescribed authority.

Consequential amendments are proposed in the second proviso, ninth proviso and thirteenth proviso to clause (23C) of section 10, so as to include a reference to approval granted under sub-clause (iv) or sub-clause (v) of the said clause in addition to notification issued under the said sub-clauses. It is also proposed to insert a new proviso after the fifteenth proviso so as to provide that all pending

applications in respect of which no notification has been issued under the said sub-clause (iv) or (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day.

Consequential amendment is also proposed in sub-clause (ii) of the proviso to sub-section (3) of section 143. Consequential amendment is also proposed in section 296 so as to provide that notifications issued before the 1st day of June, 2007 under sub-clause (iv) of clause (23C) of section 10 shall be placed before each House of Parliament within the specified period.

These amendments will take effect from 1st June, 2007.

[Clauses 6, 38 and 71]

Removal of the requirement for charitable or religious trusts or institutions to file for registration within one year of creation or establishment

Under the existing provisions of section 12A, in order to claim exemption under sections 11 and 12, a charitable or religious trust or institution is required to make an application for registration in the prescribed form and in the prescribed manner to the Commissioner within one year from the date of its creation or establishment and has to be registered under section 12AA. The section also provides that where such application is made after the aforesaid period, the Commissioner may condone such delay, if he is satisfied that the application was delayed for sufficient reasons. On such condonation of delay, the provisions of section 11 and 12 shall apply in respect of the income of such trust or institution from the date of creation of the trust or establishment of the institution. However, where the Commissioner is not so satisfied, the provisions of section 11 and 12 shall apply only from the 1st day of the financial year in which the application is made.

Amendment is proposed in section 12A to provide that the provisions of clause (a) shall not apply in relation to any application made on or after the 1st day of June, 2007.

It is also proposed to number section 12A as sub-section (1) of section 12A and to insert a new clause (aa) therein to provide that the provisions of sections 11 and 12 shall not apply in relation to the income of the trust or institution (where any application for registration has not been made under clause (a) before the first day of June, 2007), unless the person in receipt of the income has made an application for such registration on or after the 1st day of June, 2007 in the prescribed form and in the prescribed manner to the Commissioner and such trust or institution is registered under section 12AA.

It is also proposed to insert a new sub-section (2) in section 12A so as to provide that where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution for the assessment year immediately following the financial year in which such application is made.

Through the above amendments, a trust or institution will no longer be required to file an application for registration within one year from the date of its creation or establishment. Besides, the power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, shall stand removed. Accordingly, in respect of applications filed on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made.

Consequential amendments are also proposed to be made in sub-sections (1) and (2) of section 12AA to include a reference to an application for registration of a trust or institution made under the newly inserted clause (aa) of sub-section (1) of section 12A.

These amendments will take effect from 1st June, 2007.

[Clause 8 and 9]

Extension of Time limitation for making assessment where a reference is made to the Transfer Pricing Officer

Under the existing provisions of the Income-tax Act, there is no extra time available to the Assessing Officer for completing the assessment or reassessment in cases where a reference is made by him under sub-section 92CA to the Transfer Pricing Officer for determination of the Arm's length price of an international transaction. Since, the time limit for selection of cases for scrutiny is one year from the end of the month in which the return was filed, references to Transfer Pricing Officers are made mostly after one year of filing of the return. Thus, Transfer Pricing Officers are not getting adequate time to make a meaningful audit of transfer price in cases referred to them.

With a view that the Transfer Pricing Officers as well as the Assessing Officers get sufficient time to make the audit of transfer price and the assessment in cases involving international transactions, it has been proposed to revise the time limits specified in sections 153 and 153B for making the assessment or reassessment in cases where a reference has been made to the Transfer Pricing Officer. The revised time limits in such cases shall be the time limits specified under the aforesaid sections, as increased by twelve months. It is further proposed to provide that the Transfer Pricing Officer shall determine the Arm's length price at least two months before the expiry of new statutory time limit for making the assessment or reassessment.

Under the existing provisions of sub-section (4) of section 92CA, it has been provided that on receipt of the order under sub-section (3) of said section, the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the Arm's length price determined under sub-section (3) by the Transfer Pricing Officer.

It has been proposed to amend said sub-section (4) of section 92CA so as to provide that, on receipt of the order under sub-section (3) of section 92CA, the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the Arm's length price determined under sub-section (3) of section 92CA by the Transfer Pricing Officer.

These amendments will take effect from 1st June, 2007 and shall also be applicable in cases where a reference to the Transfer Pricing Officer was made prior to 1.7.2007 but the Transfer Pricing Officer did not pass the order under sub-section (3) of section 92CA before the said date.

[Clauses 25,39 and 40]

Rationalising provisions relating to the jurisdiction of Income-tax Authorities

Under the existing provisions of clause (b) of sub-section(4) of section 120, the Board may, by general or special order, and subject to such conditions, as specified therein, empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of incomes or classes of cases, can be exercised or performed by a Joint Commissioner or Joint Director. Where any order is made under this clause, references in any other provisions of this Act, or to any rule made thereunder to the Assessing Officer shall be deemed to be references to such Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

It is proposed to amend clause (b) of sub-section (4) of the said section so as to provide that the powers and functions conferred on or assigned to the Assessing Officer may also be exercised or performed by an Additional Commissioner.

This amendment will take effect retrospectively from 1st June, 1994.

It is further proposed to amend the said clause to provide that the powers and functions conferred on or assigned to the Assessing Officer may also be exercised or performed by the Additional Director.

This amendment will take effect retrospectively from 1st October, 1996.

[Clause 33]

Rules for facilitating annexure-less returns

Under the existing provisions contained in explanation to sub-section (9) of section 139, it is provided that a return of income shall be regarded as defective unless, the conditions specified in clauses (a) to (f) of the explanation to the said sub-section are fulfilled. The Finance Act, 2006, amended the said section by inserting a proviso to the said sub-section (9), conferring on the central Board of Direct Taxes, to dispense with any of the conditions specified in clauses (a) to (f) of the explanation. However, apart from the conditions specified in clauses (a) to (f) of the explanation to the said sub-section, documents, statements, receipts, certificate, audited reports or any other documents are also required to be annexed for claiming benefits or deductions under the Income-tax Act as specified under other sections.

It is proposed to insert a new section 139C so as to provide that the Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, audited reports or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act. However, on demand the said documents, statements, receipts, certificate, audited reports or any other documents are to be produced before the Assessing Officer.

It is also proposed to insert a new section 139D so as to provide that the Board may make rules providing for the class or classes of persons who shall be required to furnish the return of income in electronic form; the form and the manner in which the return of income in electronic form may be furnished; the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand; the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

Consequently, it is proposed to insert new clauses (eeba) and (eebb) in sub-section (2) of section 295 which provides for rule making powers of the Board.

These amendments will take retrospective effect from the 1st of June, 2006.

As the provisions contained in the proviso to sub-section (9) of section 139 has been incorporated in the new sections 139C and 139D, it is proposed to omit the proviso to the explanation to sub-section (9) of section 139.

This amendment will take effect from 1st June, 2006.

[Clauses 35, 36 and 70]

Rationalisation of provision relating to special audit under section 142 (2A)

Under the existing provisions of sub-section(2A) of section 142, at any stage of the proceedings before him, if the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288. The accountant is to be nominated by the Chief Commissioner or Commissioner in this behalf and he is to furnish a report of such audit in the prescribed form duly signed and verified by him and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require. Subsection (2D) section 142 provides that the expenses of, incidental to, any audit under sub-section (2A) (including the remuneration of the accountant) shall be determined by the Chief Commissioner or Commissioner (which determination shall be final) and paid by the assessee and in default of such payment, shall be recoverable from the assessee in the manner provided in Chapter XVII-D for the recovery of arrears of tax.

The provisions of sub-section (2A) of section 142 of Income tax Act were reviewed by the Hon'ble Supreme Court in the case of Rajesh Kumar and Others Vs. Deputy Commissioner of Income-tax Others [287 ITR 91 (2006)]. The Hon'ble Supreme Court observed that the direction under sub-section (2A) of section 142 of Income tax Act for special audit of the accounts of the assessee is not administrative in nature and is a quasi-judicial order. Therefore, while arriving upon a decision to order special audit under the said provisions, the principles of natural justice are required to be applied, inter alia, to minimize arbitrariness. The Hon'ble Apex Court further observed that the expression "having regard to the nature and complexity of accounts" is significant, and if the assessee is put to a notice, he could show that the nature of the accounts is not such as would require appointment of a special auditor, and assessee could further show that what the Assessing Officer considers complex is, in fact not so. For these reasons, the Hon'ble Apex Court held that it is necessary to give an opportunity to the assessee before arriving upon a decision for ordering a special audit under sub-section (2A) of section 142. This issue again came up for consideration by the Hon'ble Supreme Court in the case of M/

S Sahara India. The Hon'ble Court observed that the decision in the case of Rajesh Kumar and others does not appear to be the correct position of law and accordingly referred the matter to a larger bench. The Court also directed that the order directing the Special Audit shall be operative and assessment proceedings, if any, shall continue subject to the outcome of the petition in this case. The decision of the Larger Bench is awaited.

There is no legislative intent to allow the assessee an opportunity of being heard before ordering a special audit under sub-section (2A) of section 142 of the Income tax Act. Accordingly the Income Tax Department has over the years ordered a large number of special audit without giving any opportunity to the tax payer of being heard. While it is not feasible to give effect to the ratio of the decision of the Hon'ble Supreme Court in the case of Rajesh Kumar and others in view of the large number of cases where such audit has been ordered in the past, respectfully following the decision of the Hon'ble Supreme Court in the said case, it is proposed to provide, prospectively, that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

It is further proposed to insert a proviso to the said sub-section (2D) so as to provide that where any direction is issued under sub-section (2A) by the Assessing Officer to an assessee to get the accounts audited, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government.

These amendments will take effect from 1st June, 2007.

[Clause 37]

Assessment of search cases—Orders of assessment and reassessment to be approved by the Joint Commissioner

Under the existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, no approval for assessment is required.

It is proposed to insert a new section 153D to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision is proposed to be made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. It is further proposed to make the provision applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A. The provisions of the said new section shall be applicable in case of a person referred to in section 153A and also in case of other person referred to in section 153C.

This amendment will take effect from 1st June, 2007.

[Clause 41]

Providing time limit for completion of assessments for returns filed under section 172

The provisions of section 172 relate to shipping business of non-residents which, inter alia, require preparation and furnishing of the return before departure of the ship, or within a maximum period of thirty days from the date of departure of the ship subject to certain conditions. The existing provisions of the said section, however, do not provide for a time limit for completion of assessment in respect of a return furnished under sub-section (3) thereof.

The amendment, therefore, proposes to insert a new sub-section (4A) providing that no order assessing the income and determining the sum of tax payable thereon shall be made under the said section after the expiry of nine months from the end of the financial year in which the return under sub-section (3) is furnished.

The amendment further proposes to insert a proviso to the proposed sub-section (4A) so as to provide that where a return under sub-section (3) is furnished before the 1st day of April, 2007, the order assessing the income and determining the sum of tax payable thereon may be made at any time on or before the 31st day of December, 2008. This will give a longer time limit of 21 months to complete all pending assessments under section 172.

These amendments will take effect, retrospectively, from 1st day of April, 2007.

[Clause 42]

Change of method for calculation of interest from per annum basis to per month basis

Sub-section (1A) of section 201 provides that the person who has not deducted the whole or any part of the tax or after deduction has failed to pay the tax as required by or under the Act, shall be liable to pay simple interest at the rate of twelve per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

On the other hand, under the other provisions of the Income-tax Act which relate to charge of interest from the assessee, namely, sections 220, 234A, 234B and 234D interest chargeable from the assessee is calculated for every month or part of a month comprised in the period for which interest is to be charged. Under section 234C(1)(a)(i), simple interest is charged at the rate of one per cent. per month for the period specified in that section. Under section 244A also under which interest is paid on refunds to the assessee, interest is calculated for every month or part of a month.

The difference between calculation of interest on per-annum basis and per-month basis lies in the difference in procedure followed for calculation of interest under these two methods. When interest is calculated on per annum basis, any fraction of a month is ignored and when interest is calculated for every month or part of a month basis, any fraction of a month is deemed a full month and interest is calculated for the full month. This principle has been followed in framing rule 119A which provides for procedure for calculation of interest on annual or monthly basis.

Under the widely applicable provisions of sections 220(2), 234A, 234B, 234C, 234D and 244A, interest is chargeable on per month basis. Accordingly, the amendment proposes to change the method for calculation of interest to per month basis from the existing

per annum basis under clause (a) of sub-section (4) of section 132B, sub-section (1A) of section 201, sub-section (6A) of section 245D, rule 60(1)(a) and rule 68A(3) of the Second Schedule to the Income-tax Act, and sub-section (6A) of section 22D of the Wealth-tax Act.

The proposed amendments regarding change of method of calculation of interest to monthly basis will be applicable in respect of interest chargeable or payable for the period commencing on or after 1st April, 2008. For any period ending on or before 31st March, 2008, interest shall continue to be charged or paid on per annum basis under the aforementioned sections and rules to the Second Schedule which are proposed to be amended. How will interest chargeable or payable be calculated in a case in which both the periods, that is, the period before 31st March, 2008 and the period thereafter are involved? The answer is that in respect of any period commencing on or before 31st March, 2008 and ending after that date, interest shall, in respect of so much of such period as falls after that date, be calculated on per month basis.

These amendments will take effect on 1st April, 2008.

[Clauses 34, 50 and 55]

Providing for the right to appeal against an order holding a person as an assessee in default under section 206C(6A)

The existing provisions of sub-section (6A) of section 206C deem a person responsible for collecting tax to be the assessee in default in respect of the whole or any part of the tax which he fails to collect or after collection fails to pay in accordance with the provisions of the Act. The Assessing Officer is required to pass an order deeming such person an assessee in default.

By virtue of the provisions of the aforesaid sub-section (6A), a liability is visited upon the person responsible for collecting tax and payment thereof as taxes become recoverable from him. Such person should, therefore, be entitled to file an appeal against the order of the Assessing Officer deeming him as an assessee in default. Provisions for appeal already exist against similar order passed by the Assessing Officer under sub-section (1) of section 201 whereby a person is deemed as an assessee in default if he fails to deduct or after deducting fails to pay the tax to the Government account.

The amendment, therefore, provides for insertion of a new clause (hb) in sub-section (1) of section 246 to provide that a person deemed as an assessee in default may appeal before the Commissioner (Appeals).

The amendment also proposes to insert a new sub-section (1B) in section 246 to provide that an appeal filed by an assessee in default against an order made under sub-section (6A) of section 206C on or after 1st day of April, 2007 but before 1st day of June, 2007 shall be deemed to have been filed before the Commissioner (Appeals) under new clause (hb) of sub-section (1) of section 246.

These amendments will take effect from 1st June, 2007.

[Clause 62]

Provision of appeal by a person denying liability to deduct tax

Under the existing provisions of section 248, it is provided that where any person has deducted and paid tax in accordance with the provisions of sections 195 and 200 in respect of any sum chargeable under the Act, other than interest and who denies his liability to make such deductions, may make an appeal to the Commissioner (Appeals) to be declared not liable to make such deductions.

It is proposed to substitute section 248 so as to provide that where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

This amendment will take effect from 1st June, 2007.

[Clause 63]

Provision for Form of appeal and limitation: Consequential to the amendment made to section 248

Under the existing provisions of sub-section (2) of section 249, the different situations and the relevant dates from which thirty days for filing appeal shall be counted has been provided. The provisions of clause (a) of sub-section (2) provide that where the appeal relates to any tax deducted under sub-section (1) of section 195, thirty days for filling appeal shall be counted from the date of payment of the tax.

It is proposed to amend section 248 so as to provide for an appeal by a person, who has paid the tax deductible on income of the non-resident under 'net of tax' arrangement and who is denying that any tax was deductible. Consequentially, it is proposed to amend clause (a) of sub-section (2) of section 249 providing that where the appeal is under section 248, the prescribed time shall be counted from the date of payment of tax.

This amendment will take effect from 1st June, 2007.

[Clause 64]

Provision relating to approval of charitable institutions and funds

Under the existing provisions of section 80G, deductions in respect of donations to certain funds, charitable institutions is available from the taxable income of the donor. The said section provides for two categories of funds- one that are enumerated in sub-section (2) and the secondly, those funds which are approved by the Commissioner under clause (vi) of sub-section (5) of the said section.

Presently, under section 253, no appeal lies to the Appellate Tribunal against the order of rejection of approval by the Commissioner under section 80G (5) (vi). It is, therefore, proposed to amend section 253 so as to allow an appeal to be filed against such orders of the Commissioner before the Appellate Tribunal.

This amendment will take effect from 1st June, 2007.

[Clause 65]

Prescribing time-limit for grant of stay by the Appellate Tribunal

Under the existing provisions of section 254, the Appellate Tribunal may pass an order of stay in any proceeding relating to an appeal filed before it. In such cases, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order. If the appeal is not decided within the period for which the stay was granted, the stay order shall be vacated after the expiry of the stay period.

It is proposed to amend section 254, so as to provide that the Appellate Tribunal, after considering the merits of the application made by the assessee, may pass an order of stay in any proceeding relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order. The Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order.

It is further proposed to provide that where such appeal is not disposed of within the aforesaid period of stay, the Appellate Tribunal may extend the period of stay or pass an order of stay for a further period or periods as it thinks fit. Such extension in the period of stay is to be granted on an application made in this behalf by the assessee and after the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee. It has also proposed to provide that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not in any case exceed three hundred and sixty five days. The Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

It is also proposed to provide that if the appeal is not disposed of within the period originally allowed or within the period or periods, subsequently extended, the order of stay shall stand vacated after the expiry of such period or periods.

This amendment will take effect from 1st June, 2007.

[Clause 66]

Clarification in respect of presumption as to seized books of account, money, bullion, jewellery or other valuable article or thing to other proceedings under the Income-tax Act

Under the existing provisions of sub-section (4A) of section 132, it is provided that the books of account, money, bullion, jewellery or other valuable article or thing found in the possession or control of any person in the course of a search under section 132 will be presumed to belong to the said person. It is further provided that it will be presumed that the contents of such books of account and other documents are true; and that the signature and every other part of such books of account and other documents which purport to be in handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

A new section 292C has been inserted so as to clarify that presumptions provided in sub-section (4A) of section 132 can be made in any proceedings under this Act.

It is also proposed to provide similar amendment in the Wealth-tax Act by insertion of a new section 42D.

This amendment will take effect retrospectively from the 1st day of October, 1975.

[Clauses 69 and 84]

REVISED SETTLEMENT SCHEME

Chapter XIX-A of the Income-tax Act contains provisions relating to settlement of cases by the Settlement Commission. With a view to avoid delay in determining the tax liability of an assessee which is caused because of factors like duplication of proceedings, absence of statutory time frame for settling the case, and also with a view to streamline the proceedings before the Settlement Commission, it is proposed to amend the provisions of said Chapter XIX-A of the Income-tax Act. The important changes proposed to be made are—

- (i) Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. It is proposed to provide that after 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. Further, an assessee shall not be allowed to make the application before the Commission during the pendency of following proceedings of assessment—
 - (a) Assessment / reassessment proceedings in response to a notice under section 148. These proceedings shall be deemed to have commenced on the date on which notice under section 148 was issued;
 - (b) assessment or reassessment proceedings under section 153A for each of six assessment years preceding the assessment year relevant to the previous year in which a search under section 132 was conducted or a requisition under section 132A was made; and also the assessment or reassessment proceedings in case of such persons for the assessment year relevant to the previous year in which the search under section 132 was conducted or the requisition under section 132A was made. These proceedings shall be deemed to have commenced on the date on which the search under section 132 was initiated or the requisition under section 132A was made;
 - (c) proceedings of making fresh assessment where original assessment was set aside under section 254 by the Appellate Tribunal or under section 263 or section 264 by the Commissioner. Such proceedings shall be deemed to have commenced from the date on which the order setting aside the original assessment was passed;
- (ii) Under the existing provisions, an application can be made only if the additional amount of income-tax payable on the income disclosed in the application exceeds one lakh rupees. It is proposed to enhance this limit to three lakh rupees.
- (iii) Under the existing provisions, the income-tax payable on the income disclosed in the application has to be paid after the application is allowed to be proceeded with under sub-section (1) of section 245D. It is proposed to provide that such tax alongwith interest, if any, shall be paid on or before the date of making the application and proof of such payment shall be

attached with the application. It is also proposed to provide that the applicant shall send a copy of the application to the Assessing Officer on the date of making the application before the Commission.

- (iv) Under the existing provisions, the Commission, on receipt of an application, calls for a report from the Commissioner. After considering the material contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved, the Commission passes an order to reject the application or to allow the application to be further proceeded with. Under the existing provisions, there is no statutory time limit for passing the order for rejecting or allowing the application to be proceeded with. However, a suggestive time limit of one year from the end of the month in which such application was made has been provided. It is proposed to provide that the Settlement Commission, within 7 days of receipt of the application shall issue a notice to the applicant to explain as to why his application be admitted. Thereafter, within 14 days from the date of receipt of the application, the Settlement Commission shall pass an order for rejecting the application or allowing the application to be proceeded with. Complexity of the investigation involved in a case shall not be the criteria for admitting or rejecting the application. Further, where no order or rejection or admission of an application is passed within the aforesaid period, the application shall be deemed to have been allowed to be proceeded with. It has also been proposed to provide that-
- (a) the applications which were made before 1st June, 2007 but pending on that date as to whether to be rejected or allowed to be proceeded with, shall be deemed to have been allowed to be proceeded with if the tax on the income disclosed in the application and the interest is paid on or before 31st July, 2007. In case, such tax and interest is not paid on or before the aforesaid date, the application shall be deemed to have been rejected;
- (b) in respect of applications which were admitted before 1st June, 2007 but order of settlement was not passed before the said date, the tax on the income declared in the application and interest thereon shall have to be paid on or before 31st July, 2007. Tax and interest shall be paid by this date even in cases where the Commission has already granted any extension or installment for payment of tax beyond the said date. If the tax and interest is not paid on or before 31st July, 2007, the application shall not be allowed to be further proceeded with and the proceedings before the Commission shall abate on 31st July, 2007.
- (v) If an application made on or after 1st June, 2007 is allowed to be proceeded, the Settlement Commission shall issue a notice to the Commissioner within 30 days from the date on which the application was received. In case of applications referred to in (iv)(a) above, if the tax and interest has been paid before 31st July, 2007, such notice shall be issued to the Commissioner on or before the 7th day of August, 2007. The Commissioner shall send his report within 30 days from the date on which the communication from the Settlement Commission is received by him;
- (vi) On receipt of the report of the Commissioner, the Settlement Commission shall hear the applicant and the Commissioner within fifteen days from the date of receipt of the report. If it is found that the application was not a valid application, the Commission by passing an order may declare the application invalid. Copy of the order declaring an application invalid will have to be sent to the applicant and the Commissioner. In case an application is declared invalid the proceedings before the Commission shall abate. If the Commissioner does not send the report within the specified period, the Commission may proceed in the matter further without the report of the Commissioner.
- (vii) In respect of applications made before 1.7.2007 and referred to in (iv)(a) or (iv)(b), above which are not declared invalid or as the case may be, allowed to be further proceeded with, the Settlement Commission, if, is of the opinion to do so, may direct the Commissioner to make or cause to be made such further inquiry or investigation as it deems fit. The Commissioner shall submit his report within 90 days from the date on which the communication from the Settlement Commission is received by him;
- (viii) The Commission shall, after giving an opportunity to the Commissioner and to the applicant and considering the reports of the Commissioner and other material available with it, pass the settlement order. Under the existing provisions, there is no time limitation for making the order of settlement. It is proposed that the Commission shall pass such order within 9 months from the end of the month in which the application was received. In respect of applications referred to in (iv)(a) or (iv)(b) above, the Settlement Commission shall pass the order on or before 31st March, 2008;
- (ix) Under the existing provisions, it is provided that the Commission may grant immunity from prosecution under Indian Penal Code, Income-tax Act and any other Central Act. It is proposed that to provide that the Commission shall not grant immunity from prosecution under any law other than Income-tax Act and Wealth-tax Act. However, in respect of pending applications, the existing provisions shall continue.
- (x) Under the existing provisions, it is provided that the Commission may, if. It is necessary or expedient to do so, reopen completed proceedings. It is proposed to provide that the Commission shall not have powers to reopen the completed proceedings in a case where an application under section 245C has been filed on or after 1st June, 2007.
- (xi) It is also proposed that, if the application made on or after 1.7.2007 is rejected or such application or an application referred to in (iv)(a) above is declared invalid or an application referred to in (iv)(b) above is not allowed to be further proceeded with or the settlement order is not passed within the specified period, the proceedings before the Commission shall abate and the Assessing Officer or other income-tax Authority before whom the proceeding were pending at the time of making the application, as the case may be, shall resume and complete the proceeding. Credit shall be allowed for the tax and interest paid by the applicant by the Assessing Officer.. The period from the date on which the application was made before the Commission and upto the date on which proceedings get abated shall be excluded from the time limitation for completing the proceedings by the Assessing Officer;
- (xii) It is also proposed to provide that after 1.6.2007, an assessee can apply for settlement only once during his lifetime. For this purpose, an application which was not admitted shall not be deemed to be an application;
- (xiii) It is also proposed to provide that the definition of "Vice-Chairman" shall include the senior Member among the Members of a Bench so that, if there is no Vice-Chairman at a Bench, it can be presided over by a Member who is senior amongst the Members of the Bench;

(xiv) Chapter V-A of the Wealth-tax Act also contains similar provisions for settling a Wealth-tax case by the Settlement Commission. It has been proposed to bring similar amendments in the Wealth-tax Act also.

(xv) These amendments will take effect from 1st June, 2007.

[Clauses 53,54,55,56,57,58,59,60,61] and [Clauses 75,76,77,78,79,80,81,82,83]

MISCELLANEOUS

Exemption for income of ASOSAI-SECRETARIAT

Clause (23BBD) of section 10 provides that any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 for seven previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2008, shall not be included in the total income. The Comptroller and Auditor General of India is the Secretary General of ASOSAI and its Secretariat functions from his office.

Since the term of the Comptroller and Auditor General of India as the Secretary General of ASOSAI has been extended by another three years, it is proposed to amend the said clause so as to extend the said exemption for a further period of three assessment years beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2011.

This amendment will take effect from 1st April, 2008 and will apply in relation to the assessment years 2008-2009, 2009-2010 and 2010-2011. [Clause 6]

Exemption for income of Central Electricity Regulatory Commission

It is proposed to insert a new clause (23BBG) in section 10 to provide exemption from income-tax to any income of Central Electricity Regulatory Commission constituted under sub-section (1) of Section 76 of the Electricity Act, 2003.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 6]

Amalgamation of Public Sector Companies engaged in the business of operation of aircraft

Under the existing provisions of section 72A, the accumulated losses and unabsorbed depreciation of the amalgamating companies or company shall be set-off against the profit of the amalgamated company. Presently, the benefit is available in case of amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company. Such benefits are also available in the case of amalgamation of a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 with a specified bank.

It is proposed to amend the said section so as to extend the benefits of carry-forward and set-off of accumulated losses and unabsorbed depreciation available under section 72A to amalgamation of one or more Public Sector Company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-09 and subsequent years. [Clause 17]

FRINGE BENEFIT TAX

Rationalizing the provisions of Fringe Benefit Tax

Section 115WB defines fringe benefits and deemed fringe benefits. Under sub-section (1) of section 115WB the expression 'fringe benefits' has been defined, which, inter-alia, means any privilege, service, facility or amenity, directly or indirectly, provided by an employer to his employees, any contribution by the employer to an approved superannuation fund for the employees, etc.

With a view to bring Employees' Stock Option Plan within the purview of fringe benefit tax, it is proposed to insert a new clause (d) in sub-section (1) of section 115WB so as to include any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees), within the ambit of "fringe benefits".

It is also proposed to define the expressions "specified security" and "sweat equity shares" for the purposes of the proposed clause (d).

Sub-section (2) of the said section 115WB provides that the fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has in the course of his business or profession, incurred any expense on or made any payment for the purposes of entertainment, hospitality, conference, sales promotion (including publicity), etc. Proviso to clause (D) of sub-section (2) of section 115WB excludes certain expenditure on advertisement from sales promotion including publicity. Clause (v) of the proviso refers to expenditure on advertisement by way of signs, art work, painting, banner, etc. Clause (vii) of the proviso refers to the expenditure on distribution of free samples of medicines or of medical equipment to doctors.

To expand the domain of such exceptions to provide relief to employers, it is proposed to amend clause (v) and to substitute clause (vii) of the proviso to clause (D) of sub-section (2) of section 115WB so as to provide that the expenditure on display of products and on distribution of samples of any item either free of cost or at concessional rate to any person including doctors, shall not be included in 'sales promotion including publicity' for valuation of fringe benefits.

Under the existing provisions contained in section 115WC, the method of computation of the value of fringe benefits referred to in section 115WB has been provided.

It is proposed to insert a new clause (ba) in sub-section (1) of the said section 115WC so as to provide that the fair market value of the specified security or sweat equity shares, on the date of exercise of the option by the employee as reduced by the amount actually paid by, or recovered from the employee in respect of such security or shares, shall be the value of fringe benefits referred to in the proposed clause (d) of sub-section (1) of section 115WB.

It is further proposed to define the expression "fair market value" to mean the value determined in accordance with the method as may be prescribed by the Board.

Consequent to the insertion of clause (d) in sub-section (1) of section 115WB, it is also proposed to omit proviso to sub-clause (iii) of clause (2) of section 17 which provides that the value of any benefit provided by the company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants directly or indirectly under any Employees' Stock Option Plan or scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government, is not a "perquisite" for the purposes of section 17.

Consequent to insertion of clause (ba) in sub-section (1) of section 115WC providing for the value of fringe benefits referred to in clause (d) of sub-section (1) of section 115WB, it is also proposed to insert a new sub-section (2AB) in section 49 so as to provide that for the purposes of said sub-section (2AB) of section 49, the cost of acquisition of specified security or sweat equity shares shall be the value under the proposed clause (ba) of sub-section (1) of section 115WC if such value has been taken into account for the purposes of levy of fringe benefit tax.

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clauses 10,14,30 and 31]

Alignment of due date for payment of advance tax on fringe benefits with that of advance tax on income.

Section 115WJ provides that every assessee who is liable to pay advance tax on his current fringe benefits shall pay the same on his own accord.

Sub-section (2) of section 115WJ provides that the advance tax payable in the financial year on the value of the fringe benefits referred to in section 115WC, shall be payable on or before the 15th day of the month following each quarter. However, the advance tax payable for the quarter ending on the 31st March of the financial year shall be payable on or before the 15th day of March of the said financial year.

Sub-section (3) of section 115WJ provides that where an assessee has failed to pay the advance tax for any quarter or where the advance tax paid by him is less than thirty per cent. of the value of fringe benefits paid or payable in that quarter, he shall be liable to pay simple interest at the rate of one per cent. on the amount by which the advance tax paid falls short of, thirty per cent. of the value of fringe benefits for any quarter, for every month or part of the month for which the shortfall continues.

It is proposed to substitute sub-section (2) of the said section so as to provide that the amount of advance tax on the current fringe benefits shall be payable by all the companies, who are liable to pay the same, in four instalments during each financial year. The companies shall pay not less than fifteen per cent of such advance tax on or before 15th June; forty-five per cent as reduced by the amount paid in earlier instalment (s) on or before 15th September; seventy-five per cent as reduced by the amount paid in earlier instalment (s) on or before 15th December; and the whole amount as reduced by any amount paid in earlier instalment(s) on or before 15th March of the financial year. All assessees (other than companies), who are liable to pay the advance tax on current fringe benefits shall pay the same in three instalments during each financial year. Such assessees shall pay not less than thirty per cent of such advance tax on or before 15th September; sixty per cent as reduced by the amount paid in earlier instalment on or before 15th December; and the whole amount as reduced by any amount paid in earlier instalment(s) on or before 15th March of the financial year.

It is further proposed to substitute sub-section (3) of section 115WJ so as to provide that where an assessee has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest at the rate of one per cent. of the amount by which the advance tax paid falls short of the amount payable by the due date for every month or part of the month for which the shortfall continues.

These amendments will take effect from 1st June, 2007.

[Clause 32]

BANKING CASH TRANSACTION TAX (BCTT)

Exclusion of office or establishment of the Central Government or the Government of a State and enhancement of exemption limit in the provisions of Banking Cash Transaction Tax (BCTT).

Under the existing provisions of Banking Cash Transaction Tax (BCTT), as contained in Chapter VII of the Finance Act, 2005, in section 94, tax is levied at the rate of 0.1 per cent (10 basis points) on taxable banking transactions. Such banking transactions include- (i) Withdrawals of cash (by whatever mode) exceeding Rs. 25,000 in the case of individuals and HUFs and Rs. 1,00,000 for other taxable entities on any single day from an account (other than a saving bank account) with any scheduled bank; and (ii) Receipt of cash exceeding a specified limit from any scheduled bank on any single day on encashment of one or more term deposits, whether on maturity or otherwise. The BCTT is also payable amongst others, by an office or establishment of the Central Government or the Government of a State.

It is proposed to amend the said section, so as to exclude the offices or establishments of the Central Government and governments of the states from the purview of definition of "person".

It is also proposed to amend the said section so as to enhance the existing limit of taxable banking transactions from the present twenty-five thousand to fifty thousand rupees for individuals and Hindu undivided family.

This amendment will take effect from the 1st of June, 2007.

[Clause 134]