Income-tax

Clause 2, read with the First Schedule to the Bill, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2008-09. Further, it lays down the rates at which tax is to be deducted at source during the financial year 2008-09 from income subject to such deduction under the Income-tax Act and the rates at which "advance tax" is to be paid, tax is to be deducted at source from, or paid on, income chargeable under the head "Salaries" and tax is to be calculated and charged in special cases for the financial year 2008-09.

Rates of income-tax for the assessment year 2008-09

Part I of the First Schedule to the Bill specifies the rates at which income is liable to tax for the assessment year 2008-09. These rates are the same as those specified in Part III of the First Schedule to the Finance Act, 2007, for the purposes of deduction of tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2007-08.

Rates for deduction of tax at source during the financial year 2008-09 from income other than "Salaries"

Part II of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source during the financial year 2008-09 from income other than "Salaries". The rate at which tax is to be deducted from income by way of short-term capital gain referred to in section 111A has been raised from ten per cent to fifteen per cent. Further, in the case of a person resident in India, other than a company, the rate at which tax is to be deducted from income by way of interest payable on security of the Central or State Government has been specified at ten per cent. In the remaining cases, the rates are the same as those specified in Part II of the First Schedule to the Finance Act, 2007, for the purposes of deduction of income-tax at source during the financial year 2007-08.

The amount of tax so deducted shall be increased by a surcharge:-

(i) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, 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 and subject to the deduction exceeds ten lakh rupees;

(ii) in case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such tax;

(iii) in the case of every firm and domestic company, 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 and subject to the deduction exceeds one crore rupees;

(iv) in the case of every company other than a domestic company at the rate of two and one-half per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

No surcharge shall be levied in the case of any co-operative society or local authority.

The additional surcharge, called the "Education Cess on Income-tax" for the purposes of the Union shall continue to be levied at the rate of two per cent. of income-tax and surcharge in all cases so as to fulfil the commitment of the Government to provide and finance universalized quality basic education.

The additional surcharge, called the "Secondary and Higher Education Cess" on income-tax, at the rate of one per cent. of income-tax and surcharge (not including the Education Cess) shall also continue to be levied in all cases so as to fulfil the commitment of the Government to provide and finance secondary and higher education.

Rates for deduction of tax at source from "Salaries" computation of "advance tax" and charging of income-tax in special cases during the financial year 2008-09

Part III of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source from, or paid on, income under the head "Salaries", the rates at which "advance tax" is to be paid and the rates at which income-tax is to be calculated or charged in special cases for the financial year 2008-09.

Paragraph A of this Part specifies the rates of income-tax in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of Part III applies. In such cases, the rates of income-tax on total income shall be as under:-

Up to Rs. 1,50,000	*Nil*
Rs. 1,50,001 to Rs. 3,00,000	10 per cent.
Rs. 3,00,001 to Rs. 5,00,000	20 per cent.
Above Rs. 5,00,000	30 per cent.

In the case of every individual, being a woman, resident in India and below the age of sixty-five years at any time during the previous year, the rate of income-tax on total income shall be as under -

Up to Rs. 1,80,000	*Nil*
Rs. 1,80,001 to Rs. 3,00,000	10 per cent.
Rs. 3,00,001 to Rs. 5,00,000	20 per cent.
Above Rs. 5,00,000	30 per cent.

In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, the rates of income-tax on total income will be as under–

Up to Rs. 2,25,000	*Nil*
Rs. 2,25,001 to Rs. 3,00,000	10 per cent.
Rs. 3,00,001 to Rs. 5,00,000	20 per cent.
Above Rs. 5,00,000	30 per cent.

Paragraph A further provides that the amount of income-tax computed shall, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, having total income exceeding ten lakh rupees be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax. However, the total amount payable as income-tax and surcharge on total income exceeding ten lakh rupees shall not exceed the total amount payable as income-tax on a total income of ten lakh rupees by more than the amount of income that exceeds ten lakh rupees.

Paragraph A also provides that the amount of income-tax computed shall in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

No change is proposed in the rates of surcharge levied in Paragraph A.

Paragraph B of this Part specifies the rates of income-tax in the case of every co-operative society. In such cases, the rates

of tax will continue to be the same as those specified for assessment year 2008-09. No surcharge will be levied.

Paragraph C of this Part specifies the rate of income-tax in the case of every firm. In such cases, the rate of tax will continue to be the same as that specified for assessment year 2008-09.

Further, the amount of income-tax computed shall, in the case of every firm having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Paragraph D of this Part specifies the rate of income-tax in the case of every local authority. In such cases, the rate of tax will continue to be the same as that specified for assessment year 2008-09. No surcharge will be levied.

Paragraph E of this Part specifies the rates of income-tax in the case of companies. In the case of domestic companies, the rate of tax will continue to be the same as that specified for assessment year 2008-09. Further, in the case of every company other than a domestic company, the rate of tax will continue to be the same as that specified for assessment year 2008-09.

Paragraph E also provides the rate of surcharge in case of companies. The amount of income-tax computed shall, in the case of every domestic company having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income tax. Further, the amount of income-tax computed shall, in the case of every company, other than a domestic company, having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Marginal relief will be provided in such cases whereby the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Further, marginal relief shall also be provided in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees.

In respect of any fringe benefits chargeable to tax under section 115WA of the Income-tax Act, the tax payable shall be increased by a surcharge as follows:—

(a) in the case of every association of persons and body of individuals, at the rate of ten per cent. of such tax, where the fringe benefits exceed ten lakh rupees;

(b) in the case of every firm, artificial juridical person and domestic company, at the rate of ten per cent. of such tax;

(c) in the case of every company, other than a domestic company, at the rate of two and one-half per cent. of such tax.

The additional surcharge, called the "Education Cess on income-tax" for the purposes of the Union shall continue to be levied at the rate of two per cent. of income-tax and surcharge. Also, the additional surcharge, called the "Secondary and Higher Education Cess" on income-tax, at the rate of one per cent. of income-tax and surcharge (not including the Education Cess) shall continue to be levied in all cases.

Clause 3 seeks to amend section 2 of the Income-tax Act, relating to definitions.

This clause seeks to insert a new *Explanation* after *Explanation* 2 in clause (1A) of section 2, which defines agricultrual income, so as to provide that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause (15) of the said section defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

It is proposed to amend the said clause by inserting a proviso thereto so as to exclude from "advancement of any other object of general public utility"–

(*i*) any activity in the nature of trade, commerce or business, or

(*ii*) any activity of rendering any service in relation to any trade, commerce or business,

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from any such activity.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 4 seeks to amend section 10 of the Income-tax Act which relates to incomes which do not form part of the total income.

It is proposed to insert a new clause (26AAA) in section 10 so as to provide that any income, which accrues or arises to a “Sikkimese” individual from any source in the State of Sikkim or by way of dividend or interest on securities, shall not be included in the total income of such individual.

The term ‘Sikkimese’ has been specified in the said clause in pursuance to the Sikkim Subjects Regulation, 1961, rules made thereunder and relevant Government orders issued in this regard.

This amendment will take effect retrospectively from 1st April, 1990 and will accordingly apply in relation to the assessment year 1990-91 and subsequent assessment years.

Clause 4 further seeks to amend clause (29A) of the said section, which provides for exemption of any income of certain commodity boards and export development authorities specified in sub-clauses (a) to (g) of the said clause. It is proposed to insert a new sub-clause to provide exemption in respect of any income accruing or arising also to the Coir Board established under the Coir Industry Act, 1953.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 4 also seeks to insert a new clause (43) in the said section so as to provide that any amount received by an individual as a loan, either in lump sum or instalment, in a transaction of reverse mortgage referred to in clause (xvi) of section 47 will also not be included in total income.

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

Clause 5 seeks to amend section 35 of the Income-tax Act, which relates to expenditure on scientific research.

Clause (ii) of sub-section (1) of the said section allows deduction of an amount equal to one and one-fourth times of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used by it for scientific research. The provision also requires such scientific research association, university, college or other institution to be approved and notified for the purposes of said clause.

Further, sub-section (2AB) of the said section allows deduction of an amount equal to one and one-half times of the expenditure incurred on scientific research, not being expenditure in the nature of cost of any land or building, on approved in-house research and development facility. This deduction is available to a company engaged in the specified business.

The proposed amendment seeks to insert clause (iia) in sub-section (1) of the said section to allow deduction of an amount equal to one and one-fourth times of any sum paid to a company for scientific research, provided such company–

(A) is registered in India;

(B) has as its main object the scientific research and development;

(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner; and

(D) fulfils such other conditions as may be prescribed.

The proposed amendment further seeks to insert clause (6) in sub-section (2AB) of the said section to provide that no deduction shall be allowed to a company approved under sub-clause (C) of clause (iia) of sub-section (1) of the said section in respect of the expenditure referred to in clause (1) of sub-section (2AB) which is incurred after 31st March, 2008.

These amendments will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assesment years.

Clause 6 seeks to amend section 35D of the Income-tax Act, relating to amortisation of certain preliminary expenses.

Under the existing provisions of the said section, deduction for certain specified preliminary expenses in computing business income is allowed. The deduction is allowed at an amount equal to 1/5th of such expenditure for five successive previous years. The preliminary expenses relate either to the period before the commencement of business or after. However, if preliminary expenses relate to a period after the commencement of business, such expenses are only allowed if they are in relation to the extension of an industrial undertaking or the setting up of a new industrial unit.

The proposed amendment seeks to substitute the words "industrial undertaking" with the word "undertaking" and the words "industrial unit" with the word "unit", wherever they occur in the said section. This is intended to provide benefit of amortisation of specified post commencement preliminary expenses to all sectors for the extention of an undertaking or the setting up of a new unit.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 7 seeks to amend section 36 of the Income-tax Act, relating to other deductions for the purposes of computation of business income.

It is proposed to insert clause (xv) in sub-section (1) of the said section so as to provide that any amount of securities transaction tax paid by the assessee during the previous year in respect of taxable securities transactions entered into in the course of his business during the previous year shall be allowed as a deduction, if the income arising from such taxable securities transactions is included in the income computed under the head "Profits and gains of business or profession".

It is also proposed to insert an *Explanation* to provide that for the purposes of this clause, the expressions "securities transaction tax" and "taxable securities transaction" shall have the meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004.

Clause 7 further seeks to insert clause (xvi) in sub-section (1) of the said section so as to provide that any amount of commodities transaction tax paid by the assessee during the previous year in respect of taxable commodities transactions entered into in the course of his business during the previous year shall be allowed as a deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

It is also proposed to insert an *Explanation* to provide that for the purposes of this clause, the expressions "commodities transaction tax" and "taxable commodities transaction" shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2008.

These amendments will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 8 seeks to omit sub-clause (ib) of clause (a) of section 40 which provides that any sum paid on account of securities transaction tax shall not be allowed as a deduction in the computation of “profits and gains of business or profession”.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 9 seeks to amend section 40A of the Income-tax Act, relating to expenses or payments not deductible in certain circumstances.

Under the existing provisions contained in clause (a) of sub-section (3) of the said section any expenditure incurred in respect of which payment is made in a sum exceeding Rs.20,000/- otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft is not allowed as a deduction. Clause (b) of sub-section (3) of section 40A also provides for deeming a payment as profits and gains of business or profession if the payment is made in any subsequent year in a sum exceeding Rs. 20,000/- otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft.

The amendment seeks to substitute the said sub-section (3) with sub-sections (3) and (3A). The proposed sub-section (3) provides that where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

The proposed sub-section (3A) provides that where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees.

It is also proposed to provide that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-sections (3) and (3A) where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may-be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

The proposed amendment will take effect from the 1st day of April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 10 seeks to amend section 43 of the income-tax Act relating to definition of certain terms relevant to income from profits and gains of business or profession.

Sub-clause (b) of clause (6) of the said section provides that written down value in the case of assets acquired before the previous year means the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922, or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886, was in force.

It is proposed to insert *Explanation* 6 in the said clause (6) to provide that where an assessee was not required to compute his total income for the purposes of Income-tax Act for any previous year or years preceding the previous year relevant to the assessment year under consideration,-

(a) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

(b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax Act for purposes of clause (6) of the said section;

(c) the depreciation actually allowed as above shall be adjusted by the amount of depreciation attributable to such revaluation.

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

Clause 11 seeks to amend section 47 of the Income-tax Act, which lists transactions not regarded as transfer.

It is proposed to insert a new clause (xa) to provide that any transfer by way of conversion of bonds referred to in clause (a) of sub-section (1) of section 115AC into shares or debentures of any company shall not be considered as transfer.

Further, a new clause (xvi) is also proposed to be inserted in the said section so as to add to the list, any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

These amendments will take effect from 1st April, 2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.

Clause 12 seeks to amend section 49 of the Income-tax Act, which relates to cost with reference to certain modes of acquisition.

Sub-section (2A) of the said section provides that where the capital asset, being a share or debenture in a company, became the property of the assessee in consideration of a transfer referred to in clause (x) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.

It is proposed to substitute the said sub-section to provide that where the capital asset, being a share or debenture of a company, became the property of the assessee in consideration of a transfer referred to in clause (x) or clause (xa) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificates in relation to which such asset is acquired by the assessee.

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

Clause 13 seeks to amend section 80C of the Income-tax Act relating to deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc. This section provides for a deduction of upto rupees one lakh to an individual or a Hindu undivided family for making investment in certain saving instruments or for incurring expenditure on tuition fee and repayment of housing loan.

It is proposed to insert new clauses (xxiii) and (xxiv) in sub-section (2) of said section to enlarge the scope of eligible savings instruments, so as to provide that any sum paid or deposited in the previous year by the assessee in an account under the Senior Citizens Savings Scheme Rules, 2004 or as five year time deposit in an account under the Post Office Time Deposit Rules, 1981 shall also be eligible for tax benefits.

Further, a new sub-section (6A) is also proposed to be inserted so as to provide that where any amount, including the interest accrued thereon, is withdrawn by the assessee from such accounts before the expiry of the period of five years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is withdrawn and shall be liable to tax in the assessment year relevant to such previous year. However, if such amount is received by the nominee or legal heir of the assessee on the death of such assessee, the amount so received by such nominee or legal heir, as the case may be, shall not be liable to tax. However, the interest including in such amount which has not been included in the total income of the assessee in any of the earlier year, shall be liable to tax. Further, if the interest included in such amount has been taken into consideration for computing the total income of the assessee for the previous year or years preceding the previous year in which the amount is withdrawn, such interest shall not be liable to tax again.

These amendments will take effect from 1st April, 2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.

Clause 14 seeks to substitute section 80D of the Income-tax Act, which relates to deduction in respect of medical insurance premia.

The said section provides for deduction of up to fifteen thousand rupees to an assessee, being an individual or a Hindu undivided family, who makes payment of the specified sum by any mode, other than cash, to effect or keep in force an insurance on,—

(a) the health of the assessee or on the health of the wife or husband, dependant parents or dependant children of the assessee where the assessee is an individual;

(b) the health of any member of the family where the assesseee is a Hindu undivided family.

The said section also provides that in case any of the insured persons is a senior citizen, the deduction would be available up to twenty thousand rupees.

With a view to encourage individual assessees to supplement their parents' efforts to get themselves insured, it is proposed to substitute the said section so as to provide for an additional deduction of up to fifteen thousand rupees to an individual assessee who makes payment of the specified sum, by any mode, other than cash, to effect or keep in force an insurance on the health of his parent or parents. The existing condition of the parents being dependant on the assessee is proposed to be dispensed with. This deduction shall be in addition to the existing deduction of up to fifteen thousand rupees available to the individual assessee on an insurance for himself, his spouse and dependant children.

It is also proposed that if either of the individual assessee's parents is a senior citizen, and who has been insured, the deduction available would be up to twenty thousand rupees.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 15 seeks to amend section 80-IB of the Income-tax Act, which relates to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Sub-section (9) of the said section provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil. The term "mineral oil" does not include petroleum and natural gas, unlike other sections of the Act.

The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years

including the initial assessment year –

(*i*) in which the commercial production under a production sharing contract has first started; or

(*ii*) in which the refining of mineral oil has begun.

It is proposed to insert a new proviso in sub-section (9) of section 80-IB so as to provide that no deduction under this sub-section shall be allowed to an undertaking engaged in refining of mineral oil, if it begins refining on or after 1st April, 2009.

This amendment will take effect from 1st April, 2008.

Further, a new sub-section (11C) is proposed to be inserted in the said section so as to extend a five year tax holiday to hospitals located anywhere in India, except seven urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad and the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar and Gandhinagar and the city of Secunderabad. The area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census. The said tax benefit will be available to a hospital which is constructed and has started or starts functioning at any time during the period beginning on 1st April, 2008 and ending on 31st March, 2013. Initial assessment is defined as the assessment year relevant to the previous year in which the business of the hospital starts functioning.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 16 seeks to amend section 80-ID of the Income-tax Act which relates to deduction in respect of profits and gains from business of hotels and convention centres in specified areas.

Section 80-ID of the Act provides for hundred percentage of tax deduction for a period of five years to new hotels of two, three and four star categories and convention centres which are constructed and started or start functioning at any time during the period beginning on 1st April, 2007 and ending on 31st March, 2010. For availing the above benefit the hotel or convention centre should be located in the specified area, which has been defined as the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Buddha Nagar and Ghaziabad.

It is proposed to extend the scope of tax benefit available in this section also to new two-star, three-star or four-star hotel, located in specified district having World Heritage Site, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013. Specified districts having World Heritage Site are proposed to be the districts of Agra, Jalgoan, Aurangabad, Kancheepuram, Puri, Bharatpur, Chhatarpur, Thanjavur, Bellary, South 24 Parganas (excluding areas failing within Kolkata Urban agglomeration on the basis of the 2001 census), Chamoli, Raisen, Gaya, Bhopal, Panchmahal, Kamrup, Goalpara, Nagaon North Goa, South Goa, Darjeeling and Nilgiri.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 17 seeks to amend section 88E of the Income-tax Act, relating to rebate in respect to securities transaction tax.

The amendment seeks to provide that no deduction of Income-tax under this section shall be allowed in, or after, the assessment year beginning on the 1st April, 2009.

This amendment will take effect from 1st April, 2008.

Clauses 18 and 19 seek to amend sections 111A and 115AD of the Income-tax relating to tax on short-term capital gains in certain cases.

Under the existing provisions of section 111A and 115AD, a special rate of tax of ten per cent. is provided on short-term capital gain arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund, where such transaction is chargeable to securities transaction tax.

It is proposd to increase the rate of tax on such short-term capital gain to fifteen per cent.

These amendments will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

Clause 20 seeks to amend section 115JB of the Income-tax Act, which relates to special provision for payment of tax by certain companies.

The said section provides that in the case of a company, if the tax payable on the total income, as computed under the Income-tax Act in respect of any previous year is less than seven-and-a-half per cent. of its book profit (ten per cent. for previous year relevant to assessment year 2007-08 and onwards), such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be seven-and-a-half per cent. (ten per cent. for previous year relevant to assessment year 2007-08 and onwards) of such book profit. Sub-section (2) deals with the preparation of profit and loss account. As per the *Explanation* after sub-section (2), the expression "book profit" means the net profit as shown in the profit and loss account prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 as increased or reduced by certain adjustments, as specified in that section. Clause (a) of the aforesaid *Explanation*, *inter alia*, provides that the book profit shall be increased by the amount of income-tax paid or payable and the provision therefor, if debited to profit and loss account.

It is proposed to number the *Explanation* of section 115JB as *Explanation 1* and insert a new clause after clause (g) of the *Explanation 1* as so numbered so as to provide that the book profit shall be increased by the amount of deferred tax and the provision therefor, if debited to profit and loss account.

Further it is proposed to insert a new *Explanation* after *Explanation 1* so as to provide that for the purposes of clause (a) of the *Explanation 1* the amount of income-tax shall include,—

(*i*) tax on distributed profits or on distributed income under section 115-O or section 115R, respectively;

(*ii*) any interest charged under this Act;

(*iii*) surcharge, if any, as levied by the Central Acts from time to time;

(*iv*) Education Cess on income-tax, if any, levied by the Central Acts from time to time; and

(*v*) Secondary and Higher Education Cess on income-tax, if any, levied by the Central Acts from time to time.

These amendments will take effect retrospectively from 1st April, 2001 and will accordingly apply in relation to the assessment year 2001-02 and subsequent assessment years.

Clause 21 seeks to amend section 115-0 of the Income-tax Act, which relates to tax on distributed income of domestic companies.

Sub-section (1) of the said section provides, *inter alia*, that any amount declared, distributed or paid by such company, by way of dividends, shall be charged to additional income-tax or tax on distributed profits at the rate of fifteen per cent.

It is proposed to insert a new sub-section (1A) in the said section so as to provide that the amount of dividends referred to in sub-section (1) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if—

(a) such amount of dividend is received from its subsidiary;

(b) the subsidiary has paid tax under this section on such dividend; and

(c) the domestic company is not a subsidiary of any other company.

The new sub-section also provides that the same amount of dividend shall not be reduced more than once. For this purpose, a company shall be a subsidiary of another company, if such other company holds more than half in the nominal value of the equity share capital of the company.

This amendment will take effect from 1st April, 2008.

Clause 22 seeks to amend section 115WB of the Income-tax Act, which relates to fringe benefits.

In the said section, the expression "specified security" has been defined, which, *inter alia,* includes employees' stock option. It is proposed to amend this definition so as to include securities offered under an employees' stock option plan or scheme, where the employees' stock option has been granted.

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

Sub-section (2) of the said section 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 (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains), incurred any expense on or made any payment for the specified purposes such as entertainment, hospitality, conference, sales promotion (including publicity), etc.

Sub-clauses (i) and (ii) of clause (B) of the said sub-section exclude certain expenditure from the hospitality expenditure for calculation of fringe benefit tax. It is proposed to amend clause (B) to further provide that any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed, shall also be excluded from the hospitality expenditure for calculation of fringe benefit tax.

Further, the *Explanation* to clause (E) of the said sub-section excludes certain expenses from the employees' welfare expenses for calculation of fringe benefit tax. It is proposed to enlarge the scope of the exclusion in this *Explanation* by providing that the expenditure incurred or payment made to—

(*i*) provide crèche facility for the children of the employee; or

(*ii*) sponsor a sportsman, being an employee; or

(*iii*) organise sports events for employees,

shall also be not considered as expenditure on employees' welfare for calculation of fringe benefit tax.

Further, clause (K) of the said sub-section provides for expenditure on maintenance of any accommodation in the nature of guest house, other than accommodation used for training purposes, as fringe benefit. It is proposed to omit this clause so as not to subject this expenditure to fringe benefit tax.

These amendments will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 23 seeks to amend section 115WC of the Income-tax Act, which relates to value of fringe benefits.

Section 115WC provides for valuation of various fringe benefits specified in section 115WB. Under clause (c) of sub-section (1) of section 115WC, it is provided that the value of fringe benefit relating to expenditure referred to in clauses (A) to (K) of sub-section (2) of section 115WB shall be twenty per cent. of the expenses. Similarly, under clause (d) of the said sub-section, it is provided that the value of fringe benefit referred to in clauses (L) to (P) of sub-section (2) of section 115WB shall be fifty per cent. of the expenses. The fringe benefit for the purposes of expenses on festival celebrations mentioned in clause (L) of sub-section (2) of section 115WB, is accordingly valued at fifty per cent.

It is proposed to amend both clauses (c) and (d) of sub-section (1) of section 115WC so as to provide that only 20 per cent. of the expenditure on festival celebrations shall be deemed to be the value of fringe benefit and not 50 per cent. as under the existing provisions.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

Clause 24 seeks to amend section 115WD of the Income-tax Act, which relates to return of fringe benefits.

Clause (a) of the *Explanation* to sub-section (1) of the said section provides for the due date for filing of return of fringe benefits by the categories of assessees specified thereunder. Under the said provisions of the Act, the due date for filing return of fringe benefits in the case of a company or a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force, is 31st October of the assessment year.

It is proposed to amend the said clause (a) so as to provide that the due date for filing return of fringe benefits shall be 30th September of the assessment year.

This amendment will take effect from 1st April, 2008.

Clause 25 seeks to amend section 115WE of the Income-tax Act, which relates to assessment of fringe benefits.

It is proposed to substitute sub-section (1) to the said section so as to provide that where a return has been made under section 115WD, such return shall be processed in the following manner, namely:-

(*a*) the value of fringe benefits shall be computed after making the following adjustments, namely:–

(*i*) any arithmetical error in the return; or

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*b*) the tax and interest, if any, shall be computed on the basis of the value of fringe benefits computed under clause (a);

(*c*) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(*d*) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(*e*) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

It is further proposed to provide that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Further, the expression "an incorrect claim apparent from any information in the return" in the said sub-section has been defined. It is also clarified that the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

It is also proposed to insert new sub-sections (1A), (1B) and (1C) to the said section. Sub-section (1A) provides that for the purpose of processing of returns under sub-section (1), the Board may make a Scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or refund due to, the assessee as required under that sub-section. Sub-section (1B) proposes that for the purpose of giving effect to the Scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and

adaptations as may be specified in that notification so, however, that no direction shall be issued after 31st March, 2009. Sub-section (1C) provides that every notification issued under sub-section (1B) along with the Scheme, shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

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

Clause 26 seeks to insert a new section 115WKB in the Income-tax Act, relating to deemed payment of tax by the employee.

Sub-section (1) of the proposed section seeks to provide that where an employer has paid any fringe benefit tax with respect to allotment or transfer of specified security or sweat equity shares, referred to in clause (d) of sub-section (1) of section 115WB, and has recovered such tax subsequently from the employee, it shall be deemed that the fringe benefit tax so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him only to the extent to which the amount thereof relates to the value of the fringe benefits provided to such employee, as determined under clause (ba) of sub-section (1) of section 115WC.

Sub-section (2) of the new section seeks to provide that notwithstanding anything contained in any other provision of this Act, where the fringe benefit tax recovered from the employee is deemed to be the tax paid by such employee under sub-section (1), such employee shall not be entitled, under this Act, to claim any refund out of such payment of tax or any credit of such payment of tax against tax liability on other income or against any other tax liability.

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

Clause 27 seeks to amend section 139 of the Income-tax Act, which relates to return of income.

Clause (a) of *Explanation 2* to sub-section (1) of the said section provides for the due date for filing of return of income by the categories of assessees specified thereunder. Under the said provisions of the Act, the due date for filing return of income in the case of a company or a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force, or a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, is 31st October of the assessment year.

It is proposed to amend the said clause so as to provide that the due date for filing such return of income shall be 30th September of the assessment year.

This amendment will take effect from 1st April, 2008.

The *Explanation* to sub-section (9) of the said section provides for conditions required to be fulfilled so that a return of income is not regarded as defective.

Sub-clause (i) of clause (c) of the said *Explanation* provides that a return shall be regarded as a defective return if it is not accompanied by proof of the tax claimed to have been deducted or collected at source before 1st April, 2008.

Further, it is proposed to omit the reference to the said date so as to bring the provisions relating to proof of the tax claimed to have been deducted or collected at source on par with the provisions relating to proof of payment of advance tax referred to in the said sub-clause.

This amendment will take effect from 1st April, 2008.

Clause 28 seeks to amend section 142 of the Income-tax Act, which relates to enquiry before assessment.

Sub-sections (2A) to (2D) of the said section deal with power of Assessing Officer to order special audit, where the nature and complexity of the accounts requires such audit, to seek the assistance of a chartered accountant.

Sub-section (2C) of the said section specifies the period within which the audit report is to be furnished. The proviso to the said sub-section provides that the Assessing Officer may extend the said period of furnishing of audit report, on an application made in this behalf, by the assessee and for any good and sufficient reason.

It is proposed to amend the said proviso so as to provide that the Assessing Officer may, *suo motu*, or on an application made in this behalf by the assessee, and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit.

This amendment will take effect from 1st April, 2008.

Clause 29 seeks to amend section 143 of the Income-tax Act, which relates to assessment.

It is proposed to substitute sub-section (1) to the said section so as to provide that where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(*a*) the total income or loss shall be computed after making the following adjustments, namely:–

(*i*) any arithmetical error in the return; or

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*b*) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(*c*) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(*d*) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(*e*) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

It is further proposed to provide that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is reduced but no tax or interest is payable by, or no refund is due to, him:

It is also proposed to provide further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return was made.

Further, the expression "an incorrect claim apparent from any information in the return" in the said sub-section has been defined. It is also clarified that the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

It is also proposed to insert new sub-sections (1A), (1B) and (1C) to the said section. Sub-section (1A) provides that for the purpose of processing of returns under sub-section (1), the Board may make a Scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or refund due to, the assessee as required under that sub-section. Sub-section (1B) proposes that for the purpose of giving effect to the Scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification so, however,

that no direction shall be issued after 31st March, 2009. Sub-section (1C) provides that every notification, along with the Scheme, issued under sub-section (1B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Further, it is proposed to amend said section so as to substitute the proviso to clause (ii) of sub-section (2) thereof to provide that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

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

Clause 30 seeks to amend section 147 of the Income-tax Act, which relates to income escaping assessment.

It is proposed to insert a proviso to provide that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

This amendment will take effect from 1st April, 2008.

Clause 31 seeks to amend section 151 of the Income-tax Act, which relates to sanction for issue of notice.

Under the existing provisions of section 151, there is, in certain situations, requirement of satisfaction of the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, on the reasons recorded by the Assessing Officer about the fitness of a case for the issue of notice under section 148.

It is proposed to insert an *Explanation* after sub-section (2) of section 151 so as to declare that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue the notice himself.

This amendment will take effect retrospectively from 1st October, 1998.

Clauses 32 to 36 seek to amend sections 153, 153A, 153B, 153C and 153D of the Income-tax Act, which relate to time-limit for completion of assessments and reassessments, assessment in case of search or requisition time-limit for completion of assessment, etc.

The proposed amendment seeks to insert a new proviso in section 153 so as to provide that where the proceedings before the Settlement Commission abate under section 245HA, the period of limitation referred to in this section available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, after the adjustment under sub-section (4) of section 245HA, shall be not less than one year, and where such period of limitation is less than one year, it shall be deemed to be extended to one year. Further, for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.

This amendment of section 153 will take effect retrospectively from 1st June, 2007.

It is further proposed to insert a new sub-section (4) in section 153 to provide that notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A and sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year which stands revived under sub-section (2) of section 153A, shall be made within one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.

The existing provision of section 153A is proposed to be renumbered as sub-section (1) and a new sub-section (2) is proposed to be inserted to provide that if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in any appeal or other legal proceeding, then, notwithstanding anything contained in sub-section (1) of this section or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Proviso to this sub-section proposes to provide that such revival shall cease to have effect, if such order of annulment is set aside. Further, in view of the provisions of section 153A being renumbered as sub-section (1) thereof, consequentially, second proviso to sub-section (1) has been amended by substituting the words "referred to in this section" with the words "referred to in this sub-section".

Clause (b) of section 153A provides for assessment or reassessment of total income of 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.

Clause (a) of sub-section (1) of section 153B provides for time-limit for completion of assessment or reassessment of total income in respect of each assessment year falling within a period of six assessment years referred to in clause (b) of section 153A. Clause (b) of this sub-section provides for time-limit for completion of assessment in respect of the assessment year relevant to the previous year in which search is conducted or requisition is made.

It is also proposed to insert a new clause (vii) in the *Explanation* to sub-section (1) of section 153B providing that the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A till the date of the receipt of the order setting aside the order of such annulment by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153B. Consequential amendments in clause (a) of sub-section (1) to substitute the word, figures and letter "section 153A" with the words, figures and letter "sub-section (1) of section 153A" and in the proviso to the explanation has been made.

Further, consequential amendments in sections 153C and 153D have been made to substitute the word, figures and letter "section 153A" with the words, brackets, figures and letter "sub-section (1) of section 153A".

These amendments will take effect retrospectively from 1st June, 2003.

Clause 37 seeks to amend section 156 of the Income-tax Act, which relates to notice of demand.

The existing provisions of section 156 provides that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

It is proposed to amend said section so as to provide that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.

This amendment will take effect from 1st April, 2008.

Clause 38 seeks to amend section 191 of the Income-tax Act, which relates to direct payment.

The *Explanation* to the said section provides that if any person, referred to in section 200 and the principal officer of the company referred to in section 194, does not deduct the whole or any part of the tax and such tax has not been paid by the assessee direct, then, such person, the principal officer of the company shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default as referred to in sub-section (1) of section 201 in respect of such tax.

The said *Explanation* thus covers in its ambit persons referred to in section 200. Section 200 in turn refers to a person deducting any sum in accordance with the provisions of Chapter XVII-B and who is required to pay within the prescribed time the sum so deducted to the credit of Central Government. Thus, this provision leaves room for an interpretation that a person required to deduct tax at source but not deducting the same will not be deemed an assessee in default under section 201. Such an interpretation is contrary to legislative intent.

The proposed amendment, therefore, seeks to substitute the said *Explanation* to clarify that where a person is required to deduct tax at source but fails to do so, he shall also be deemed to be an assessee in default under section 201.

This amendment will take effect retrospectively from 1st June, 2003.

Clause 39 seeks to amend section 193 of the Income-tax Act, relating to interest on securities.

Section 193 provides for deduction of tax at source on any income by way of interest on securities payable to a resident.

The proposed amendment of the said section seeks to exempt from deduction of tax at source, any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.

This amendment will take effect from 1st June, 2008.

Clause 40 seeks to amend section 194C of the Income-tax Act, which relates to payments to contractors and sub-contractors.

Sub-section (1) of the said section specifies the entities which are liable to deduct tax at source on payments to a resident contractor. These entities include some of associations of persons or bodies of individuals but do not include all associations of persons or bodies of individuals in general.

The proposed amendment seeks to provide that every association of persons or body of individuals, whether incorporated or not, shall be liable to deduct income-tax at source under the said sub-section.

This amendment will take effect from 1st June, 2008.

Clause 41 seeks to amend section 195 of the Income-tax Act, which relates to other sums.

Sub-section (1) of the said section provides that any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the Act shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

The proposed amendment seeks to insert sub-section (6) in the said section so as to provide that the person referred to in sub-section (1) shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

This amendment will take effect from 1st April, 2008.

Clause 42 seeks to substitute section 199 of the Income-tax Act, which relates to credit for tax deducted.

The proposed sub-section (1) seeks to provide that any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

The proposed sub-section (2) seeks to provide that any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

The proposed sub-section (3) seeks to provide that the Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.

This amendment will take effect from 1st April, 2008.

Clause 43 seeks to amend section 201 of the Income-tax Act, which relates to consequences of failure to deduct or pay.

Sub-section (1) of the said section provides that if any person referred to in section 200 and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under the Income-tax Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax.

The said sub-section thus covers in its ambit persons referred to in section 200. Section 200 in turn refers to a person deducting any sum in accordance with the provisions of Chapter XVII-B and who is required to pay within the prescribed time the sum so deducted to the credit of Central Government. Thus, this provision leaves room for an interpretation that a person required to deduct tax at source but not deducting the same will not be deemed an assessee in default under section 201. Such an interpretation is contrary to legislative intent.

The proposed amendment, therefore, seeks to substitute the said sub-section to clarify that where a person is required to deduct tax at source but fails to do so, he shall also be deemed to be an assessee in default under section 201.

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

Clause 44 seeks to amend section 203 of the Income-tax Act, which relates to certificate for tax deducted.

Sub-section (3) of the said section provides that on or after 1st April, 2008, there would be no requirement of furnishing—

(i) certificate of tax deducted at source; or

(ii) certificate of any sum paid as tax to the Central Government by the employer on any non-monetary perquisite to the employee.

The proposed amendment substitutes the said date with 1st April, 2010 so as to provide that upto 31st March, 2010–

(i) the person deducting tax shall continue to furnish a certificate of tax deducted at source to the person on whose behalf deductions were made; and

(ii) an employer shall continue to furnish a certificate of tax paid on any non-monetary perquisite to the employee.

This amendment will take effect from 1st April, 2008.

Clause 45 seeks to amend section 206C of the Income-tax Act, relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

Sub-section (4) of the said section provides that any amount collected in accordance with the provisions of said section and paid to the credit of the Central Government shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected. The said sub-section also requires production of certificate of tax collected at source for giving credit to the person from whom the amount has been collected. The proviso to the said sub-section (4) provides that after 1st April, 2008 credit shall be given on the basis of annual statement referred to in the second proviso to sub-section (5) of the said section and a certificate of collection of tax is not required to be produced along with the return of income for claiming credit for tax collected at source.

The method of allowing credit to the assessee for tax collected at source needs a certain degree of flexibility considering the

ongoing technological and business process changes. Therefore, the proposed amendment seeks to substitute the said sub-section (4) to provide that any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules as may be prescribed by the Board from time to time.

The existing provisions of first proviso to sub-section (5) of the said section provide that on or after 1st April, 2008, there would be no requirement of furnishing a certificate of collection of tax at source.

The proposed amendment substitutes the said date with 1st April, 2010 so as to provide that up to 31st March, 2010 the person who collects tax shall continue to furnish a certificate of tax collected at source to the person from whom the amount has been collected.

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

Clause 46 seeks to amend section 254 of the Income-tax Act, relating to orders of Appellate Tribunal.

Sub-section (2A) of the said section provides that the Income Tax Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253.

The first proviso to this sub-section provides that the said Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order and the said Appellate Tribunal shall dispose of the appeal within the specified period of stay.

The second proviso to this sub-section provides that where the appeal has not been disposed of within the said specified period and the delay in disposing of the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days. The Appellate Tribunal is required to dispose of the appeal within the extended period.

The third proviso to this sub-section provides that if such appeal is not decided within the period allowed originally or the period or periods so extended or allowed, the order of stay shall stand vacated after the expiry of such period or periods.

The intention behind these provisions have been very clear that the Appellate Tribunal cannot grant stay either under the original order or under any subsequent order, beyond the period of 365 days in aggregate.

To make this intention clear, it is proposed to amend section 254 of the Income-tax Act and further 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, even if the delay in disposing of the appeal is not attributable to the assessee.

This amendment will take effect from 1st October, 2008.

Clause 47 seeks to insert a new section 268A in the Income-tax Act, relating to filing of appeal or application for reference by income-tax authorities.

The proposed section seeks to provide that the Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of Chapter XX.

It is further proposed to provide that where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of– (a) the same assessee for any other assessment year; or (b) any other assessee for the same or any other assessment year.

It is also proposed to provide that notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders, instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

It is also proposed to provide that the Appellate Tribunal or Court, hearing any appeal or reference filed under this Chapter, shall have regard to the orders, instructions or directions issued by the Board from time to time either before or after the insertion of this section and the circumstances in which such appeal or application for reference was filed or was not filed in any case; and accordingly the Tribunal or Court shall decide the appeal or the reference on the merits of the issue under consideration.

It is also proposed to provide that every order or instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

This amendment will take effect retrospectively from 1st April, 1999.

Clause 48 seeks to amend section 271 of the Income-tax Act, which relates to failure to furnish returns, comply with notices, concealment of income, etc.

Under the existing provisions contained in Chapter XXI the Assessing Officer is required to be satisfied during the course of penalty proceedings. Legislative intent was that such a satisfaction was required to be recorded only at the time of levy of penalty and not at the time of initiation of penalty. However, some of the judicial interpretations on this issue are favouring the view that satisfaction has to be recorded at the time of initiation of penalty proceedings also.

It is therefore proposed to insert a new sub-section (1B) in section 271 of the Income-tax Act so as to provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and if such order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under sub-section (1).

This amendment will take effect retrospectively from 1st April, 1989.

Clause 49 seeks to insert a new section 273AA in the Income-tax Act relating to the power of Commissioner to grant immunity from penalty.

The proposed amendment seeks to provide that a person may make application to the Commissioner for granting immunity from penalty, if (a) he has made an application for settlement under section 245C and the proceedings for settlement have abated; and (b) penalty proceeding have been initiated under this Act.

It is further proposed to provide that the application referred to in sub-section (1) of the said section for granting immunity from penalty shall not be made after the imposition of penalty after abatement.

It is also proposed to provide that the Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under

this Act, if he is satisfied that the person has, after abatement, co-operated with the income-tax authority in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.

It is also proposed to provide that the immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

It is also proposed to provide that the immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceeding, after abatement, concealed, any particulars, material to the assessment, from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

This amendment will take effect from 1st April, 2008.

Clause 50 seeks to insert a new section 278AB in the Income-tax Act, relating to the power of Commissioner to grant immunity from prosecution.

The proposed amendment seeks to provide that a person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 245C and the proceedings for settlement have abated.

It is further proposed to provide that the application referred to in sub-section (1) of the said section, for granting immunity from prosecution, shall not be made after institution of the prosecution proceedings after abatement.

It is also proposed to provide that the Commissioner may grant to such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived:

It is also proposed to provide that where the application for settlement under section 245C is made before 1st June, 2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any Central Act for the time being in force.

It is also proposed to provide that the immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

It is also proposed to provide that the immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceeding, after abatement, concealed any particulars material to the assessment, from the income-tax authroity or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings."

This amendment will take effect from 1st April, 2008.

Clause 51 seeks to insert a new section 282A in the Income-tax Act, relating to authentication of notices and other documents.

The proposed new section seeks to provide that where this Act requires a notice or other document to be issued, served or given by any income-tax authority, such notice or other document shall be signed in manuscript by that authority.

It is further proposed to provide that every notice or other document to be issued, served or given, for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

It is also proposed to provide that for the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document by authenticating it in the manner provided in sub-section (2) of the said section.

This amendment will take effect from 1st June, 2008.

Clause 52 seeks to insert a new section 292BB in the Income-tax Act, laying down certain circumstances in which notice shall be deemed to be valid.

It is proposed to provide that where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was, (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner.

This amendment will take effect from 1st April, 2008.

Clause 53 seeks to amend section 292C of the Income-tax Act, which relates to presumption as to assets, books of account, etc.

The said section provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132, it may, in any proceeding under this Act, be presumed that-

(*i*) such books of account, other document, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(*ii*) the contents of such books of account and other documents are true; and

(*iii*) the signature and every other part of such books of account and other documents which purport to be in the 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.

It is proposed to amend the said section so as to extend the above mentioned presumptions also to books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation.

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

It is also proposed to extend the above-mentioned presumption also to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A.

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

Clause 54 seeks to amend sub-section (2) of section 295 of the income-tax Act, which relates to rule-making power of the Board, by inserting a new clause (fa) therein so as to specifically provide the Board with the power to prescribe the form and manner in which the information relating to payment of any sum may be furnished under the proposed sub-section (6) of section 195.

This amendment will take effect from 1st April, 2008.

Clause 55 of the Bill seeks to amend Part A of the Fourth Schedule to the Income-tax Act, which relates to recognised provident funds.

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or Commissioner may accord recognition to any provident fund which in his opinion satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf.

The proviso to sub-rule (1) of the said rule 3 provides that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4, and any other conditions which the Board may, by rules specify in this behalf, the recognition to such fund shall be withdrawn, if such fund does not satisfy such conditions on or before 31st March, 2008.

It is proposed to amend the said proviso to sub-rule (1), so as to extend the said time limit by one more year i.e., from 31st March, 2008 to 31st March, 2009.

This amendment will take effect from 1st April, 2008.

Clause 56 seeks to amend section 17 of the Wealth-tax Act, which relates to wealth escaping assessment.

It is proposed to insert a new proviso in sub-section (1) of the said section to provide that the Assessing Officer may assess or reassess such net wealth, other than the net wealth involving matters, which are the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

This amendment will take effect from 1st April, 2008.

Clause 56 further seeks to insert an *Explanation* after sub-section (1B) of the said section so as to provide that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice need not issue the notice himself.

This amendment will take effect retrospectively from 1st October, 1998.

Clause 57 seeks to amend section 17A of the Wealth-tax Act, which relates to time-limit for completion of assessments and reassessments.

The proposed amendment seeks to insert a new proviso in the said section so as to provide that where a proceeding before the Settlement Commission abates under section 22HA, the period of limitation referred to section 17A available to the Assessing Officer for making an order of assessment, reassessment, as the case may be, shall, after the adjustment of the period under sub-section (4) of section 22HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to be extended to one year.

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

Clause 58 seeks to amend section 18 of the Wealth-tax Act, which relates to failure to furnish returns, comply with notices, concealment of income, etc.

It is proposed to insert a new sub-section (1A) in this section so as to provide that where any amount is added or disallowed in computing the net wealth of an assessee in any order of assessment or reassessment and if such order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under sub-section (1).

This amendment will take effect retrospectively from 1st April, 1989.

Clause 59 seeks to insert a new section 18BA in the Wealth-tax Act, relating to power of the Commissioner to grant immunity from penalty.

The proposed amendment seeks to provide that a person may make an application to the Commissioner for granting immunity from penalty, if– (a) he has made an application for settlement under section 22C and the proceedings for settlement have abated under section 22HA; and (b) the penalty proceedings have been initiated under this Act.

It is further proposed to provide that the application to the Commissioner under sub-section (1) shall not be made after imposition of penalty after abatement.

It is also proposed to provide that the Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from penalty for any offence under this Act, if he is satisfied that the person has, after the abatement, co-operated with the wealth-tax authority in the proceedings before him and has made a full and true disclosure of his net wealth and the manner in which such net wealth has been derived.

It is also proposed to provide that the immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

It is also proposed to provide that the immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars, material to the assessment, from the wealth-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

This amendment will take effect from 1st April, 2008.

Clause 60 seeks to insert a new section 35GA in the Wealth-tax Act relating to power of the Commissioner to grant immunity from prosecution.

The proposed amendment seeks to provide that a person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 22C and the proceedings for settlement have abated under section 22HA.

It is further proposed to provide that the application to the Commissioner under sub-section (1) shall not be made after institution of the prosecution proceedings after abatement.

It is also proposed to provide that the Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any proscution under this Act, if he is satisfied that the person has, after the abatement, co-operated with the wealth-tax authority in the proceedings before him and has made a full and true disclosure of his net wealth and the manner in which such net wealth has been derived:

It is also proposed to provide that where the application for settlement under section 22C had been made before 1st June, 2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force.

It is also proposed to provide that the immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

It is also proposed to provide that the immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of proceedings, after abatement, concealed any particulars, material to the assessment, from the wealth-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

This amendment will take effect from 1st April, 2008.

Clause 61 seeks to insert a new section 42 in the Wealth-tax Act, laying down certain circumstances in which notice shall be deemed to be valid.

It is proposed to provide that where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the relevant provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was, (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner.

This amendment will take effect from 1st April, 2008.

Clause 62 seeks to amend section 42D of the Wealth-tax Act, which relates to presumption as to assets, books of account, etc.

The said section provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 37A, it may, in any proceeding under this Act, be presumed that-

(*i*) such books of account, other document, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(*ii*) the contents of such books of account and other documents are true; and

(*iii*) the signature and every other part of such books of account and other documents which purport to be in the 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.

It is proposed to amend the said section so as to extend the above mentioned presumption also to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 37B.

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