

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend clause (11) of section 10 of the Income tax Act relating to definition of 'block of assets'. The said clause confers powers upon the Central Board of Direct Taxes to prescribe the percentage of depreciation in respect of 'block of assets' which means a group of assets falling within a class of assets being building, machinery, plant or furniture. The definition of 'block of asset' is being amended so as to include the intangible assets such as know-how, patents, copyrights, trade-marks, licences, franchises or similar business or commercial rights. Now it is proposed to confer power upon the Boards to prescribe depreciation in respect of the said intangible assets.

Clause 7 of the Bill, *inter alia*, seeks to substitute clause (23G) of section 10 of the Income-tax Act relating to certain exemptions. The said clause (23G) proposes to exempt income by way of interest of an infrastructure capital fund or infrastructure capital company from primary investment in infrastructure enterprise wholly engaged in developing, maintaining and operating infrastructure facility. It is proposed to confer power upon the Central Board of Direct Taxes to make rules in respect of applications to be made by the said infrastructure enterprises to the Central Government for approval and also prescribe the conditions to be satisfied by the aforesaid enterprises.

The new sub-clause also seeks to empower the Central Board of Direct Taxes to notify 'infrastructure facility' which is of similar nature specified in clause (c) of the Explanation to the said clause (23G) which fulfils the condition specified in sub-section (4A) of section 80-IA of the Income-tax Act.

Clause 12 of the Bill seeks to insert a new section 33ABA in the Income tax Act relating to Site Restoration Fund. Under the new section, certain deductions are admissible subject to certain conditions specified therein. One of the conditions is that the assessee furnishes the report of audit in the prescribed form duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288. The proviso to sub-section (2) of the new section provides that it would be sufficient compliance by the assessee if he furnishes the said report and a further report in a case where such assessee gets the accounts of his business audited under any other law. It is proposed to confer powers upon the Central Board of Direct Taxes to prescribe the form of such further report to be furnished by the assessee.

Sub-section (9) of the proposed new section 33ABA confers power upon the Central Government to direct, by notification in the Official Gazette, that the deduction under the new section shall not be allowed after such date as may be specified in such notification.

Clause 32 of the Bill seeks to substitute new section 80DD for section 80DD and section 80DDA of the Income-tax Act for allowing deduction in respect of maintenance including medical treatment of certain category of handicapped dependants. Sub-clause (ii) of clause (b) of sub-section (4) of the said new section 80DD proposes to confer power upon the Central Board of Direct Taxes to specify in the rules the permanent physical disability (including blindness) or mental retardation for the purposes of deduction under the said section 80DD.

Clause 34 of the Bill seeks to insert new section 80GG of the Income-tax Act relating to deductions in respect of rents paid. It is proposed to confer power upon the Central Board of Direct Taxes to prescribe certain conditions or limitations subject to which deduction of the amount specified under the new section shall be allowed.

Clause 35 of the Bill proposes to insert a new section 80HHBA in the Income-tax Act relating to deduction in respect of profits and gains from housing project in certain cases. One of the conditions

specified therein requires the assessee to furnish, alongwith his return of income, a report of audit of the accounts in the prescribed form duly signed and verified by such accountants as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act. It is proposed to confer power upon the Central Board of Direct Taxes to prescribe the form of the said audit report.

Clause 37 of the Bill seeks to amend section 80-IA of the Income-tax Act relating to deduction in respect of profits and gains from industrial undertakings, etc., in certain cases. The undertakings engaged in the infrastructure facilities qualify for deductions under section 80-IA subject to certain conditions specified in the said section. This clause, *inter alia*, proposes to extend the deductions available under the said section to the housing projects. Sub-clause (iv) of clause (ca) of sub-section (12) of section 80-IA confers power upon the Central Government to prescribe the authority for approving the housing projects eligible for deduction under the said section 80-IA.

Clause 39 of the Bill seeks to insert a new section 80JJAA in the Income-tax Act relating to deduction in respect of employment of new workmen. Under the provisions of new section, an assessee, being an Indian company, shall be allowed certain deductions subject to certain conditions specified in the said section 80JJAA. One of the conditions specified in clause (b) of sub-section (2) of the new section 80JJAA requires the assessee to furnish alongwith the return of income the report of the accountant as defined in the Explanation below sub-section (2) of section 288 giving such particulars as may be prescribed by the Central Board of Direct Taxes.

Clause 42 of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income. Section 139 specifies certain conditions for filing the return. One of the conditions specified in the proviso to sub-section (1) of section 139 is that any person, who incurs expenditure for himself or any other person on travel to any foreign country, shall be required to file return of his income. This clause, *inter alia*, seeks to insert Explanation 4 so as to confer power upon the Central Board of Direct Taxes to specify in the Official Gazette the neighbouring countries or such other places of pilgrimage which shall not be included in the condition of travel to any foreign country for the purposes of proviso to sub-section (1) of section 139.

Clause 43 of the Bill proposes to amend section 139 A of the Income-tax Act relating to permanent account number. This clause, *inter alia*, proposes that a person, who has applied, but has not been allotted the permanent account number, shall quote General Index Register Number in all his returns, correspondence, challans for payment of any sum, or such transactions as may be prescribed by the Central Board of Direct Taxes under sub-section (5) of section 139 A. This clause confers powers upon the Central Board of Direct Taxes to make rules providing for the form of the declaration to be made by a person who has not been allotted a permanent account number or who does not have General Index Register Number.

Clause 49 of the Bill proposes to amend section 192 of the Income-tax Act relating to deduction of tax at source from salaries. This clause *inter alia*, allows the loss under the head "Income from house property" to be taken into account for making deduction under section 192 by any person responsible for paying any income chargeable under the head "Salaries". The proposed deductions relating to loss under the head "Income from house property" shall be taken into account on assessee's furnishing the particulars of such loss to the person responsible for making the payment under sub-section (1) of section 139. The new sub-section (2B) of section 192 confers power upon the Central Board of Direct Taxes

to prescribe the form in which the assessee furnishes the particulars of such loss and the manner in which such form be verified.

Clause 50 of the Bill seeks to amend section 245N of the Income-tax Act relating to definitions for the purposes of Chapter XIX-B relating to advance rulings. This clause proposes to amend the definition of "applicant" specified in clause (b) of section 245 N. It is proposed to confer power upon the Central Government to notify in the Official Gazette the class of persons who shall be allowed to file an application under the said Chapter.

Clause 54 of the Bill seeks to amend section 253 of the Income-tax Act relating to appeal to the Appellate Tribunal. This clause proposes to confer powers upon the Central Government to prescribe the form in which an appeal shall be made to the Appellate Tribunal on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clause 66 of the Bill seeks to amend the First Schedule to the Income-tax Act relating to insurance business. This clause confers powers upon the Central Board of Direct Taxes to prescribe any other provision in addition to the provision for any tax, dividend or reserve which shall be added back in computing the profit and gains of other insurance business.

Clause 72 of the Bill seeks to insert a new section 23A in the Wealth-tax Act relating to appealable orders before Commissioner (Appeals). This clause confers powers upon the Central Board of Direct Taxes to prescribe the form of appeal to the Commissioner (Appeals) and the manner in which such form be verified.

Clause 81 of the Bill seeks to amend section 15 of the Interest-tax Act relating to appeal to Commissioner (Appeals). This clause confers powers upon the Central Board of Direct Taxes to prescribe the form of appeal which may be filed on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clause 87 of the Bill seeks to amend section 22 of the Expenditure-tax Act relating to appeal to Commissioner (Appeals). This clause confers powers upon the Central Board of Direct Taxes to prescribe the form of appeal which shall be filed on or after the 1st day of October, 1998 and the manner in which such appeal be verified.

Clauses 89 to 101 of the Bill contain provisions in respect of Kar Vivad Samadhan Scheme, 1998 for settlement of certain disputed direct tax arrears and indirect tax arrears. It is proposed to confer powers upon the Chief Commissioner of Income-tax and Chief Commissioner of Central Excise to notify the designated authority not below the rank of Commissioner of Income tax and Commissioner of Central Excise, for the purposes of the said scheme.

It is also proposed to confer powers upon the Central Board of Direct Taxes to prescribe (a) the form in which a declaration may be made under section 91 and the manner in which such declaration be verified (b) the form of certificates which may be granted under sub-section (1) of section 93 (c) the manner in which the orders may be published under sub-section (2) of section 99 (d) and any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by rules.

Clause 104 of the Bill seeks to substitute new sections 53 to 55 in the Customs Act, 1962, sub-section (1) of the proposed section 54 empowers the Central Board of Excise and Customs to make regulations to provide form in which the bill of transshipment shall be presented to the proper officer under said sub-section. Sub-section (3) of the said section 54 empowers the said Board to make regulations to provide conditions subject to which the proper officer may allow the goods to be transhipped without payment of duty under the sub-section.

Clause 105 of the Bill seeks to insert new Chapter XIVA in the Customs Act, 1962. Sub-section (1) of section 127B of the proposed Chapter XIVA empowers the Central Government to make rules to specify the form and manner for making application under that sub-section and other particulars which that application shall contain and the fees to be accompanied with such application. Sub-section (1) of section 127D of the said Chapter empowers the Central Government to make rules to specify the manner in which any property may be provisionally attached under that sub-section. Section 127G of the said Chapter empowers the Central Government to make rules to specify fee to be paid for obtaining copies under that sub-section. Proviso to said section 127G empowers the Central Government to make rules to specify the fees to be paid to obtain certified copy under that proviso.

Clause 113 of the Bill seeks to insert new Chapter V in the Central Excise Act, 1944. Sub-section (1) of section 32E empowers the Central Government to make rules to provide the form and manner of making application under that sub-section and other particulars which that application may contain and the fees to be accompanied with such application. The said sub-section (1) also empowers the Central Government to make rules to prescribe the manner in which the applicant is required to file monthly return before making application under that sub-section. Sub-section (1) of section 32G of the said Chapter empowers the Central Government to make rules to provide the manner in which any property may be provisionally attached under that sub-section. Section 32J of the said Chapter empowers the Central Government to make rules to prescribe the fee to be paid for obtaining copies under that sub-section. Proviso to said section 32J empowers the Central Government to make rules to prescribe the fees to be paid for obtaining a certified copy under that proviso.

Clause 119 of the Bill seeks to amend the Finance Act, 1994. Sub-clause (1) of the said clause proposes to substitute new section 66 for existing section 66 of the said Act. Sub sections (1), (2), (3) (4) and (5) of the proposed new section 66 empowers the Central Government to make rules to provide the manner of collection of service tax levied under those sub-sections. Clause (4) of the said clause proposes to substitute new sections 68 to 71 for the existing sections 68 to 71 of the Finance Act, 1994. Sub-section (1) of the proposed section 68 empowers Central Government to make rules to provide the manner in which and the period within which the service tax shall be paid under that sub-section. Sub-section (2) of the said section 68 empowers the Central Government to make rules to provide the manner of payment of service tax under that sub-section. The proposed section 69 empowers the Central Government to make rules to provide the form in which application shall be made under that section for registration. The proposed section 70 empowers the Central Government to make rules to provide form and manner in which and the frequency at which a return shall be furnished or caused to be furnished under that section. Sub-clause (7) of the said clause 119 proposes to substitute new section 75 for the existing section 75 of the Finance Act, 1994. The proposed section 75 empowers Central Government to prescribe period to credit the tax or any part thereof to the account of Central Government for the purposes of that section. Sub-clause (12) of the proposed clause 119 proposes to substitute new sub-section (2) for existing sub-section (2) of section 94 of the Finance Act, 1994. Clauses (a) to (f) of the proposed sub-section (2) enumerates the details regarding which in particular the Central Government may make rules.

The matters in respect of which notification may be issued or rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

The delegation of legislative power is, therefore, of a normal character.