FINANCE BILL, 2005

PROVISIONS RELATING TO DIRECT TAXES

(i) Prescribing the rates of income-tax on incomes liable to tax for the assessment year 2005-2006; the rates at which tax will be deductible at source during the financial year 2005-2006 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of "advance tax", deduction of income-tax from or payment of tax on 'Salaries' and charging of income-tax on current incomes in certain cases for the financial year 2005-2006.

(ii) Amendment of the Income-tax, inter-alia, with a view to, -

- lowering the burden on the income taxpayer significantly so that there will be positive effects on productivity and on revenue contribution;
- simplifying the tax statute by allowing more discretion in the hands of the taxpayer in saving and investment decisions;
- reducing the corporate tax rate so as to, -
  - reduce ex-ante cost of capital and provide larger internal accruals for modernisation and expansion;
  - remove any disincentive to firms from incorporating by equating the corporate tax rate with the top marginal personal income tax rate; and
  - provide deserved relief to those corporates that bear the heavier part of the corporate tax burden;
- improving the equity of the tax structure by reducing tax incentives, in particular, accelerated depreciation to reflect the impact of reduction in corporate tax rates and low inflation in the price of capital goods over the last decade, without adversely affecting internal accruals for replacement;
- providing further impetus to new investment;
- streamline tax administration business processes through rapid computerisation and quality taxpayer service so as to, -
  - reduce transaction costs and facilitate voluntary compliance;
  - leverage tax administration capabilities of both direct and indirect taxes to identify non-compliance.

2. Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, changes in the provisions of the tax laws are ordinarily proposed to be prospective in their operation. The substance of the main provision in the Bill relating to direct taxes is explained in the following paragraphs.

INCOME-TAX

I. Rates of income-tax in respect of incomes liable to tax for the assessment year 2005-2006.

In respect of incomes of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2005-2006, the rates of income tax have been specified in Part I of the First Schedule to the Bill. These are same as those laid down in Part III of the First Schedule to the Finance (No.2) Act, 2004. The Bill also provides for the levy of a surcharge for purposes of the Union. The rates of surcharge are, -

(i) ten per cent on the tax (computed after rebate under Chapter VIII-A) payable by individuals, Hindu undivided families, association of persons and body of individuals having total income exceeding Rs.8,50,000/-;
(ii) ten per cent on the tax payable by artificial juridical persons;
(iii) two and one half per cent on the tax payable by a firm, local authority, co-operative society and company.

The additional surcharge, called the "Education Cess on Income tax", so as to fulfil the commitment of the Government to provide universalised quality basic education, is proposed to be levied at the rate of two per cent. on the amount of tax payable inclusive of surcharge.

II. Rates for deduction of income-tax at source during the financial year 2005-2006 from income other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2005-2006 from incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill. These rates apply *inter alia* to income by way of interest on securities, interest other than "interest on securities", insurance commission, winnings from lotteries or crossword puzzles, winnings from horse races and income of non-residents (including non-resident Indians). The rates for deduction of tax at source on income by way of royalty or fees for technical services, in the case of a company other than a domestic company, have been reduced from twenty per cent. to ten per cent., if the agreement is made on or after the 1st day of June, 2005. All other rates for deduction of income tax at source from income other than salaries will continue at the same level as those specified in Part II of the First Schedule to the Finance (No.2) Act, 2004.

The tax deducted at source in each case is proposed to be increased by a surcharge for purposes of the Union. The rates of surcharge are, -

(i) ten per cent on the tax deductible on payments to individuals, Hindu undivided families, association of persons and body of individuals if the payment or the aggregate of the payment made or likely to be made exceeds ten lakh rupees;
(ii) ten per cent on the tax deductible on payments to artificial juridical persons;
(iii) ten per cent on the tax deductible on payments to a firm,

(iv) ten per cent on the tax deductible on payments to a domestic company;

(v) two and one-half per cent on the tax deductible on payments to every company other than a domestic company.

The additional surcharge, called the “Education Cess on Income tax”, levied so as to fulfil the commitment of the Government to provide universalised quality basic education, at the rate of two per cent. on the amount of tax deducted at the rates in force inclusive of surcharge, is proposed to be continued.

III. Rates for deducting income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the financial year 2005-2006.

The rates for deduction of income-tax at source from “Salaries” during the financial year 2005-2006 and also for computation of “advance tax” payable during that year in the case of all categories of taxpayers have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the financial year 2005-2006 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, or assessment of bodies formed for short duration, etc.

The additional surcharge, called the “Education Cess on Income tax”, levied so as to fulfil the commitment of the Government to provide universalised quality basic education at the rate of two per cent. on the amount of tax deducted at the rates in force inclusive of surcharge, is proposed to be continued.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs:-

A. Individuals, Hindu undivided families etc.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of individuals, Hindu undivided families, association of persons, etc.

The rate structure is proposed to be rationalised by increasing the exemption limit and broad basing the tax slabs. The basic exemption limit is proposed to be increased from the existing Rs.50,000/- to Rs.1,00,000/-. Henceforth, no tax is to be levied on income below Rs. 1,00,000/-. Tax will be levied at the rate of 10 per cent on incomes between Rs.1,00,000/- and Rs. 1,50,000/-. On incomes between Rs.1,50,001/- to Rs.2,50,000/- tax is proposed to be levied at the rate of twenty per cent on the income exceeding Rs. 1,50,000/-. On incomes exceeding Rs. 2,50,000/-, tax is proposed to be levied at the rate of thirty per cent.

In the case of every individual being a woman (resident in India) who is below sixty-five years of age at any time during the previous year, the proposed basic exemption limit of Rs. 1,00,000/- is to be increased to Rs. 1,25,000/-. In other words, no resident woman below the age of sixty-five year needs to pay tax on incomes upto Rs. 1,25,000/-. In the case of a resident individual of the age of sixty-five years or more at any time during the previous year, the proposed basic exemption limit of Rs. 1,00,000/- is to be further increased to Rs. 1,50,000/-. In other words, no resident individual of the age of sixty-five years or more with income upto Rs. 1,50,000/- will pay any tax.

The tax payable would be increased by a surcharge for purposes of the Union at the rate of ten per cent. of the tax payable (after allowing rebate under Chapter VIII-A) where total income exceeds Rs.10,00,000/-. In the case of artificial juridical person surcharge at the rate of ten per cent. is levied irrespective of the threshold limit. No surcharge would be payable by such persons (other than artificial juridical person) having incomes of Rs.10,00,000/- or below. Marginal relief would be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs.10,00,000/- is limited to the amount by which the income is more than Rs.10,00,000/-. However, no marginal relief shall be available in respect of the Education Cess.

The Table below gives the income slabs and the rates of income-tax. Column (a) specifies the rates given in Paragraph A of Part I of the First Schedule to the Bill; and column (b) specifies the rates give in Paragraph A of Part III of the First Schedule to the Bill.

TABLE – 1: Comparison between the existing and the proposed personal income tax rate schedule

(a)		(b)	
Income Slab	**Rates applicable for financial year 2004-05 (assessment year 2005-06)**	**Income Slab**	**Rates proposed for financial year 2005-06 (assessment year 2006-07)**
Upto Rs.50,000/-	Nil.	Upto Rs. 1,00,000/- [2]	Nil
Rs.50,001/- to Rs.60,000/-	10%	Rs. 1,00,001/- [2] to Rs.1,50,000/-	10%[3]
Rs.60,001/- to Rs.1,50,000/-	20%	Rs.1,50,001/- to Rs.2,50,000/-	20%
Above Rs.1,50,000/-	30%[1]	Above Rs.2,50,000/-[4]	30%

1. *Persons having income exceeding Rs.8,50,000/- in this slab would be required to pay ten per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A. Marginal relief on such tax is also provided for.*
2. *In the case of a resident woman below sixty-five years of age at any time during the previous year, for the figures Rs.1,00,000/- and Rs.1,00,001/-, the figures Rs1,25,000/- and Rs 1,25,001/- shall be respectively substituted.*
3. *In the case of a resident individual of the age of sixty five years or more at any time during the previous year, the figure 10% shall be read as Nil.*
4. *Persons in this slab having income exceeding Rs10,00,000/- would be required to pay ten per cent. surcharge on the total income-tax payable after rebate, if any, under Chapter VIII-A. Marginal relief on such tax is also provided for.*

Note *: Education Cess at the rate of 2% on income-tax and surcharge continues to be levied in the proposed rate structure.*

B. Co-operative societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates are the same as those specified in the corresponding Paragraph of Part I of the First Schedule to the Bill. The surcharge for the purpose of the Union on tax payable is proposed to be withdrawn. However, education cess at the rate of two per cent. on the tax payable would continue to be levied.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate has been reduced from thirty-five per cent. to thirty per cent. The surcharge for the purposes of the Union on tax payable by firms has been increased from two and a half per cent to ten per cent. of the tax payable. The Education cess at the rate of two per cent. on the tax payable inclusive of surcharge will continue.

D. Local authorities

In the case of local authorities, the rate of income-tax has been specified in Paragraph D of Part III of the First Schedule to the Bill. This rate is the same as that specified in the corresponding Paragraph of Part I of the First Schedule to the Bill. The surcharge for the purposes of the Union at the rate of two and one-half per cent. on the tax payable has been withdrawn. No surcharge for the purposes of Union is, therefore, levied on Local Authorities. However, Education cess at the rate of two per cent. on the tax payable will continue to be levied.

E. Companies

In the case of companies, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Bill. The tax rate in the case of a domestic company is proposed to be reduced from 35% to 30%. The existing surcharge of two and a half per cent. on domestic company is proposed to be increased to ten per cent. The tax rate and surcharge in the case of foreign company will continue to remain at the existing level of forty per cent. and two and half per cent. respectively. The tax payable by all companies inclusive of surcharge will continue to be increased by an education cess at the existing rate of two per cent.

[*Clause 2 & First Schedule*]

Rationalisation of the tax treatment of savings.

The existing provisions of the Income-tax Act do not accord a homogeneous treatment to the taxation of financial savings. There is considerable variation in the taxation of the contributions made to savings schemes, the tax levied on the accumulations and the tax treatment at the final stage of withdrawal. This lack of uniformity tends to induce artificial distortions and bias amongst the various financial instruments. While many of the savings plans are exempted from tax at all the three stages, others are subject to tax on either the accumulations or payments received at the terminal stage. The best international practice relating to taxation of financial savings is the 'exempt-exempt-taxed' (EET) method. A large number of countries have adopted this method and many others are moving towards it. Under this method, contributions to specified savings is exempt from tax (E), the accumulation is also exempt (E) but the withdrawal/benefits from the savings are taxed (T). The EET method eliminates/reduces the bias inherent against savings under the income tax.

The provisions of section 80CCC of the Act allow for a deduction from income of an amount of rupees ten thousand deposited by an individual towards any annuity plan of the Life Insurance Corporation or any other insurer for receiving pension. However, the amounts received by way of withdrawal or pension are subject to tax at the appropriate marginal rate in the year of receipt. The provisions of section 80CCD provide a similar treatment to the contributions to the pension scheme of the Central Government for all new entrants to Central Government service after 1st January, 2004 and to the pension or annuities received after retirement. The savings under these two provisions are in uniformity with the EET method.

The provisions of section 80L allow for a deduction from the gross total income of an individual or a Hindu Undivided family of any income by way of interest on government securities, National Savings Certificates, interest on debentures of public sector companies, interest on deposits with banking companies or financial corporations, etc subject to a limit of twelve thousand rupees. An additional deduction of three thousand rupees is allowed with respect to interest on government securities.

The provisions of section 88 provide for a deduction from the tax payable on the total income of an individual or Hindu undivided family, which is equal to a fixed percentage of sums paid or deposited by way of life insurance premia, contributions to provident fund, schemes for deferred annuities, national saving certificates, infrastructure bonds, payment of tuition fees, repayment of principal amount of housing loans, etc. For the purpose of deduction under this section, the aggregate sums to be paid or deposited in the eligible schemes is limited to rupees seventy thousand with an additional amount of rupees thirty thousand for investment in infrastructure bonds. Further, within the overall investment ceiling, there is a sectoral cap of rupees twenty thousand for repayment of a housing loan and twenty four thousand for payment of tuition fees. The rate of rebate from income tax is twenty per cent. for persons with gross total income not exceeding rupees one hundred and fifty thousand, and fifteen per cent. for persons with gross total income exceeding one hundred and fifty thousand rupees and upto rupees five lakhs. No rebate is available for persons with income above rupees five lakhs. The savings in the various schemes under this provision do not conform to the EET method.

The existing method of taxing financial savings is highly distortionary resulting in economic inefficiency and inequity. With a view to removing such distortionary effects, it is proposed to adopt the EET method as the most preferred option. However, the shift from the existing EEE method to EET method is likely to impose transitional administrative problems though not insurmountable. The design of some existing saving schemes in operation, particularly mandatory plans and insurance products, may not allow for sufficient flexibility in the short run to switch to an EET method of taxation. Therefore, it is proposed to set up a committee of experts to work out the roadmap for moving towards an EET system. The committee will also examine the mix of savings instruments that would qualify under the new EET system.

In the transition, it is proposed to take appropriate steps to facilitate the ultimate switch over to the EET system. Under the EET system, the contributions to savings plan are deductible from income. Therefore, the existing system of providing rebate for investment in saving products is inconsistent with the EET method. The first step in the direction of the EET method is, therefore, to switch from

the rebate method to income based deduction method. Therefore, it is proposed to replace the existing method of providing tax rebate under section 88 for contributions/investments in specified savings schemes by an income based deduction for contributions by inserting a new section 80C under Chapter-VI-A of the Income-tax Act.

Under this new section 80C, an individual or a Hindu undivided family, will be allowed a deduction from income of an amount not exceeding one lakh rupees with respect to sums paid or deposited in the previous year, out of income chargeable to tax, in certain specified schemes. The investments eligible for deduction under the proposed section are the same as those entitled for rebate from income-tax under section 88. These include life insurance premia, contributions to provident fund or schemes for deferred annuities, purchase of infrastructure bonds, payment of tuition fees, repayment of principal amount of housing loans, etc. However, in order to minimise distortions, there are no sectoral caps in the proposed section and the assessee is free to invest in any one or more of the eligible instruments within the overall ceiling specified.

It is further proposed to insert another new section 80CCE to provide that the aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not exceed one lakh rupees.

It is also proposed to omit section 88 to provide that no deduction from the amount of income-tax under the said section shall be allowed to any assessee for assessment year 2006-07 and subsequent years.

It is also proposed to amend section 80L so as to provide that no deduction under the said section shall be allowed to any individual or Hindu undivided family for assessment year 2006-07 and subsequent years.

Consequential amendments have also been proposed in section 10, section 54EC, section 54ED, section 80CCC, section 80CCD and section 295.

The proposed amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clauses 4, 17, 18, 21to 24, 28 and 29*]

Elimination of tax rebate under section 88D for persons with income below rupees one lakh.

The provisions of section 88D provide for a rebate of the entire amount of income-tax payable in case of a resident individual having total income up to rupees one lakh. It also provides marginal relief to ensure that the post tax income of any individual does not fall below rupees one lakh..

In view of the proposed increase in the general exemption limit to rupees one lakh, it is proposed to omit the said section.

The proposed omission will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clause 32*]

Elimination of tax rebate for senior citizens under section 88B and for women under section 88C

The provisions contained in section 88B allow for a deduction from income-tax payable on the total income of an individual who is of the age of sixty five years or above, of the whole amount of such income-tax or rupees twenty thousand, whichever is less.

The provisions of section 88C allow for a deduction from income-tax payable on the total income of a woman who is below the age of sixty five years of the whole amount of such income-tax or rupees five thousand, whichever is less.

In view of the proposed increase in the exemption limit for senior citizens to rupees one lakh fifty thousand and for women to rupees one lakh twenty five thousand, it is proposed to omit the said sections.

The proposed omissions will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clauses 30 and 31*]

Elimination of Standard deduction for salaried tax payers.

Under the existing provisions of section 16, an assessee whose income from salary does not exceed rupees five lakhs, is allowed a deduction of forty per cent. of salary or thirty thousand rupees, whichever is less. In the case of an assessee whose salary income exceeds rupees five lakhs, a deduction of rupees twenty thousand is allowed.

In view of the proposed increase in the general exemption limit to rupees one lakh and the substantial broadening of the income slabs, it is proposed to amend the said section so as to withdraw the above benefits.

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clause 6*]

FRINGE BENEFIT TAX

Introduction of Fringe Benefit Tax

The taxation of perquisites or fringe benefits provided by an employer to his employees, in addition to the cash salary or wages paid, is subject to varying treatment in different countries. These benefits are either taxed in the hands of the employees themselves or the value of such benefits is subject to a 'fringe benefit tax' in the hands of the employer. The rationale for levying a fringe benefit tax on the employer lies in the inherent difficulty in isolating the 'personal element' where there is collective enjoyment of such benefits and attributing the same directly to the employee. This is so especially where the expenditure incurred by the employer is ostensibly for purposes of the business but includes, in partial measure, a benefit of a personal nature. Moreover, in cases where the employer directly reimburses the employee for expenses incurred, it becomes difficult to effectively capture the true extent of the perquisite provided because of the problem of cash flow in the hands of the employer.

Therefore, it is proposed to adopt a two pronged approach for the taxation of fringe benefits under the Income-tax Act. Perquisites which can be directly attributed to the employees will continue to be taxed in their hands in accordance with the existing provisions of section 17(2) of the Income-tax Act and subject to the method of valuation outlined in rule 3 of the Income-tax Rules. In cases, where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, it is proposed to levy a separate tax known as the **fringe benefit tax** on the employer on the value of such benefits provided or deemed to have been provided to the employees.

For this purpose, a new Chapter XII-H is proposed to be inserted in the Income-tax Act containing sections 115W to 115WL, which provides for the levy of additional income-tax on fringe benefits. The Chapter is divided into three parts. Part A contains the meaning of certain expressions used, part B enumerates the basis of charge and part C delineates the procedures for filing of return in respect of fringe benefits, assessment and the payment of tax thereon.

Under the proposed provisions, fringe benefit tax is payable by an employer who is either an individual or a Hindu undivided family engaged in a business or profession; a company; a firm; an association of persons or a body of individuals; a local authority; or an artificial juridical person.

The tax is payable in respect of the value of fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year. The value of fringe benefits so calculated, is subject to additional income-tax in respect of fringe benefits at the rate of thirty per cent. as provided in section 115WA. The fringe benefit tax is payable by the employer even where he is not liable to pay income-tax on his total income computed in accordance with the other provisions of this Act.

Fringe benefits as outlined in section 115WB, mean any privilege, service, facility or amenity directly or indirectly provided by an employer to his employees (including former employees) by reason of their employment. They also include reimbursements, made by the employer either directly or indirectly to the employees for any purpose, contributions by the employer to an approved superannuation fund as well as any free or concessional tickets provided by the employer for private journeys undertaken by the employees or their family members.

Further, as per the provisions of the proposed section, the fringe benefits shall be deemed to have been provided if the employer has incurred any expense or made any payment for the purposes of (a) entertainment; (b)festival celebrations; (c)gifts; (d) use of club facilities; (e) provision of hospitality of every kind to any person whether by way of food and beverage or in any other manner, excluding food or beverages provided to the employees in the office or factory; (f) maintenance of guest house; (g)conference; (h) employee welfare;(i) use of health club, sports and similar facilities,(j) sales promotion including publicity; (k) conveyance, tour and travel including foreign travel expenses; (l)hotel boarding and lodging; (m) repair, running and maintenance of motor cars; (n) repair, running and maintenance of aircrafts; (o) consumption of fuel other than industrial fuel; (p) use of telephone; (q) scholarship to the children of the employees.

The method of computation of the value of fringe benefits for purposes of levy of the fringe benefit tax is provided in section 115WC as the aggregate of ,-

(a) cost of free or concessional tickets for private journeys of the employees or their family members as provided by the employer to the general public as reduced by any amount paid or recovered from the employee;

(b) the actual amount of contribution made by the employer to the approved superannuation fund;

(c) a specified percentage of each of the expenses enumerated as items (a) to (q) in the earlier paragraph.

In cases where the employer is engaged in the business of carriage of passengers or goods by motor car or by aircraft, a lower percentage of expenses on repair, running and maintenance of motor cars or aircrafts or fuel expenses has been specified. Similarly, for hotels, a lower percentage of the expenses incurred on hospitality has been specified for purposes of calculating the liability under the fringe benefit tax.

An employer liable to pay fringe benefit tax is required to furnish a return of fringe benefits before the due date as given in section 115WD. Section 115WE outlines the procedure for the assessment of the return of fringe benefits filed by the employer and the determination of tax or interest payable or refund due and in either case the issue of intimation to that effect. Section 115WF provides for a best judgement assessment where the employer fails to furnish the return under section 115WD or fails to comply with a notice issued under section 115WE. Where the Assessing Officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, section 115WG provides for the reassessment of such fringe benefits which have escaped assessment and section 115WH provides for issue of notice for assessment or reassessment under section 115WG.

The provisions of section 115WI and section 115WJ provide for the payment of advance tax in respect of fringe benefits and the interest payable by the employer in case of delay in making such payment. Section 115WK provides for the charging of interest for default in furnishing return of income and section 115WL provides for the application of all other provisions of the Income-tax Act in relation to fringe benefits as well, save as otherwise provided.

A new section 271FB is proposed to be inserted to provide for the levy of penalty for the failure to furnish a return of fringe benefits.

Consequential amendments have also been proposed in section 2, section 17, section 40, section 119, section 124, section 139A, section 140, section 140A, section 142, section 153, section 238, section 239, section 244A, section 246A, section 271, **,** section 273B, section 276CC and section 278 to include a reference to the provisions of this Chapter.

The proposed amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clause 37*]

WIDENING OF TAX BASE

Obligation to furnish a Return of income

Section 139 of the Income tax Act provides for furnishing of a return of income. Under the existing provisions, all companies are obliged to file a return of income irrespective of whether their income is liable to tax or not. Similarly, persons other than a company are obliged to file their return of income if their total income exceeded the exemption limit i.e. the maximum amount, which is not chargeable to income tax. The requirement of filing a return is with reference to the total income.

Further, a person is also required to file his return under what is commonly referred to as the one-in-six scheme. Under this scheme, six important items of assets and expenditure have been specified which serve as indicator of a person's potential income. If a person incurs any of the specified expenditures or acquires any of the specified assets, such person is obligated to file a return of income irrespective of whether his income is taxable or not. These six items are,-

- Occupation of a house
- Ownership of a motor car
- Expenditure on foreign travel
- Holder of a credit card
- Subscriber to a cellular phone
- Member of a club where the entrance fees is more than twenty five thousand rupees.

With a view to expanding the tax base, the provisions relating to filing of returns are being amended to provide that-

- All partnership firms should file their return of income irrespective of their level of income;
- The basis for filing of return to be shifted from total income to gross total income. In other words, all persons claiming deductions under chapter VI-A or under sections 10A, 10B or 10BA shall be required to file their return even if their income after claiming such deductions is below the taxable limit.
- Subscribers to a cellular phone will no longer be required to file their return if their income is below the maximum amount not chargeable to tax.
- Persons incurring an expenditure of more than fifty thousand rupees on consumption of electricity will be obliged to file their return irrespective of their level of income.

These amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-07. [*Clause 40*]

WELFARE MEASURES

Deduction for entire amount of interest paid on a loan taken for pursuing higher education.

Under the existing provisions of section 80E, a deduction of rupees forty thousand is allowed to an individual on account of any amount paid by him in the previous year by way of repayment of loan, or interest on such loan, taken from any financial institution or any approved charitable institution for the purpose of pursuing higher education.

In order to encourage the pursuit of higher studies, it is proposed to allow without any limit, the entire amount of interest paid by an individual during the previous year on such loan taken from any financial institution or any approved charitable institution for the purposes of pursuing higher education, as a deduction from the total income. However, no deduction shall be allowed for repayment of the principal loan amount. The deduction shall be allowed for eight years beginning from the year in which payment of interest on the loan begins.

The proposed amendment shall take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [*Clause 25*]

MEASURES TO PROMOTE REGIONAL DEVELOPMENT

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

Under the existing provisions contained in sub-section (4) of section 80-IB, industrial undertakings engaged in manufacture or production or operation of a cold storage plant and set up during the period 1.4.1993 to 31.3.2005 in the State of Jammu and Kashmir, are eligible for a hundred percent. deduction of profits for a period of five years, followed by twenty-five percent.(thirty percent. in the case of companies) for the next five years. The deduction is subject to a negative list of commodities included in the Thirteenth Schedule which should not be manufactured or produced by such industrial undertakings. The deduction is not available to industries in the State set up after 31.3.2005.

With a view to promote the industrial development of the State of Jammu and Kashmir, it is proposed to extend the terminal date for setting up of industrial undertakings and commencement of eligible business in the State by two more years, from 31.3.2005 to 31.3.2007.

This amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-07 and subsequent years. [*Clause 27*]

RATIONALISATION AND SIMPLIFICATION MEASURES

Insertion of sunset clause for units in Special Economic Zones

Under the existing provisions of sub-section (1A) of section 10A, an undertaking set in a Special Economic Zone which begins to manufacture or produce articles or things or computer software after 31.3.2002, is allowed a hundred per cent. deduction of export

profits for a period of five years and fifty per cent for the next two years followed by a fifty percent deduction of export profits credited to a special reserve account, for the next three years.

With a view to rationalize the provisions of this section, it is proposed to insert a sunset clause so as to provide that no deduction under the sub-section shall be allowed to any undertaking which begins to manufacture or produce such articles or things or computer software after 31.3.2009, in a Special Economic Zone.

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. *[Clause 5]*

Allowing tax credit for MAT under section 115JB against tax liability in subsequent years under other provisions.

Under the existing provisions of section 115JB, where the income-tax payable by a company in the previous year is less than seven and one-half per cent. of its book profit such book profit is deemed to be the total income of the company and it is liable to pay income-tax at the rate of seven and one-half per cent. No credit of such tax paid by the company under this section is allowed against the tax liability which arises in subsequent years under the other provisions of the Act.

It is proposed to amend section 115JAA to provide that where any amount of tax is paid under sub-section (1) of section 115JB by a company for any assessment year beginning on or after the 1st day of April, 2006, credit in respect of the taxes so paid for such assessment year shall be allowed on the difference of the tax paid under section 115JB and the amount of tax payable by the company on its total income computed in accordance with the other provisions of the Act. The amount of tax credit so determined shall be allowed to be carried forward and set off in a year when the tax becomes payable on the total income computed under the regular provisions. However, no carry forward shall be allowed beyond the fifth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable. The set off in respect of the brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on the total income and the tax which would have been payable under section 115JB for that assessment year. No credit will be allowed in respect of MAT paid in any assessment year prior to 2006-07.

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. *[Clause 35]*

Revival of exemption of interest in Non-Resident (External) Account

Under the existing provisions of sub-clause (ii) of clause (4) of section 10 of the Income-tax Act, any income by way of interest on money standing to the credit of an individual in a Non-Resident (External) Account in any bank in India, is exempt from income-tax. However, this exemption is not available in respect of such interest income after 31st March, 2005.

It is proposed to amend the said sub-clause (ii) to provide that such income by way of interest on moneys standing to credit of individual in a Non-Resident (External) Account shall continue to be exempt from tax even after 31st March, 2005.

This amendment will take effect from 1st April, 2006, and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. *[Clause 4]*

Revival of exemption of interest on Foreign Currency Deposits

Under the existing provisions of item (fa) of sub-clause (iv) of clause (15) of section 10, the interest payable by a scheduled bank before 1st April, 2005 to a non-resident or to a person who is not ordinarily resident on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India is exempt from Income-tax.

It is proposed to amend the said item (fa) to provide that such income payable by way of interest to a non-resident or to a person who is not ordinarily resident shall continue to be exempt on or after the 1st April, 2005.

This amendment will take effect from 1st April, 2006, and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. *[Clause 4]*

Revival of exemption on lease rentals paid while acquiring an aircraft or an aircraft engine

Clause (15A) of section 10 provides for exemption from income-tax of the lease payment received in respect of a lease of an aircraft or an aircraft engine by the Government of a foreign state or a foreign enterprise from an Indian company engaged in the business of operation of aircraft. This exemption is available subject to the condition that the agreement for such lease is entered into prior to 1st April, 2005. In other words, the tax exemption is not available in respect of lease rent payments under an agreement entered in or after 1st April, 2005. Further clause (6BB) of section 10 also provides for exemption from tax on tax paid by the Indian company in such lease rents.

It is proposed to provide that the exemption for lease payments shall continue with regard to agreements entered into on or before 30th September, 2005. However, the benefit of exemption from tax on tax will be available in respect of lease payments made in pursuance of agreements entered on or after 1st October, 2005.

These amendments will take effect from 1st April, 2006, and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. *[Clause 4]*

Reduction in rate of tax on royalty and fees for technical services in the case of a non-resident from 20% to 10%

The existing provisions of clause (b) of sub-section (1) of the section 115Aprovide for the rates at which income-tax shall be payable where the total income of a non-resident (not being a company) or a foreign company includes any income by way of royalty or fees

for technical services other than income referred to in sub-section (1) of section 44DA received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after 31st March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy.

Under the existing provisions contained in the said clause (b), the royalty or fees for technical services received in pursuance of an agreement made on or before 31st May, 1997 is taxable at the rate of thirty per cent. and where such royalty or fees for technical services is received in pursuance of an agreement made after 31st May, 1997, the same is taxable at twenty per cent. under that Act.

It is proposed to amend the said clause (b) of sub-section (1) so as to reduce the said tax rate from twenty per cent. to ten per cent. on royalty received in pursuance of an agreement made on or after 1st June, 2005. It is further proposed to reduce the tax rate from twenty per cent. to ten per cent. on fees for technical services received in pursuance of an agreement made on or after 1st June, 2005.

It is also proposed to make amendments in Part II of the First Schedule to the Finance Bill, 2005 reducing the rates for deduction of tax at source in the case of royalty or fees for technical services from twenty per cent. to ten per cent.

These amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. *[Clause 34]*

Extension of tax benefits for developing, operating, maintaining an infrastructure facility to authorities constituted under a Central or State Act.

Under the existing provisions of clause (i) of sub-section (4) of section 80-IA, an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility, which commences such operation and maintenance on or after 1st April, 1995, is eligible for a hundred per cent. deduction of profits for a period of ten years. Sub-clause(a) provides that the enterprise should be owned by a company registered in India or by a consortium of such companies.

It is proposed to amend the above condition so as to enable an authority or a board or a corporation or any other body established or constituted under a Central or State Act which is not incorporated under the Companies Act, 1956 to take advantage of the benefits provided under the said section.

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. *[Clause 26]*

Rationalisation of rates of depreciation and enhancement of additional depreciation on new machinery and plant.

Under the existing provisions of section 32, depreciation on capital assets is allowed as a deduction at the accelerated rates specified in the Appendix to Income-tax Rule, 1962. The accelerated rate of depreciation on general machinery and plant is 25 per cent. Further, section 32 also provides for an initial depreciation of 15 per cent. on new machinery and plant subject to inter alia the condition that the installation of new plant and machinery result in a ten percent. increase in the installed capacity.

The rates of depreciation have remained at the existing levels for a long time. These do not fully reflect the positive effect on internal accruals as a result of the steady reduction in the corporate tax rates over the last two decades and the fall in the rate of inflation in the prices of capital goods. The tax rate on domestic companies is proposed to be reduced to 33 per cent. (including surcharge of 10 per cent.) from 35.875 per cent. (including surcharge of 2.5 per cent.). This reduction in the tax rate will further improve the internal accruals of the companies to finance replacement of plant and machinery.

In view of the above, it is proposed to amend the Income-tax Act and the rules thereunder so as to reduce the rate of depreciation for general machinery and plant to 15 per cent. from the existing rate of 25 per cent. Rates of depreciation of other capital assets are also being rationalised in line with the reduction in the rate for general machinery and plant.

Further, in order to encourage new investment, the initial depreciation on new machinery and plant is proposed to be increased to 20 per cent. from the existing level of 15 per cent. The requirement of creating a minimum increase of 10 per cent. in installed capacity for availing the initial depreciation is also proposed to be eliminated. Consequently, the initial depreciation will be available to all new plant and machineries except those referred to in the proviso to the proposed clause (iia) of section 32 of the Income-tax Act.

This amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. *[Clause 8]*

Tax treatment of reserves utilised for purchase of a ship

Under the existing provisions of section 33AC a shipping company is allowed a specified deduction in respect of amounts credited to a reserve account to be utilised for acquiring a new ship. The acquisition of a new ship is generally financed by debt and internal accruals. These internal accruals could be from general reserves or special reserves created for this purpose. Further, the law provides that if a company sells or transfers the ship after the three years' lock-in period and the sale proceeds are not utilised for the purpose of acquiring a new ship within a period of one year from the end of the previous year in which such sale or transfer took place, the sale proceeds are deemed to be the profits of the assessment year immediately following the previous year in which the ship was sold or transferred.

As stated above, a new ship is acquired by a shipping company by utilising both the reserves and borrowed capital. The existing law provides that if a ship is sold or transferred, the whole of the sale proceeds would be subject to tax. This implies that both borrowed capital and amount withdrawn from reserves would bear the burden of tax. The real intent is to restrict the incidence of the tax on the amount utilised from the reserve account for acquiring the ship. The proposed amendment seeks to clarify this real intent whereby

only so much of the sale proceeds which represent the amount credited to the reserve account and utilised for acquisition of the ship would be deemed to be the profits.

This amendment will take retrospective effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 9]*

Deduction for payments under the Voluntary Retirement Scheme

During the last decade a number of companies have embarked on a programme of restructuring which inter alia includes reviewing the size of its work force. As a result such companies have introduced voluntary retirement schemes for its employees. The companies are allowed to amortise the payments to its employees at the time of their voluntary retirement under any scheme framed in accordance with the prescribed guidelines.

The existing provisions do not fully reflect this intent. Under the existing provisions, one-fifth of the amount paid to an employee at the time of voluntary retirement is allowed as deduction and the balance is allowed to be deducted in four equal instalments in the four succeeding years. Where part payments are made at the time of voluntary retirement, only the payment made in the first year is allowed to be amortised over five years. The balance paid in instalments in subsequent years is not allowed as deduction. The proposed amendment seeks to provide for amortisation of the amount of the payment made in any year, each such payment independently admissible for amortisation over a period of five years.

This amendment will take retrospective effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years. *[Clause 11]*

Dredgers to be treated as qualifying ship for the purpose of Tonnage Tax Scheme

Chapter XII-G provides for levy of tonnage-tax on shipping companies. This tax is levied in respect of a "qualifying ship". However, a dredger does not qualify for the purposes of levy of tonnage-tax. The proposed amendment seeks to amend the law so as to extend the scope of tonnage-tax to dredgers. This levy, in the case of dredgers will be in lieu of income-tax at the option of the tax payer.

This amendment will take effect from 1st April, 2006, and will, accordingly, apply in relation to the assessment year 2006-07 and subsequent years. *[Clause 36]*

MEASURES TO RATIONALISE THE TAX TREATMENT OF DERIVATIVE TRANSACTIONS

Under the existing provisions [clause (5) of section 43] a transaction for the purchase and sale of any commodity including stocks and shares is deemed to be a "speculative transaction", if it is settled otherwise than by actual delivery. However, certain categories of transactions are excluded from the purview of the said provision. Further the unabsorbed speculation losses are allowed to be carried forward for eight years for set-off against speculation profits in subsequent years. These restrictions were essentially designed as an anti-evasion measure to prevent claims of artificially generated losses in the absence of an appropriate institutional infrastructure.

Recent systemic and technological changes introduced by stock markets have resulted in sufficient transparency to prevent generating fictitious losses through artificial transactions or shifting of incidence of loss from one person to another. The screen based computerised trading provides for an excellent audit trail. Therefore, the present distinction between speculative and non-speculative transactions, particularly relating to derivatives is no more required.

The proposed amendment, therefore, seeks to provide that an eligible transaction carried out in respect of trading in derivatives in a recognised stock exchange shall not be deemed to be a speculative transaction. The proposed amendment also seeks to notify relevant rules etc. regarding conditions to be fulfilled by recognised exchanges in this regard. Further it is also proposed to amend sub-section (4) of section 73 so as to reduce the period of carry forward of speculation losses from eight assessment years to four assessment years.

These amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. [*Clauses 14 and 20*]

RATIONALISATION OF THE PROVISION OF TAX DEDUCTION AND COLLECTION AT SOURCE

Return of income not to be accompanied by TDS certificate for taxes deducted on or after 1st April, 2006

Under the existing provisions contained in sub-clause (i) of clause (c) of the Explanation to sub-section (9) of section 139, a return of income is not regarded as defective even if it is not accompanied by the proof of tax, if any, claimed to have been deducted at source on or after 1st April, 2005. Similarly, the provisions of sub section (3) of section 199 provide that credit for TDS will be given on the basis of information furnished by the deductor and there will be no requirement for the deductee to file TDS certificates to claim credit for pre-paid taxes. Consequently, the provisions of section 203 provide that a deductor will not be required to issue a TDS certificates in respect of TDS on or after 1st April, 2005. These provisions were introduced in anticipation of dematerialisation of TDS certificates before 1st April, 2005.

The new system of tax accounting under OLTAS is gradually stabilising and is yet to attain full perfection. Secondly, the entries relating to tax deduction need to be flawlessly captured at all the stages beginning from the deposit of tax deducted by the deductor into the bank and from the bank to NSDL. Therefore, it will be some time before the existing requirement of filing TDS certificates as proof of tax deducted at source can be done away with. There will be a need to produce the TDS certificate as proof of the tax deducted at source.

In view of the above, it is proposed to provide that all returns upto assessment year 2006-07 will have to be accompanied by the certificate of deduction of tax at source failing which the return will be treated as defective. Similarly it is also proposed to amend the provisions of section 199 to provide that credit for TDS upto assessment year 2006-07 will only be given on production of TDS certificates. It is also proposed to amend section 203 to provide that the deductor will be required to issue TDS certificates in respect of TDS before 1st April, 2006. However, the requirement of filing TDS certificates along with the return and claiming credit on the basis of such certificates will be dispensed with from assessment year 2007-08. Similarly, the deductor will not be required to issue TDS certificates in respect of TDS on or after 1st April, 2006.

Similar amendments are also being proposed in respect of tax collection at source under Chapter XVII-BB of the Income-tax Act.

This amendment will take effect from 1st April, 2005. *[Clauses 40, 50, 51 and 53]*

Truck operators owning upto two trucks exempted from TDS

Under the existing provisions contained in sub-section (3) of section 194C, tax is required to be deducted where the amount of any sum credited or paid or likely to be credited or paid exceeds twenty thousand rupees or the aggregate of the payments made by one single deductor exceed fifty thousand rupees.

The amendments introduced through the Finance (No. 2) Act, 2004 to the provisions of the aforesaid sub-section (3) have led to hardship in the case of small truck owners, particularly those who own upto two trucks. This is because the law provides for estimation of income from a truck at rupees forty-two thousand per year. Since the exemption limit has been raised to rupees one lakh, the income of persons who own upto two trucks is below the exemption limit and therefore, not liable to tax. Any TDS on such truck owners would impose additional burden in as much as a refund will have to be claimed by filing a return.

The proposed amendment, therefore, seeks to provide for non-deduction of tax at source from the amount paid to a sub-contractor being an individual and not owning more than two goods carriages at any time during the previous year. For such non-deduction the sub-contractor (transporter) will be required to furnish a declaration as may be prescribed to the person responsible for payment. The person making payment to the sub-contractor without deduction of tax at source shall in turn furnish to the income-tax authority the prescribed particulars in the prescribed form within the prescribed time.

This amendment will take effect from 1st June, 2005. *[Clause 49,]*

Furnishing of quarterly returns regarding the details of non-deduction of tax by banks, co-operative societies and public sector companies

The proposed new section 206A seeks to provide that any banking company or cooperative society or public company referred to in the proviso to clause (i) of sub-section (3) of section 194A responsible for paying to a resident any income not exceeding five thousand rupees by way of interest (other than interest on securities), shall prepare quarterly returns 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 authorised by such authority the quarterly returns as aforesaid, verified in such manner and within such time as may be prescribed, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

It is further provided that the Central Government may, by notification in the Official Gazette, require any person other than a person mentioned in sub-section (1) responsible for paying to a resident any income liable for deduction of tax at source under Chapter XVII, to prepare and deliver or cause to be delivered quarterly returns in the prescribed form and verified in such manner and within such time as may be prescribed, to the prescribed income-tax authority or the person authorised by such authority on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

This amendment will take effect from 1st June, 2005. *[Clause 52]*

Penalty for not furnishing quarterly returns by banks, co-operative societies and public sector companies of non-deduction of tax

The proposed amendment seeks to insert a new clause (l) in sub-section (2) in section 272A to provide for penalty in cases of failure to deliver or cause to be delivered the quarterly return within the time specified in the newly inserted sub-section (1) of section 206A. The penalty will be one hundred rupees for every day of default.

This amendment will take effect from 1st June, 2005. *[Clause 60]*

New provision to provide for set off of losses of a banking company against the profit of a banking institution under a scheme of amalgamation.

With a view to provide for carry forward and set off of accumulated loss and unabsorbed depreciation allowance of a banking company against the profits of a banking institution under a scheme of amalgamation sanctioned by the Central Government it is proposed to insert a new section 72AA in the Income-tax Act, 1961.

The proposed new section provides that where a banking company has been amalgamated with a banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949, the accumulated loss and unabsorbed depreciation of the amalgamating banking company shall be deemed to be the loss or the allowance for depreciation of the banking institution for the previous year in which the scheme of amalgamation is brought into force, and all the provisions contained in the Income-tax Act, 1961, relating to set off and carry forward of loss and unabsorbed depreciation shall apply accordingly.

The explanation to the proposed new section defines the expressions “accumulated loss”, “banking company, “banking institution” and “unabsorbed depreciation”, for the purposes of the said section.

It is also proposed to amend section 47 of the Act, so as to provide that any transfer of a capital asset by a banking company to a banking institution in a scheme of amalgamation of such banking company with such banking institution sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 shall not be regarded as transfer for the purposes of capital gains.

It is further proposed to amend section 49 of the Act so as to provide that cost of accquisition of a capital asset transferred under the scheme of amalgamation of a banking company with a banking institution sanctioned under sub-section (7) of section 45 of the Banking Regulation Act, 1949 shall be deemed to be the cost for which the banking company acquired it.

This amendment will take effect retrospectively from 1st April, 2005 and will, accordingly apply in relation to assessment year 2005-06 and subsequent years. *[Clause 8, 15, 16 & 19]*

Rationalisation of procedure for assessment in cases of search and seizure.

The existing provisions of clause (a) of sub-section (1) of section 153B confer powers upon the Assessing Officer to make an order of assessment or reassessment of total income of six assessment years preceding the assessment year relevant to the previous year in which search under section 132 is conducted or requisition under section 132A is made, within a period of two years from the end of the financial year in which the last of the authorisations for search, or for requisition was executed. Clause (b) of the said sub-section confers power upon the Assessing Officer to make an order of assessment or reassessment of total income of the assessment year relevant to the previous year in which search is conducted or requisition is made, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or requisition under section 132A was executed.

The time-limit provided in the aforesaid clause (a) and clause (b) is also applicable for making assessment or reassessment in case of other person referred to in section 153C.

With a view to rationalizing the provisions, it is proposed to insert a proviso to sub-section (1) of the said section 153B so as to provide that in case of such other person, the time limit for making assessment or reassessment of total income of the assessment years referred to in clause (a) and clause (b) of the sad sub-section, shall be the either two years from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

Under the existing provisions of section 153A, where the Assessing Officer is satisfied that books of account or documents or assets seized under section 132 or requisitioned under section 132A belong to a person other than a person in whose case search under section 132 or requisition under section 132A was made, he shall handover the same to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person under section 153A. Second proviso to section 153A provides that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in the said section pending on the date of initiation of the search under section 132 or on the date of making of requisition under section 132A, as the case may be, shall abate.

It is proposed to amend the said section so as to provide that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

It is also proposed to insert a new sub-section (2) so as to provide that in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, in case of other person, where (a) no return of income has been furnished by such person and no notice under subsection (1) of section 142 has been issued to him, or (b) a return of income has been furnished by such person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or (c) assessment or reassessment, if any, has been made, before the date of receiving of books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person for such assessment year in the manner provided in section 153A. The provisions of the proposed new sub-section (2) would apply where books of account or documents or assets seized or requisitioned referred to in sub-section (1) has been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

These amendments will take effect retrospectively from 1st June, 2003 and will, accordingly, apply in relation to a search initiated under section 132 or in relation to books of account, other documents or any assets requisitioned under section 132A after the 31st May, 2003. *[Clause 46 & 47]*

Taxation of income from Zero Coupon Bonds

With a view to rationalizing the tax treatment of zero coupon bonds, it is proposed to treat the income on transfer of a zero coupon bond (not being stock-in-trade) as capital gains. For this purpose, it is proposed to amend to the definition of the term 'transfer' in clause (47) section 2 so as to also include maturity or redemption of a zero coupon bond. Definition of 'zero coupon bond' has been provided in the proposed new clause (48) of section 2 so as to mean a bond in relation to which no benefit is received or receivable before maturity or redemption and which are issued on or after 1st June, 2005 by infrastructure capital company or infrastructure capital fund or public sector company and specified by the Central Government in Official Gazette. Consequential amendments are also proposed to be made in the definition of short term capital asset so as to treat a zero coupon bond held for a period of not more than twelve months as short term capital asset. Provisions of section 112 are also proposed to be amended so as to bring parity with other securities.

Consequently long termcapital gains on zero coupon bonds will be subject to tax at ten per cent. if the tax payer does not claim the benefit of indexation. It is also proposed to provide that the company or fund or public sector company which issues such bond, will be allowed a deduction for the discount on *pro rata* basis subject to rules to be prescribed in this regard. It is also proposed to amend section 194A so as to provide that no tax will be deducted at source in respect of income payable on zero coupon bond.

[Clause 3, 12, 33 & 48]

MEASURES TO PROMOTE SCIENTIFIC RESEARCH AND DEVELOPMENT

Extension of weighted deduction for expenditure incurred on in-house R&D

Under the existing provisions contained in sub-section (2AB) of section 35, a company engaged in the business of bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, chemicals, etc, incurs any expenditure on scientific research (excluding cost of land or building) on in-house research and development facility, is allowed a weighted deduction of a hundred and fifty per cent. of the expenditure so incurred. However, no deduction with regard to such expenditure incurred shall be allowed after 31st March, 2005.

With a view to encourage the indigenous development of in-house scientific research, it is proposed to extend the time limit for availing the weighted deduction under the said sub-section by two more years i.e. up to 31.3.2007.

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. *[Clause 10]*

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

Under the existing provisions of sub-section (8A) of section 80-IB, a company carrying on scientific research and development is allowed a hundred per cent deduction of the profits of such business for a period of ten assessment years, if such company is approved by the Secretary, Department of Scientific and Industrial Research, Ministry of Science & Technology, before 1st April, 2005.

With a view to promote scientific research and development in the country, it is proposed to allow the deduction to companies carrying on scientific research and development, which are approved by the prescribed authority before 1st April, 2007

The proposed amendment will take effect from 1st April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years. [*Clause 27*]

MEASURES FOR ADDITIONAL RESOURCE MOBILISATION

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

The existing provisions of Chapter VII of the Finance (No.2) Act, 2004 provide for levy of a Securities transaction tax on the value of transactions in respect of specified securities.

The said Chapter provides that Securities Transaction Tax shall be charged in respect of the following transactions at the rates as under:-

(i) @ 0.075% on the value of transactions of delivery-based purchase of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange, to be paid by the buyer,

(ii) @ 0.075% on the value of transactions of delivery-based purchase of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange, to be paid by the seller,

(iii) @ 0.015% on the value of transactions of non-delivery based sale of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange to be paid by the seller,

(iv) @ 0.01%, on the value of transactions of derivatives being option or future, entered in a recognised stock exchange,

(v) @ 0.15% on the value of transactions of sale of units of an equity-oriented fund to the mutual fund.

With a view to raise additional resources and also plug the leakage of tax revenue, it is proposed to enhance these rates. The proposed new rates shall be as under:-

(i) @ 0.1% on the value of transactions of delivery-based purchase of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange, to be paid by the buyer,

(ii) @ 0.1% on the value of transactions of delivery-based sale of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange, to be paid by the seller,

(iii) @ 0.02% on the value of transactions of non-delivery based sale of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange to be paid by the seller,

(iv) @ 0.0133%, on the value of transactions of derivatives being option or future, entered in a recognised stock exchange,

(v) @ 0.2% on the value of transactions of sale of units of an equity-oriented fund to the mutual fund.

The proposed amendment will take effect from the 1st June, 2005. [*Clause 124*]

MEASURES TO CHECK TAX EVASION

New provisions for levy of Banking Cash Transaction Tax

Chapter VII of the Finance Bill, 2005, contains provisions relating to Banking Cash Transaction Tax. This proposed new Chapter shall be applicable to the whole of India except the State of Jammu and Kashmir. This Chapter shall come into force with effect from 1st June, 2005.

Clause 94 of the Bill proposes to define person to have the same meaning as assigned in clause (31) of section 2 of the Income-tax Act and also includes an office or establishment of the Central Government or the Government of a State.

The aforesaid clause also proposes to define the taxable banking transactions as follows:-

(i) a transaction of withdrawal of cash exceeding ten thousand rupees on any single day by a person from any scheduled bank; or

(ii) a transaction of purchase of a bank draft or a banker's cheque or any other financial instrument on payment of cash exceeding ten thousand on a single day by a person from any scheduled bank; or

(iii) receipt of cash from a scheduled bank exceeding ten thousand rupees on any single day by a person on encashment of term deposit, whether on maturity or otherwise, from that bank

Sub-clause (1) of clause 95 of the Bill proposes to levy a Banking Cash Transaction tax on taxable banking transactions at the rate of 0.1% of the value of each such taxable banking transaction. Sub-clause (2) of this clause proposes to provide that the Banking Cash Transaction tax shall be payable by the following,-

(i) in case of cash withdrawals exceeding ten thousand rupees, by person withdrawing the cash from any scheduled bank;

(ii) in respect of purchase of a bank draft or a banker's cheques or any other financial instrument on payment of cash exceeding ten thousand, by the person purchasing any such instrument from the bank;

(iii) in respect of receipt of cash on encashment of term deposit, by the concerned depositor;

(iv) in respect of cash withdrawal exceeding ten thousand rupees by way of bearer's cheques by the bearer of such cheques or instrument.

Proviso to sub-clause (2) of this clause proposes to provide that no banking cash transaction tax shall be payable if the amount of term deposit is credited to any account with the bank.

Clause 96 of the Bill proposes to define the value of taxable banking transactions as follows:-

(i) in case of cash withdrawals exceeding ten thousand rupees, the amount of cash withdrawn,

(ii) in respect of purchase of a bank draft or a banker's cheques or any other financial instrument on payment of cash exceeding ten thousand, the amount of cash deposited;

(iii) in respect of receipt of cash on encashment of term deposit, the amount of cash received on encashment of term deposit.

Clause 97 of the Bill proposes to provide that every scheduled bank shall collect the banking cash transaction tax at the specified rate, from every person entering into a taxable banking transaction with that bank. The banking cash transaction tax so collected during any calendar month shall be paid by every scheduled bank to the credit of the Central Government by the fifteenth day of the month immediately following the said calendar month. The said section also provides that any scheduled bank that fails to collect the tax shall be liable to pay the tax to the credit of the Central Government in accordance with the provisions of the said Chapter.

Clause 98 of the Bill proposes to provide that every scheduled bank shall within the prescribed time after the end of each financial year, furnish a return to the Assessing Officer or any other authority or agency authorised by the Board, in such form and verified in such manner as may be prescribed by the Board, in respect of all taxable securities transactions entered into during any financial year. The proposed clause 98 also provides that the Assessing Officer may issue a notice to any assessee who is responsible for collection of banking cash transaction tax and has not furnished the return within the prescribed time, asking the assessee to furnish the return within the time specified in the notice. It is also proposed to provide for furnishing of a revised return before the assessment is made in cases where the assessee has not furnished a return within the time allowed or on discovery of any omission or wrong statement in the return furnished earlier.

Clause 99 of the proposed Chapter confers power on the Assessing Officer to make an assessment of the taxable banking transaction and determine the banking cash transaction tax payable or refundable on the basis of such assessment. It is also proposed that no assessment shall be made after the expiry of two years from the end of the relevant financial year. The proposed section also provides that in cases where any refund has been issued to an assessee, the assessee shall refund the same to the person from whom it was collected within the prescribed time.

Clause 100 of the proposed Chapter provides that the Assessing Officer may amend any order passed by him under the provisions of the said Chapter with a view to rectify any mistake apparent from record, within one year from the end of the financial year in which the order sought to be amended was passed. It is also proposed that any amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall be made only after giving the assessee a reasonable opportunity of being heard.

Clause 101 of the proposed Chapter provides that every assessee who fails to credit the banking cash transaction tax to the account of the Central Government within the specified period shall pay simple interest at the rate of 1% of such tax for every month or part of a month by which crediting of the tax has been delayed.

Clause 102 of the proposed Chapter provides for penalty for failure to collect or pay the banking cash transaction tax. It is proposed that any assessee who fails to collect the whole or any part of the banking cash transaction tax shall be liable to pay by way of penalty a sum equal to the amount of banking cash transaction tax that he failed to collect. It is also proposed to provide that any assessee who having collected the banking cash transaction tax fails to pay such tax to the credit of the Central Government shall be liable to pay a penalty of one thousand rupees for every day during which the failure continues. However, the penalty imposable under this clause shall not exceed the amount of the banking cash transaction tax that was to be paid.

Clause 103 of the proposed Chapter provides that if an assessee fails to furnish a return in respect of the banking cash transaction tax within the prescribed time, he shall be liable to pay a sum of one hundred rupees for every day during which the failure continues by way of penalty.

Clause 104 of the proposed Chapter provides that any assessee who fails to comply with a notice issued under sub- clause (2) of clause 100 of the proposed Chapter shall be liable to pay by way of penalty a sum of hundred rupees for every day during which the failure continues.

Clause 105 of the proposed Chapter provides that no penalty will be imposable under any of the above sections if the assessee proves that there was reasonable cause for the failure to comply with the provisions of the said clause. It is also proposed that no order imposing a penalty under the proposed Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

Clause 106 of the proposed Chapter provide that sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, shall apply in relation to banking cash transaction tax.

Clause 107 of the proposed Chapter provides that where the assessee is aggrieved by any assessment order passed by the Assessing Officer, he may file an appeal to the Commissioner of Income-tax (Appeals), in such form and verified in such manner as may be prescribed by the Board within thirty days from the date of receipt of the order of the Assessing Officer.

Clause 108 of the proposed Chapter provides for filing of appeal to the Appellate Tribunal in such form and verified in such manner as may be prescribed by the Board, in cases where the assessee is aggrieved by any order passed by the Commissioner of Income-tax (Appeals), and also in cases where the Commissioner of Income-tax objects to any order passed by the Commissioner of Income-tax (Appeals).

Chapter 109 of the proposed Chapter provides that if a person makes any statement in any verification, or delivers an account or statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable by way of imprisonment upto a period of three years and with fine.

Consequent to the proposed levying of Banking Cash Transaction Tax, it is also proposed to insert a new clause in sub-section (1) of section 36 of the Income-tax Act so as to provide for allowing deduction in respect of banking cash transaction tax paid by the assessee during the year on the taxable banking transactions entered into by him.

[Chapter VII (Clauses 93 to 112) & Clause 12]