

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (e) of clause 5 of the Bill seeks to insert a new clause (19) in section 10 of the Income-tax Act relating to incomes not included in total income. The amendment proposed by the said sub-clause confers powers upon the Central Board of Direct Taxes to specify, by rules made by it, the circumstances and subject to such conditions, the family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, where the death of such member has occurred in the course of operational duties shall be exempt from total income under the said section 10.

Sub-clause (f) of clause 5 of the Bill seeks to substitute the definition of "venture capital undertaking" as given in clause (c) of Explanation I to clause (23FB) of section 10 to mean a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities Exchange Board of India Act, 1992. This provision empowers the Central Board of Direct Taxes to notify in the official Gazette such venture capital undertaking for the purposes of the said clause (23FB).

Clause 10 of the Bill seeks to amend section 35AC of the Income-tax Act relating to expenditure on eligible projects or schemes. The proposed amendment seeks to substitute the existing sub-section (4) so as to lay down an additional ground for withdrawal of approval by the National Committee. In case where the association or institution, to which approval has been granted, fails to furnish to that Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed, the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval. It is also proposed to provide that a copy of the order withdrawing the approval shall be forwarded to the Assessing Officer having jurisdiction over the concerned association or institution.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form of the report to be furnished by the association or institution to the National Committee and setting forth such particulars and within such time as may be prescribed for the purposes of said section.

The proposed amendment further seeks to substitute the existing sub-section (5) so as to provide an additional ground for withdrawal of approval by the National Committee. It is proposed to provide that in case a report in respect of such eligible project or the scheme has not been furnished after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed, such notification may be withdrawn in the same manner in which it was issued. It is also proposed to provide that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be. It is also proposed to provide that a copy of the notification by which the notification of the eligible project or the scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form of the report to be furnished by the association or institution to the National Committee and setting forth such particulars and within such time as may be prescribed for the purposes of said section.

Clause 14 seeks to insert a new section 80 CCD in the Income-tax Act relating to deduction in respect of contribution to pension scheme of the Central Government. Sub-section (1) of the proposed new section seeks to provide that where an individual, employed by the Central Government on or after 1st April, 2004 who has paid or deposited any amount in his amount under a pension scheme notified or as may be notified by the Central Government, he shall be allowed a deduction of the whole of the amount, paid or deposited by him as does not exceed ten per cent. of his salary in the previous year.

It is proposed to confer power upon the Central Government to notify the said scheme for the purposes of the new section 80-CCD.

Clause 15 seeks to amend section 80DD of the Income-tax Act relating to deduction in respect of maintenance including medical treatment of a

dependent who is person with "disability" as defined under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

A person claiming deduction under this section is required to furnish a copy of the certificate issued by the medical authority alongwith with the return.

It is proposed to include "autism", "cerebral palsy" and multiple "disability" as referred to in section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental retardation and Multiple Disabilities Act, 1999, in the definition of disability.

The proposed amendment also confers powers on the Central Board of Direct Taxes to notify medical authority for certifying disability in the nature of 'autism', 'cerebral palsy' and 'multiple disabilities' etc.

Clause 17 seeks to amend section 80-1B of the Income-tax Act relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Sub-clause (d) of the said clause seeks to substitute sub-section (10) of the said section so as to provide, *inter alia*, a hundred per cent. deduction of the profits derived by an undertakings developing and building having projects approved by the local authority before 31st March, 2007 subject to certain conditions such as (a) such undertaking has commenced or commences development and construction of the housing project on or after 1st October, 1998 (b) the project is on the size of a plot of land which has a minimum area of one acre except in the case of a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings, and notified by the Board.

It is proposed to confer power upon the Central Board of Direct Taxes to notify such schemes for the purposes of sub-section (10) of section 80-1B.

Clause 17 also seeks to amend section 80-1B of the Income-tax Act relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. The proposed amendment, *inter alia*, seeks to insert a new sub-section (11B) in the said section so as to provide that the profits derived by an undertaking from the business of operating and maintaining a hospital in rural area shall be eligible for a deduction of hundred per cent. of such profits and gains for five assessment years beginning from the initial assessment year in which the undertaking begins to provide medical services. An undertaking shall be eligible for such deduction if such hospital is constructed during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008, it has at least one hundred beds for patients and the construction is in accordance with the local regulations of the local authority for the time being in force.

The proposed amendment confers power upon the Central Board of Direct Taxes to specify the form and the manner in which an audit report shall be submitted by the assessee for the purpose of claiming deductions under this section.

Clause 18 seeks to amend section 80U of the Income-tax Act relating to deduction in the of a person with 'disability' as defined under the Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

A person claiming deduction under this section is required to furnish a copy of the certificate issued by the medical authority alongwith with the return.

It is proposed to include "autism", "cerebral palsy" and multiple "disability" as referred to in section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental retardation and Multiple Disabilities Act, 1999, in the definition of disability.

The proposed amendment also confers powers on the Central Board of Direct Taxes to notify medical authority for certifying disability in the nature of 'autism', 'cerebral palsy' and 'multiple disabilities' etc.

Clause 28 of the Bill seeks to insert a new Chapter XII-G in the Income-tax Act relating to special provision for tax on income of shipping companies.

Section 115VG of the proposed Chapter provides for computation of tonnage income. As per the provisions of sub-section (4) of the said section, tonnage shall mean the tonnage of a ship indicated in the certificate

referred to in section 115VX which includes the deemed tonnage to be computed in the prescribed manner.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the manner of computation of such deemed tonnage.

Section 115V-I of the proposed Chapter relates to relevant shipping income. Sub-section (3) of the said section empower the Central Government to exclude any core activity referred to in clause (ii) of Sub-section (2) or prescribed the limit up to which such activities shall be included in the core activities for the purpose of the section, if it considers necessary or expedient so to do. Sub-section (5) of the said section provides that the incidental activities of tonnage tax company shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the incidental activities for the purposes of the relevant shipping income.

Section 115VP of the proposed Chapter relates to the method and time by making option for tonnage tax scheme. Sub-section (1) of the said section provides that a qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed, for such scheme.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner for the purpose of making the application to the Joint Commissioner.

Section 115VW of the proposed Chapter relates to maintenance and audit of accounts. The said section, *inter alia*, provides that an option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form for the purposes of furnishing the report by the accountant.

Clause 39 of the Bill seeks to amend section 200 of the Income-tax Act relating to duty of person deducting tax. The proposed amendment seeks to insert a new sub-section (3) in the said section so as to provide that any person deducting any sum on or after the 1st April, 2005 in accordance with the provisions of Chapter XVII-B or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statement for the period ending on 30th June, 30th September, 31st December and 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority or the person authorized by such authority.

The proposed amendment confers powers upon the Central Board of Direct Taxes to specify by rules made by it (a) the income-tax authority to whom such quarterly statement shall be submitted (b) the form of the quarterly statement and also (c) the manner in which and the time within which such quarterly statement shall be submitted.

Clause 42 of the Bill seeks to substitute section 203A of the Income-tax Act relating to Tax deduction account number. Sub-section (1) of the proposed section seeks to provide that every person, deducting tax or collecting tax at source in accordance with the provisions of Chapter XVII, who has not been allotted a tax deduction account number or a tax collection account number shall within the prescribed time apply to the Assessing Officer for allotment of a "tax deduction and tax collection account number".

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the time within which the person will be required to apply for the allotment of such number.

Clause 43 of the Bill seeks to insert a new section 203AA in the Income-tax Act, relating to requirement of furnishing of statement of tax deducted, etc. The provisions contained in the new section 203AA so as to provide that the prescribed Income-tax authority or the person authorized by such authority referred to in sub-section (3) of section 200, shall, within the prescribed time after the end of each financial year beginning on or after 1st day of April, 2005 prepare and deliver to the assessee a statement specifying the amount of tax deducted and such other particulars as may be specified by the Central Board of Direct Taxes.

It is proposed to confer power upon the Central Board of Direct Taxes to specify by the rules made by it (a) the time within which the assessee be given such statement, (b) the form in which such statement

shall be given, and (c) the other particulars which shall be given along with such statement.

Clause 46 of the Bill seeks to amend section 206 of the Income-tax Act relating to persons deducting tax to furnish prescribed returns. Under the existing provisions contained in sub-section (1) of the said section, the prescribed person in the case of every office of Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, every private employer and every other person responsible for deducting tax is required to prepare and deliver or cause to be delivered to the prescribed income-tax authority, such returns in such form and verified in such manner and setting forth such particulars as may be prescribed within the prescribed time after the end of each financial year.

The proposed amendment vide sub-clause (a) allows filing of the returns with any authority or agency. It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it such authority or agency to whom such return shall be delivered or cause to be delivered.

It is further proposed to confer power upon the Central Board of Direct Taxes to frame a scheme for the purposes of filing of returns with such other authority or agency referred to in the said sub-section (1) if it considers necessary or expedient to do so.

Sub-clause (b) of clause 46 of the Bill proposes to amend sub-section (2) of section 206 of the Income-tax Act. Under the existing provision contained in said sub-section (2), the person responsible for deducting tax in accordance with the provisions of Chapter XVII-B of the Income-tax Act, other than the principal officer in the case of every company, may, at his option, deliver or cause to be delivered to the prescribed income-tax authority in accordance with such scheme as may be specified by the Central Board of Direct Taxes in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a computer media like floppy, diskette, magnetic cartridge tape, etc. and in the manner as may be specified in the scheme. The proviso to the said sub-section provides that the principal officer in the case of every company responsible for deducting tax shall deliver or cause to be delivered within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

The proposed amendment requires the person specified by the rules made by the Central Board of Direct Taxes in the case of every office of the Government to deliver or cause to be delivered within the time specified by the Central Board of Direct Taxes after the end of each financial year, such returns on computer media under the said scheme.

Clause 47 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.

Item (ii) of sub-clause (b) of clause 47 of the Bill seeks to insert a proviso in sub-section (3) of the said section to provide that the person collecting tax on or after the 1st April, 2005 in accordance with the provisions of the section shall, after paying the tax deducted to the Central Government prepare quarterly statement for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority or the person authorized by such authority.

The proposed amendment confers powers upon the Central Board of Direct Taxes to specify by rules made by it—(a) the income-tax authority to whom such quarterly statement shall be submitted, (b) the form of the quarterly statement and also (c) the manner in which and the time within which such quarterly statement shall be submitted.

Item (ii) of sub-clause (c) of the proposed amendment seeks to insert a proviso in sub-section (5) of the said section to provide that no certificate shall be required to be furnished in case where tax has been collected in accordance with the foregoing provisions of this section on or after the 1st day of April, 2005. The proposed amendment further seeks to provide that the prescribed income-tax authority or the person authorized by such authority referred to in sub-section (3) shall, after the end of each financial year, prepare and deliver such statement to the buyer referred to in sub-section (1) or, as the case may be, the licensee or lessee referred to in sub-section (1C).

It is proposed to confer power upon the Central Board of Direct Taxes to specify by the rules made by it—(a) the time within which the assessee shall be given such statement, (b) the form in which such statement shall be given, and (c) the other particulars which shall be given along with such statement.

Sub-clause (f) of clause 47 of the Bill seeks to amend sub-section (5A) of the said section 206C of the Income-tax Act. The proposed amendment provides that every person collecting tax at source is required to furnish returns of tax collected for each financial year to the income-tax authority or any person authorised by such authority or any agency.

It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it—(a) the income-tax authority to whom such return shall be submitted, (b) the form of the return and also (c) the manner in which and the time within which such return shall be submitted.

Sub-clause (g) of clause 47 of the Bill seeks to substitute sub-sections (5B) and (5C) of the said section 206C to provide that the person responsible for collecting tax under the provisions of the said section, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Central Board of Direct Taxes in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media and in the manner as may be specified in that scheme. The proposed proviso to the said sub-section provides that where the seller is a company or the Central Government or a State Government, every person collecting tax in accordance with the provisions of the said section shall, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

It is proposed to confer power upon the Central Board of Direct Taxes to frame scheme for the purpose of delivering the return under said sub-section (5B).

Clause 58 of the Bill seeks to amend section 285BA of the Income-tax Act relating to furnishing of annual information return.

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

It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it, (a) the person in case of an office of Government who shall be required to furnish an annual information return and (b) the income-tax authority or other authority or agency to whom such annual information return shall be furnished.

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

It is further proposed to confer power upon the Central Board of Direct Taxes to specify the time within which the annual information return shall be furnished. It is also proposed to confer power upon the Central Board of Direct Taxes to specify the form and manner in which such annual information return shall be furnished.

The proposed sub-section (3) defines the expression "specified financial transaction" so as to include a transaction of purchase, sale or exchange of goods or property or right or interest in a property or a transaction for rendering any service which may be prescribed or a transaction under a works contract or a transaction by way of an investment made, or an expenditure incurred, or a transaction for taking or accepting any loan or deposit where the value or the aggregate value of such transaction during a previous year exceeds fifty thousand rupees or such other higher value as may be prescribed.

It is also proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it (a) the transactions for rendering any service referred to in clause (b) of sub-section (3) of the proposed section, (b) different values for different transactions mentioned in clauses (a) to (e) of sub-section (3) of the proposed section having regard to the nature of the financial transaction, in respect of different persons referred in clauses (a) to (i) of sub-section (1).

Clause 64 of the Bill seeks to amend section 156 of the Customs Act to empower the Central Government to make rules to specify the amount to be paid for compounding under sub-section (3) of section 137.

Clause 75 of the Bill seeks to amend section 37 of the Central Excise Act to empower the Central Government to make rules to prescribe the amount to be paid for compounding under sub-section (2) of section 9A of the said Act and to provide for credit of service tax leviable under Chapter V of the Finance Act, 1994, paid or payable on taxable services used in, or in relation to the manufacture of excisable goods.

Clause 80 of the Bill seeks to amend Chapter V of the Finance Act, 1994. Sub-clause (q) of the said clause seeks to amend section 94 which empowers the Central Government to make rules to provide for the following matters, namely:—

(i) provisions for determining export of taxable services;

(ii) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;

(iii) rebate of service tax paid on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services exported out of India;

Sub-clause (r) of the said clause seeks to amend section 95 of the Finance Act, 1994 to insert a new sub-section (1B) thereof so as to empower the Central Government to issue order for removal of any difficulty which may arise in respect of implementing or assessing the value of any taxable services incorporated by the proposed legislation. The proviso to the said sub-section seeks to provide that any order under that sub-section shall be made within a period of two years from the date on which this Bill receives the assent of the President.

Sub-clause (2) of the clause 86 of the Bill empowers the Central Government to appoint a date on which Chapter VII relating to Securities Transaction Tax of the Bill when enacted shall come into force.

Chapter VII of the Bill seeks to provide for the levy of a tax on the value of all transactions of purchases of securities, entered into in any recognised stock exchange, such tax shall be collected by the recognised stock exchange from the purchaser of the securities, and paid to the credit of the Central Government.

Clause 91 of the Bill provides for filing of a return by a recognised stock exchange responsible for collection of securities transactions tax, within the prescribed time, in the prescribed form and manner, and settling forth such particulars as may be prescribed, in respect of taxable securities transactions entered into during a financial year on the stock exchange.

It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it (a) the time within which the return shall be furnished, (b) the form in which the return shall be furnished, (c) manner in which the same shall be verified, (d) particulars to be furnished with the return.

Clause 92 of the Bill provides that where any amount is refunded to a recognised stock exchange, the same shall be refunded to the concerned person from whom such amount was collected, within the prescribed time.

It is also proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it the time within which such amount shall be refunded to the person concerned.

Clause 100 of the Bill provides that an assessee if aggrieved by any order of the assessing officer, may file an appeal to the Commissioner of the Income-tax (Appeals), in the prescribed form and verified in the prescribed manner.

It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it, the form in which such appeal may be made, and the manner in which the same may be verified.

Clause 101 of the Bill provide for filing of appeal to the Appellate Tribunal by the assessee or, as the case may be, by the assessing officer in the prescribed form and verified in the prescribed manner.

It is proposed to confer power upon the Central Board of Direct Taxes to specify by rules made by it, the form in which such appeal may be made, and the manner in which the same may be verified.

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

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