FINANCE BILL, 2006

PROVISIONS RELATING TO DIRECT TAXES

The provisions in Finance Bill, 2006, in the sphere of direct taxes relate to the following matters:—

(i) Prescribing the rates of income-tax on incomes liable to tax for the assessment year 2006-2007; the rates at which tax will be deductible at source during the financial year 2006-2007 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 2006-2007.

(ii) Amendment of the Income-tax Act, inter-alia, to rationalise and simplify the procedures, and widen the tax base.

(iii) Amendment of the Wealth-tax Act to streamline the assessment procedure.

2. Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, the Bill follows the principle that changes in the provisions of the tax laws, should ordinarily be made operative prospectively in relation to the current incomes and not in relation to the incomes of past years. The substance of the main provisions in the Bill relating to direct taxes is explained in the following paragraphs:—

INCOME TAX

RATES OF INCOME TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2006-07

In respect of income of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2006-2007, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2005, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases. It has also been specified that in the case of individuals, Hindu undivided families, association of persons and body of individuals having total income exceeding Rs. 10,00,000/-, the tax so computed after rebate under Chapter VIII-A shall be enhanced by a surcharge at the rate of ten per cent for purposes of the Union. In the case of every artificial juridical person, firm, and domestic company, the tax so computed shall be enhanced by a surcharge of ten per cent. In the case of local authority and co-operative society, no surcharge is levied. In the case of every company, other than a domestic company, the tax so computed shall be enhanced by a surcharge of two and one-half per cent.

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

II. Rates for deduction of income-tax at source during the financial year 2006-07 from income other than "Salaries".

The rates for deduction of income-tax at source during the financial year 2006-2007 from incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill. In the case of a non-resident (not being a company), the rate of deduction of tax at source during the financial year 2006-07 from income by way of royalties or fees for technical services received from the Government or an Indian concern in pursuance of an agreement entered into by it with the Government or an Indian concern after the 31st day of May, 1997 but before the 1st day of June, 2005 shall be 20 per cent and in pursuance of an agreement entered into on or after the 1st day of June, 2005, shall be 10 per cent. In the case of non-residents, the rate of deduction of tax at source during the financial year 2006-2007 from income by way of short-term capital gains referred to in section 111A shall be 10 per cent. In all other cases, the rates are the same as those specified in Part II of the First Schedule to the Finance Act, 2005, for the purposes of deduction of income-tax at source during the financial year 2005-2006.

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

(i) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent, of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten lakh rupees;

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

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

No surcharge shall be levied on a cooperative society or a local authority.

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

III. Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2006-2007.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2006-2007 and also for computation of "advance tax" payable during that year in the case of all categories of tax payers 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 2006-2007 on current incomes in cases where accelerated assessment 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 a short duration etc.

The salient features of the rates specified in the said Part III are proposed to be the same as that for financial year 2005-2006 preceding the assessment year 2006-07, as indicated in the following paragraphs:—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person

The basic exemption limit will continue to be 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.1,50,000/- to Rs.2,50,000/-, tax will be levied at the rate of 20 per cent. On incomes exceeding Rs.2,50,000/- tax will be levied at the rate of 30 per cent.

In case of every individual being a woman, resident of India, who is below 65 years of age at any time during the previous year, the exemption limit will continue to be Rs.1,35,000/-. Tax will be levied at the rate of 10 per cent. on incomes between Rs.1,35,000/- and Rs.1,50,000/-. On incomes between Rs.1,50,000/- to Rs.2,50,000/-, tax will be levied at the rate of 20 per cent. On incomes exceeding Rs.2,50,000/-, tax will be levied at the rate of 30 per cent.

In the case of every individual, who is resident of India and is of the age of 65 years or more at any time during the previous year, the exemption limit will continue to be Rs.1,85,000/-. Tax will be levied at the rate of 20 per cent. on incomes between Rs.1,85,000/- and Rs.2,50,000/-. On incomes exceeding Rs.2,50,000/-, tax will be levied at the rate of 30 per cent.

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

In the case of every artificial juridical person, the amount of income-tax computed shall be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A. The income-tax so reduced, shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

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 inclusive of surcharge, is proposed to be continued.

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 and will continue to be same as that for assessment year 2006-2007. No surcharge shall 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 is the same as that specified in the corresponding paragraph of Part I of the First Schedule of the Bill and shall continue to be the same as that specified for assessment year 2006-2007. A surcharge for the purposes of the Union shall continue to be levied at the rate of ten per cent. of tax.

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 and will continue to be same as that for assessment year 2006-2007. No surcharge shall be levied.

E. Companies

In the case of companies, the rate of income-tax have been specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as that specified in the corresponding paragraph of Part I of the First Schedule of the Bill and shall continue to be the same as that specified for assessment year 2006-2007. A surcharge for the purposes of the Union shall continue to be levied at the rate of 10 per cent. of tax in the case of domestic companies and 2.5 per cent. in the case of foreign companies.

It is also proposed that the additional surcharge, called the "Education Cess on Income-tax" for the purposes of the Union shall continue to be levied at the rate of two per cent. of income-tax and surcharge in all cases. [*Clause 2*]

WIDENING AND RATIONALISING THE TAX BASE

Removal of exemption for certain incomes of Investor Protection Fund

Under the existing provisions contained in clause (23EA) of section 10, any income of a notified investor protection fund set up by recognised stock exchanges in India, either jointly or separately, is exempt from taxation.

It is proposed to restrict this exemption to income by way of contributions received from stock exchanges and the members thereof by amending the said clause (23EA). Their income from investment of such contributions shall become taxable.

This amendment will take effect from the 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 4*]

Removal of exemption of income from investment in infrastructure and other projects under section 10(23G)

Under the existing provisions contained in clause (23G) of section 10, any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a cooperative bank from investments made on or after the 1st day of June, 1998 by way of shares or long-term finance in approved eligible businesses is exempt. Eligible businesses include infrastructure projects, developers of Special Economic Zones, hotel projects of not less than three star category, hospital projects with at least one hundred beds for patients and certain housing projects.

This exemption was intended to ensure low cost of raising capital for thrust area projects during an era of high interest rates and high tax rates. The tax rate as well as interest rate for borrowing of funds have since come down, reducing the over all cost of such projects. Exemption for dividends distributed by domestic companies is already available under section 10(34) of the Act. Long-term capital gains from transactions on which Securities Transaction Tax has been paid are also exempt under section 10(38). It is, therefore, proposed to omit clause (23G) of Section 10 so as to make income from existing as well as future investments in eligible businesses taxable.

Consequential amendments are also proposed to be made to section 115-O of the Act to omit references to clause (23G) of section 10.

These amendments will take effect from the 1st day of April, 2007 and will, accordingly, apply in relation to assessment year 2007-08 and subsequent years. [*Clauses 4 and 25*]

Deduction in the computation of income of taxes paid on income earned outside India not allowable

Under the existing provisions of sub-clause (ii) of clause (a) of section 40, any sum paid on account of any rate or tax levied on the profits and gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits and gains (hereinafter referred to as income-tax) is not allowed as deduction in the computation of income. Further under the scheme of the Act, any such tax paid outside India is also not allowable as a deduction in the computation of Income. However, such tax paid outside India is eligible for credit against tax payable in India on the global income of the person, in accordance with the provisions of section 90 or section 91, as the case may be.

Doubts have been expressed whether income-tax paid in a foreign country is eligible for deduction in the computation of profits and gains from business or profession. In this regard the judicial opinion is divided with overwhelming number of decisions being in favour of the Department. Neverthless, some assessees continue to claim income tax paid in the foreign country both, as deducion in the computation of profits and gains from business or profession and also as credit against tax payable on their global income. This double benefit claimed by some taxpayers is against the legislative intent.

With a view to ending the judicial conflict, it is proposed to amend the Income-tax Act by inserting Explanation 1 to sub clause (ii) of clause (a) of section 40 of the Income-tax Act so as to clarify that any sum paid outside India and eligible for relief of tax under section 90 or deduction from the income-tax payable under section 91 is not allowable, and is deemded to have never been allowable, as a deduction under section 40 of the Income-tax Act. However, the tax payers will continue to be eligible for tax credit in respect of income tax paid in a foreign country in accordance with the provisions of section 90 or section 91, as the case may be.

This amendment is clarificatory in nature and is inserted in the Income-tax Act on 1st April, 2006.

It is further proposed to insert Explanation 2 to provide that any sum paid outside India and eligible for relief of tax under newly inserted section 90A will not be allowed as a deduction in the computation of profits and gains from business or profession.

This amendment will take effect from 1st June, 2006. [*Clause 10*]

Interest not 'actually paid' not eligible for deduction under section 43B

Under the existing provisions contained in clause (d) and clause (e) of section 43B, any sum payable by the assessee as interest on any loan or borrowing or advance referred to in the said clauses is allowed as deduction in the computation of income if the sum payable as interest is 'actually paid' by the assessee.

It is proposed to insert two new Explanations, namely, Explanation 3C and Explanation 3D to clarify that if any sum payable by the assessee as interest on any loan or borrowing or advance is converted into a loan or borrowing or advance, the interest so converted and not 'actually paid', shall not be deemed as 'actual payment' and not allowed as deduction in the computation of income under section 43B.

The amendment inserting Explanation 3C relating to interest converted into loan or borrowing will take effect retrospectively from 1st April, 1989 and the amendment inserting Explanation 3D relating to interest converted into loan or advance will take effect retrospectively from 1st April, 1997 and, accordingly, apply in relation to the assessment years 1989-1990 and 1997-1998 respectively and subsequent years thereto. [*Clause 12*]

Taxation of certain anonymous donations

Income of wholly charitable or religious trusts or institutions or partly charitable or religious trusts or institutions is exempt under the Income-tax Act subject to fulfillment of certain conditions.

In order to tax unaccounted money being contributed to these institutions by way of anonymous donations, it is proposed to insert a new section 115BBC so as to provide that any income by way of anonymous donations of the entities referred to in that section shall be included in the total income and taxed at the rate of 30 per cent.

Anonymous donations received by the following entities shall be covered by the new section :-

(i) any trust or institution referred to in section 11;

(ii) any university or other educational institution referred to in section 10(23C) (iiiad) and (vi);

(iii) any hospital or other institution referred to in section 10(23C) (iiiae) and (via);

(iv) any fund or institution referred to in section 10(23C) (iv)

(v) any trust or institution referred to in section 10(23C) (v)

The following anonymous donations shall not be covered:

a) donations received by any trust or institution created or established wholly for religious purposes.

b) donations received by any trust or institution created or established for both religious as well as charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

It is also proposed to define anonymous donation to mean any voluntary contribution referred to in sub-clause (iia) of Clause (24) of section 2, where a person receiving such contribution does not maintain a record consisting of the identity of the person making such contribution indicating the name and address of the person and such other particulars as may be prescribed.

Consequential amendments are proposed to be made in section 10(23C) and section 13 so as to provide that any income by way of any anonymous donation which is taxable under the provisions of the proposed new section 115BB shall not be excluded from the total income of the assessee.

These amendments will take effect from 1st April, 2007 and will accordingly apply in relation to assessment year 2007-2008 and subsequent years.

Consequential amendments are also proposed to be made in sub-clause (iia) of clause (24) of section 2 to include voluntary contributions received by certain educational and medical institutions in the definition of income. The amendment is retrospective in the case of some institutions. [*Clauses 3, 4, 6 and 22*]

Change in definition of 'long-term specified asset' for exemption under section 54EC

Under the existing provisions of section 54EC capital gains arising form the transfer of a long-term capital asset is exempt from tax if the capital gains are invested in any long term specified asset. The expression “long term specified asset” has been defined in clause (b) of the Explanation to the said section to mean any bond redeemable after three years issued (i) on or after 1st April, 2000 by the National Bank for Agriculture and Rural Development, or by the National Highways Authority of India, (ii) on or after 1st April 2001 by the Rural Electrification Corporation Limited, (iii) on or after 1st April, 2002 by the National Housing Bank or by the Small Industries Development Bank of India.

With a view to raise tax revenues and also to channelise funds towards focused development of roads, highways, and rural electrification infrastructure, it is proposed to amend the said section so as to restrict the benefit of tax exemption only in respect of long-term capital gains invested in those bonds which are redeemable after three years, and are issued by the National Highways Authority of India, or by the Rural Electrification Corporation Limited, on or after 1st April, 2006 and are notified by the Central Government for the purposes of the said section.

This amendment will take effect from 1st April, 2006. [*Clause 13*]

Withdrawal of exemption under section 54ED

The existing provisions of section 54ED provide that the capital gains arising from transfer of long term capital asset, being listed securities or units of a mutual fund or of the Unit Trust of India shall be exempt from tax, to the extent such gains are invested in equity shares forming part of an eligible issue of capital, made by a public company, and offered for subscription to the public.

Vide Finance (No.2) Act, 2004, Securities Transaction Tax has been levied on the value of certain specified transactions of equity shares of a company or units of an equity oriented mutual fund. Consequent upon the levy of the securities transaction tax, the long term capital gains arising from the transfer of an equity share of a company or unit of an equity oriented mutual fund is exempt from tax. Further, short term capital gains arising from such transfer are charged at a concessional rate. In view of the same the provisions of section 54ED have lost relevance.

Accordingly, it is proposed to withdraw the benefit of exemption from tax provided under the said section.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 14*]

Rationalisation of provisions relating to Minimum Alternate Tax

Section 115JB provides that, in case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st April, 2001 is less than seven and one-half per cent. of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be seven and one-half per cent. of such book profit.

Since the credit for MAT paid under section 115 JB has been introduced from assessment year 2006-07 by Finance Act 2005, and the period for availing the MAT credit is proposed to be increased from five years to seven years, it is proposed to amend sub-section (1) of the said section to provide that if the income-tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st April, 2007 is less than ten per cent. of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be ten per cent. of such book profit.

The *Explanation* to sub-section (2) of section 115JB says that "book profit" means the net profit as shown in the profit and loss account for the relevant previous year, prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956, and as increased or reduced by certain adjustments as specified in the said *Explanation*. The aforesaid *Explanation*, *inter-alia,* provides that the book profit shall be increased by the amount or amounts of expenditure relatable to any income referred to in section 10 (other than the provisions contained in clause (23G) thereof) if any such amount is debited to the profit and loss account and it shall be reduced by the amount of income referred to in the said section 10 if any such amount is credited to the profit and loss account.

It is proposed to omit the reference to "other than the provisions contained in clause (23G) thereof" from clause (f) and clause (ii) of the Explanation to section 115JB. The proposed amendment is consequential to omission of clause (23G) of section 10 vide clause 4 of the Bill.

It is further proposed to amend clause (f) of the aforesaid *Explanation* to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to any income referred to in section 10 (excluding the income referred to in clause (38) thereof) and to also amend clause (ii) of the said *Explanation* to provide that the book profit shall be reduced by the amount of income referred to in section 10 (excluding the income referred to in clause (38) thereof). It is also proposed to amend the provisions of sub-section (38) of section 10 so as to provide that income by way of long-term capital gains of a company shall be taken into account in computing the book profit under section 115JB and for payment of income-tax under that section.

Under the normal provisions of the Income-tax Act, claim of higher depreciation on account of revaluation of assets is not allowed. However, companies do resort to revaluation of assets to claim such higher depreciation. With a view to plug the leakage of revenue on account of claim of higher depreciation through revaluation of assets by certain companies, it is proposed to insert a new clause (g) in the aforesaid *Explanation* so as to provide that the book profit shall be increased by the amount of depreciation debited to the profit and loss account and to also insert a new clause (iia) in the said *Explanation* so as to provide that the amount of depreciation claimed in the profit and loss account, excluding the claim of depreciation on account of revaluation of assets, shall be reduced from the book profit. With a view to avoid double taxation on this account, it is also proposed to insert a new clause (iib) in the said *Explanation* so as to provide that the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in the proposed new clause (iia), shall be reduced from the book profit.

The proposed amendments to section 115 JB and clause (38) of section 10 will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 4 and 24*]

Enhancing the period for carry forward of MAT credit

Sub-section (1) of Section 115JAA provides that where any amount of tax is paid under section 115JA by a company for any assessment year, then credit in respect of the tax so paid shall be allowed in accordance with the provisions of the said section 115JAA. Sub-section (1A) of section 115JAA provides for a similar provision with regard to any amount of tax paid under section 115JB for the assessment year commencing on 1st April, 2006 and any subsequent year. Sub-section (2) of section 115JAA provides that the tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under section 115JA or section 115JB, as the case may be, and the amount of tax payable under the normal provisions of the Income-tax Act. Sub-section (3) of section 115JAA provides that the amount of credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) of the said section, but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable under sub-section (1) of the said section.

To provide relief to assessees, being companies, who pay MAT under section 115JB for any assessmet year begining on or after 1st April, 2006, it is proposed to amend the provisions of section 115JAA so as to provide that the amount of tax credit determined shall be allowed to be carried forward and set off for seven assessment years immediately succeeding the assessment year in which the tax credit becomes allowable under the said section.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 23*]

Withdrawal of tax benefits available to certain co-operative banks

Section 80 P, *inter alia*, provides for a deduction from the total income of the Co-operative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage industry, or of marketing of agricultural produce of its members, or processing, without the aid of power, of the agricultural produce of its members, etc.

The co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. It is, therefore, proposed to amend section 80 P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

It is also proposed to insert a new sub-clause (viia) in clause (24) of the said section so as to provide that the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of 'income'.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 3 and 19*]

Method for allocating expenditure in relation to exempt income

Under the existing provisions of section 14A, it has been provided that for the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act. However, the existing provisions of section 14A do not provide the method of computing the expenditure incurred in relation to income which does not form part of the total income. Consequently, there is considerable dispute between the tax payers and the Department on the method of determining such the expenditure.

In view of the above, it is proposed to insert a new sub-section (2) in section 14A so as to provide that it would be mandatory for the Assessing Officer to determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as may be prescribed. However, the Assessing Officer shall be required to adopt the prescribed method if, having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income. It is also proposed to provide that provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-08 and subsequent years. [*Clause 7*]

RATIONALISATION AND SIMPLIFICATION OF ADMINISTRATIVE AND COMPLIANCE PROCEDURES

Providing a time limit for application for grant of exemption or continuance of exemption for certain charitable and religious trusts and institutions and certain educational and medical institutions

Under the existing provisions contained in sub-clauses (iv),(v),(vi) and (via) of clause (23C) of section 10, there is no time limit for any university or other educational institution or any hospital or other institution, or any fund or trust or institution specified therein to make an application for issue of notification/grant of approval or continuance thereof.

It is proposed to insert a new proviso in clause (23C), so as to provide a time limit for the purposes of making an application under the said sub-clauses. Such application for grant of exemption or continuance thereof under any of these sub-clauses shall have to be filed at any time during the financial year immediately preceding the assessment year from which such exemption is sought. Such application cannot be made for any earlier period. The proposed amendment shall apply only in respect of applications which are made on or after 1st June, 2006.

This amendment will take effect from 1st June, 2006. [*Clause 4*]

Credit for payment of Minimum Alternate Tax (MAT) and tax paid in a country or specified territory outside India for the purposes of charge of interest under sections 234A, 234B and 234C

Under the existing provisions of sections 234A, 234B and 234C, the assessee is held liable to pay simple interest at the rate of one per cent. for every month or part of a month for default in furnishing return of income, for default in payment of advance tax and for deferment of advance tax respectively. For the purposes of computing interest, credit for advance tax paid and tax deducted or collected at source is allowed. MAT credit under section 115JAA, relief of tax under section 90 and deduction from income-tax payable under section 91 are not taken into account while charging interest under the aforesaid sections. Under section 140A also interest is paid on shortfall of advance tax and for delay in furnishing return of income.

Representations have been received that the tax credit allowed under section 115JAA is no different from tax paid in advance and credit should be given against the tax liability, determined as a result of assessment, while calculating interest payable by the assessee under sections 234A, 234B and 234C. On similar grounds, credit for taxes paid in a country outside India has also been requested so that interest is not charged on an amount equivalent to taxes paid outside India.

It is proposed to provide for—

(a) reduction of tax credit allowed to be set off under section 115JAA from the tax on the total income; and

(b) reduction of the amount of relief of tax allowed under section 90 and 90A and deduction from the Indian income-tax payable, allowed under section 91, from the tax on the total income.

The credit for the above is also proposed to be allowed under section 140A for the purposes of calculation of tax and interest before furnishing the return of income.

It is further proposed to provide that interest is to be charged on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the total income determined under the regular assessment.

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 34,48,49 and 50*]

Payment of interest for TDS or TCS default before furnishing TDS or TCS quarterly statements and deeming the person who fails to collect or pay the tax collected at source as an assessee in default

Under the provisions of sub-section (1A) of section 201, if any person responsible for deduction of tax at source does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required under the Income-tax Act, such person is held liable to pay simple interest at twelve per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid. Similar provisions exist in respect of tax collection at source under sub-section (7) of section 206C.

In order to mandate payment of interest on self-assessment basis, it is proposed to amend sub-section (1A) of section 201 so as to provide that the person, the principal officer and the company referred to in sub-section (1) of the aforesaid section and liable to pay interest under the said sub-section (1A) shall pay such interest before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of section 200. On similar lines it is also proposed to amend sub-section (7) of section 206C so as to provide that the person responsible for collection of tax and liable to pay interest under the said sub-section (7) shall pay such interest before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of that section.

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

It is also proposed to insert a new sub-section (6A) in section 206C to provide that any person responsible for collecting tax shall be deemed to be an assessee in default if such person does not collect the whole or any part of the tax or fails to pay such tax after having collected the tax.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 42 and 47*]

Doing away with furnishing of annual TDS and TCS returns

Under the existing provisions of section 206 and sub-section (3) of section 206C, any person responsible for deducting or collecting tax under the Income-tax Act is required to prepare and deliver to the prescribed income-tax authority an annual return of tax deducted or collected at source.

A system of quarterly statements of TDS and TCS has been introduced for the taxes deducted or collected on or after 1st April, 2005 under the provisions of sub-section (3) of section 200 and those of sub-section (3) of section 206C. With the introduction of quarterly statements, the requirement of furnishing annual TDS and TCS returns has become redundant. Therefore, it is proposed to do away with the requirement of furnishing of the annual return of tax deducted or collected at source in respect of taxes deducted or collected on or after 1st April, 2005. Failure to furnish the annual return for tax deduction or collection at source before 1st day April, 2005 shall continue to attract penalty under section 272A of the Income-tax Act.

Since furnishing of quarterly statements is proposed to fully replace the annual returns, as a consequence, penal provisions for failure to furnish quarterly statements have been aligned to failure to furnish annual returns and it is proposed that the penalty leviable for failure to deliver the statements under clause (k) of sub-section (2) of section 272A shall not exceed the amount of tax deductible or collectible, as the case may be.

Under the existing provisions of sub-sections (5B) and (5D) of section 139A, every person deducting or collecting tax shall quote the permanent account number(PAN) of the person from whose income, tax has been deducted or, as the case may be, on whose income, tax has been collected, in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206 or sub-section (5A) of section 206C. Similarly under section 203A, TAN is required to be quoted in all challans and annual returns etc.

It is proposed to extend such requirement of quoting of PAN and TAN in all quarterly statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200 or proviso to sub-section (3) of section 206C as furnishing of annual returns is proposed to be discontinued.

The amendment in relation to doing away with annual returns of tax deduction or collection at source under sections 206 and 206C will take effect from 1st April, 2006 and other amendments to sections 139A and 272A take effect from 1st June, 2006.

[*Clauses 32, 44, 46, 47 and 53*]

Clarificatory amendment regarding the time limit for issue of notice under section 142

The existing provisions contained in sub-section (1) of said section, inter-alia, provide that for the purposes of making assessment in a case where a person has not made a return of his income within the time specified under sub-section (1) of section 139, the Assessing Officer may serve a notice under the said sub-section on such person requiring him to furnish the return of his income in the prescribed form and manner.

It is proposed to amend clause (i) of sub-section (1) so as to provide that in a case where a person has not made a return of his income before the end of the relevent assessment year, the Assessing Officer may serve a notice after the end of the relevant assessment year under said sub-section requiring such person to furnish his return of income.

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

It is also proposed to insert a proviso to the said clause (i) so as to provide that where any notice has been served on or after 1st April, 1990 under sub-section (1) after the end of the relevent assessment year to any person who has not made a return of his income before the end of the relevant assessment year, such notice shall be deemed to be a notice served in accordance with the provisions of the aforesaid sub-section (1).

This amendment will take effect retrospectively from 1st April, 1990. [*Clause 35*]

The time limit for issue of notice under sub-section (2) of section 143 for the purposes of making assessment or re-assessment under section 147

Under the existing provisions of sub-section (1) of section 148 it has been provided that before making any assessment, reassessment or re-computation under section 147, the Assessing Officer shall serve a notice under section 148, on the assessee, requiring him to furnish his return of income and the provisions of the Act shall apply as if the return furnished in response to such notice were a return required to be furnished under section 139.

It is proposed to insert a proviso to sub-section (1) so as to provide that where a return has been furnished during the period from 1st October, 1991 to 30th September, 2005 in response to a notice served under section 148 and, subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143 as it stood immediately before the amendment of said sub-section by the Finance Act, 2002, but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in sub-section (2) of section 153, such notice shall be deemed to be valid notice.

It is further proposed to insert a proviso in the said sub-section so as to provide that where a return has been furnished during the period from 1st October, 1991 to 30th September, 2005 in response to a notice served under section 148 and, subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in sub-section (2) of section 153, such notice shall be deemed to be valid notice.

These amendments will take effect retrospectively from the 1st October, 1991.

It is also proposed to insert an Explanation in sub-section (1) so as to clarify that the provisions of the newly inserted first proviso or the second proviso shall not apply in relation to any return which has been furnished on or after 1st October, 2005 in response to a notice served under sub-section (1) of section 148.

This amendment will take effect retrospectively from the 1st October, 2005. [*Clause 36*]

Reduction of the time limits provided for completion of assessment and reassessment

The existing provisions of section 153 provide the time limit for completion of assessments and reassessments. Section 153B of the Income-tax Act provides the time limit for completion of assessment in cases where search has been initiated under section 132 or books of account, other documents or any assets have been requisitioned under section 132A. The existing provisions of Section 17A of the Wealth-tax Act provide the time limit for completion of assessment sand reassessments of the net wealth.

It is proposed to revise the time limits specified for completion of assessments and re-assessments in sections 153, 153B of the Income-tax Act, and in section 17A of the Wealth-tax Act so that the demand raised during a financial year could be collected in same year. The revised time limits shall be the time limits specified under the aforesaid section, as reduced by three months.

These amendments will take effect from 1st June, 2006. [*Clause 37, 38 and 57]*

Modification of the return form

The existing provisions of sub-section (9) of section 139 provide that where the Assessing Officer considers that the return of income filed by an assessee is defective, he may intimate the assessee and give him an opportunity to rectify the same within fifteen days. The Explanation to the said sub-section provides that a return of income shall be regarded as defective unless, the conditions specified in clauses (a) to (f) of the Explanation to the said sub-section are fulfilled.

It is proposed to insert a proviso in the Explanation to the said sub-section (9) so as to confer power upon the Central Board of Direct Taxes to dispense with any of the conditions specified in clauses (a) to (f) of the Explanation to the said sub-section, in respect of a class or classes of persons. It is also proposed to provide that the Board shall have the power to frame rules so as to include any of the conditions specified in clauses (a) to (f) of the Explanation in the forms of return of income prescribed under sub-section (1) and sub-section (6) of section 139.

This amendment will take effect from 1st June, 2006. [*Clause 31*]

Rationalisation of provisions relating to Transfer Pricing

The existing provisions contained in section 92C provide for computation of arm's length price. Sub-section (2) of the said section provides that the most appropriate method shall be applied for computation of arm's length price. Sub-section (3) of the said section lays down the conditions under which the Assessing Officer can determine the arm's length price in a case. Under sub-section (4) it has been provided that on the basis of the arm's length price so determined, the Assessing Officer may compute the total income of an assessee. The first proviso to sub-section (4) provides that where the total income of an assessee as computed by the Assessing Officer is higher than the income declared by the assessee, no deduction under section 10A or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section.

Sections 10A and 10B provide deductions in respect of the profits and gains derived from exports. Section 10AA also provides for deduction of profits and gains derived from exports, in respect of newly established units in Special Economic Zones. With a view to rationalise the provisions of sub-section (4) of section 92C, it is proposed to amend the first proviso to the said sub-section so as to provide that no deduction under section 10AA shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under sub-section (4).

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-08 and subsequent years. [*Clause 21*]

Penalty for false quoting of TAN

Under the existing provisions of section 272BB of the Income-tax Act, a person becomes liable for penalty of a sum of ten thousand rupees if he fails to comply with the provisions of section 203A which require him to apply to the Assessing Officer for the allotment of a "tax deduction and collection account number". After allotment of the "tax deduction and collection account number", the deductor or, as the case may be, the collector is required to quote such number in all challans, certificates, returns and other documents.

Under the existing provisions, no penalty is specified for quoting a false "tax deduction and collection account number" even though a penalty is already specified for quoting or intimating a false "permanent account number" under section 272B.

The implications of quoting false TAN are as severe as quoting a false PAN. Quoting of false TAN as does the quoting of false PAN results in getting the tax deducted or collected posted to suspense account and not to the account of the deductee or collectee. It has been learnt that certain bank branches having not applied for TAN, are quoting TAN allotted to other branches of the same bank. In such events, the computer system does not accept two different returns from the two branches bearing the same TAN. False quoting of PAN and TAN has been one of the reasons for tardy progress of dematerialisation of the paper based system. In order to make dematerialisation a reality, correct quoting of TAN by the deductors or collectors needs to be enforced. Until all taxes deducted or collected are matched in the On-Line Tax Accounting System (OLTAS) and complete information is populated in the deductees' or collectees' accounts, dematerialisation may not, fully substitute for the existing paper based system. If past experience is any guide, mere existence of the provisions, requiring the deductors and the collectors to apply for TAN and quote the same in the specified documents, has not yielded desired compliance in the absence of penalty provisions for quoting a false TAN.

It is, therefore, proposed to insert a new sub-section (1A) in section 272BB so as to provide that, if a person who is required to quote his 'tax deduction account number' or 'tax collection account number' or 'tax deduction and collection account number' in the challans, certificates, statements or other documents referred to in sub-section (2) of section 203A, quotes a number which is false and which he either knows or believes to be false or does not believe to be true, such person shall pay by way of penalty a sum of ten thousand rupees.

Further, under the existing provisions contained in sub-section (2), no penalty can be imposed unless the person concerned has been given a reasonable opportunity of being heard.

It is proposed to amend sub-section (2) so as to include a reference of sub-section (1A) therein for the purpose of giving an opportunity of being heard to the person on whom the penalty is to be imposed under the said sub-section (1A).

These amendments will take effect from 1st June, 2006. [*Clauses 54 and 55*]

Penalty for failure to collect tax at source

No penalty is so far specified under the Income-tax Act for failure to collect tax at source. Subsequent to expansion of the provisions of tax collection at source, Board has been receiving information from various quarters that in a number of cases collection of tax was not being made by the persons responsible for collecting tax.

It is, therefore, proposed to insert a new section 271CA so as to provide for imposition of penalty on any person who is responsible for collecting tax and who has failed to collect tax at source in accordance with the provisions of Chapter XVII-BB of the Act. Such penalty is proposed to be a sum equal to the amount of tax which he failed to collect at source. The order of penalty is proposed to be made an appeallable order under section 246A. It is further proposed through an amendment to section 273B that no penalty shall be imposed if the concerned person proves that there was a reasonable cause for his failure.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 51, 52 and 55*]

Deferment of dematerialisation of TDS and TCS certificates

Finance (No.2) Act, 2004 introduced a new procedure under the provisions of sub-section (3) of section 203 in respect of tax deduction at source and under the first proviso to sub-section (5) of section 206C in respect of tax collection at source laying down that the deductor or, as the case may be, the collector shall not be required to issue TDS or TCS certificates to the deductee or, as the case may be, the collectee. As a consequence to doing away with the certificate, it was further provided under sub-section (3) of section 199 and under the proviso to sub-section (4) of section 206C that the deductee or the collectee will not be required to enclose a TDS or TCS certificate to his return of income for claiming credit of tax deducted or collected. Under the new procedure, credit for TDS or TCS was to be given by the Assessing Officer on the basis of annual statement of taxes in accordance with the provisions introduced under section 203AA in respect of TDS or in accordance with the second proviso to sub-section (5) of section 206C in respect of TCS. It was also provided under sub-section (9) of section 139 that the return of income shall not be deemed defective if it was not accompanied by proof of tax deducted.

The above dematerialisation provisions were to come into force with effect from 1.4.2005 in respect of tax deducted or collected on or after 1.4.2005. Through the Finance Act, 2005, however, dematerialisation provisions were deferred by one year so as to come into force in relation to taxes deducted or collected or paid on or after 1st April, 2006.

A substantial number of deductors, have not started filing their quarterly statements which they are required to furnish under sub-section (3) of section 200 and under the proviso to sub-section (3) of section 206C. Quarterly statements are the primary documents from which details of tax deducted at source or tax collected at source are captured in the Departmental system. The On-Line Tax Accounting System (OLTAS) is yet to fully stabilize as failure to quote, and in many cases quoting of false PAN and TAN have resulted in getting the taxes deducted or collected or paid getting credited to the suspense account. The dematerialisation system is dependent upon filing of TDS or TCS statements by all the deductors or collectors with correct PAN and TAN in all the TDS and TCS statements and challans. Until all taxes deducted, collected or paid are matched in the OLTAS and complete information is populated in the deductees' or collectees' account, dematerialisation cannot fully substitute for the existing paper based system.

Keeping in view the aforementioned factors, it is proposed to defer the commencement of dematerialisation provisions by two years and make such provisions applicable for taxes deducted or paid [sub section (3) of section 203] or collected [1st proviso to sub section (5) of section 206C] on or after 1st April, 2008.

These amendments will take effect retrospectively from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. *[Clauses 31,41,43,45 and 47*]

Under the existing provisions of sub-section (14) of section 155 credit for tax deducted at source is allowed if the certificate of tax deduction at source under section 203 was not filed originally with the return of income but is produced before the Assessing Officer within two years from the end of the relevant assessment year. The Bill proposes to extend this provision in respect of certificate of collection of tax at source in view of the proposed requirement of proof under sub-section (9) of section 139 in respect of tax collected at source before the 1st day of April, 2008.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 31 and 39*]

Benefits of certain deductions not to be allowed in cases where return is not filed within the specified time limit

With a view to provide incentives to certain sectors/activities, various deductions have been provided in the Income-tax Act. Under the existing provisions contained in section 10B, profits and gains derived by a hundred per cent. export oriented undertaking from the export of articles, things or computer software are allowed as a deduction from the total income of the assessee for ten consecutive assessment years.

Section 80-IA, provides for a 100% deduction of the profits and gains of an undertaking engaged in – (a) development, operation and maintenance of infrastructure facilities; (b) development, operation or maintenance of a notified industrial park or Special Economic Zone; (c) generation, distribution or transmission of power, or renovation, modernisation of transmission or distribution lines from the total income of the assessee for a period of 10 consecutive assessment years.

Section 80-IAB provides for a deduction from the total income in respect of the profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone under the Special Economic Zones Act, 2005, for ten consecutive assessment years.

The provisions contained in section 80-IB provide for deduction of the profits and gains of derived by the assessee from certain industrial undertakings established before the specified dates and engaged in specified business, for specified number of assessment years.

The provisions contained in section 80-IC allow 100% deduction for specified number of years of the profits and gains of undertaking or an enterprise established before the specified dates in the notified areas, or engaged in thrust area activities.

It is proposed to amend section 10B and insert a new section 80 AC so as to provide that no deduction under section 10 B and section 80-IA, section 80-IAB, section 80-IB and section 80-IC shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified in sub-section (1) of section 139.

The proposed amendments will take effect from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-07 and subsequent years. [*Clauses 5 and 15*]

Prescribing new class of persons for allotment of PAN and suo-moto allotment of PAN

The existing provisions of sub-sections (1) and (1A) of section 139A provide for class of persons who are required to have a Permanent Account Number:

It is proposed to insert a new sub-section (1B) so as to provide that for the purpose of collecting any information which may be useful for or relevant to the purposes of this Act, the Central Government may by way of notification specify any class or classes of persons, and such persons shall within the prescribed time apply to the Assessing Officer for allotment of a permanent account number.

Under the existing provisions contained in sub-section (2) of the said section, the Assessing Officer may also allot to any other person by whom tax is payable, a permanent account number.

It is proposed to amend the said sub-section so as to provide that the Assessing Officer may, having regard to the nature of transactions as may be specified by the rules made by the Central Board of Direct Taxes, also allot a permanent account number to any other person (whether any tax is payable by him or not), in accordance with the procedure as may be specified by such rules.

These amendment will take effect from 1st June, 2006. [*Clause 32*]

Omission of the one-by-six scheme

Under the existing provisions of the Proviso to sub-section (1) of section 139 it has been provided that a person fulfilling any of the six expenditure/asset criteria listed therein, shall be required to furnish his return of income even if his total income is below the threshold limit.

It is proposed to omit the said proviso so as to provide that no return shall be required to be furnished under the proviso for assessment year 2006-07 and subsequent years.

This amendment will take effect from 1st April, 2006. [*Clause 31*]

Clarification regarding the powers of the Board to issue directions regarding the power and function of the Income-tax authorities

Section 120 relates to the jurisdiction of income-tax authorities. The existing provisions contained in sub-section (1) of the said section, provide that the income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on or, assigned to, such authorities in accordance with directions issued by the Board for the exercise of such powers and functions by all or any of those authorities.

With a view to clarify the intention of the legislature it is proposed to insert an Explanation to sub-section (1) of the said section so as to provide that any income-tax authority, being an authority higher in rank, may exercise the powers and perform the functions of the income-tax authority lower in rank, if it is so directed by the Board under the said section. It has also been provided that any such direction issued shall be deemed to be a direction issued by the Board under the said sub-section (1).

This amendment will take effect retrospectively from 1st April, 1988. [*Clause 30*]

IMPROVING TAX PAYERS SERVICE

New Scheme to facilitate submission of returns through Tax Return Preparers

It is proposed to insert a new section 139B in the Act so as to provide that for the purpose of enabling any specified class or classes of persons to prepare and furnish returns of income, the Board may, by way of notification, frame a scheme providing that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the scheme. It is further proposed to provide that the Scheme framed under the said section shall specify the manner in which the Tax Return Preparer shall assist the persons furnishing the return of income, and shall also affix his signature on such return. It is also proposed to provide that a Tax Return Preparer may be an individual other than a person referred to in clause (ii) or clause (iv) of sub-section (2) of section 288 or an employee of the specified class or classes of persons, who has been authorised to act as a Tax Return Preparer under the proposed Scheme. It is also proposed that Scheme notified under the said section shall provide the manner in which a Tax Return Preparer shall be authorised, the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer, the code of conduct for the Tax Return Preparer, the duties and obligations of the Tax Return Preparer, the manner in which the authorisation may be withdrawn, and any other matter which is required to be or may be specified.

This amendment will take effect from 1st June, 2006 [*Clause 33*]

EXTENDING THE SCOPE AND PERIOD OF TAX INCENTIVES AND MODIFYING THE EXEMPTION REGIME

Exemption of the constituency allowance of MLAs.

Under the existing provisions contained in clause (17) of Section 10, the following allowances received by a Member of Parliament or by a Member of any State Legislature or by a member of any Committee thereof are exempt—

(i) Daily Allowance received by a Member of Parliament or a Member of any State Legislature or by a member of any Committee thereof.

(ii) Constituency Allowance received by a Member of Parliament.

(iii) All other notified allowances received by a Member of a State Legislature or by a member of any Committee thereof upto an aggregate limit of Rs. 2,000/- per month.

With a view to bring uniformity in the tax treatment of allowances received by Members of Parliament and Members of State Legislatures, it is proposed to amend sub-clause (iii) of clause (17) of the said section so as to make the constituency allowance received by Members of State Legislatures fully exempt as in the case of Members of Parliament. All other allowances of Members of State Legislatures and members of any Committee thereof excluding daily allowance shall become fully taxable as in the case of Members of Parliament.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 4*]

Extension of exemption from levy of dividend distribution tax to close-ended equity oriented funds and change in the definition of equity oriented funds

Under the existing proviso to sub-section (2) of Section 115R, dividend distribution tax is not payable in respect of any income distributed to unit holders of open-ended equity oriented funds in respect of any distribution made from such funds. An open-ended equity oriented fund is defined in the Explanation to section 115T to mean such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent of the total proceeds of such fund. The percentage of equity shareholding is computed with reference to the annual average of the monthly averages of the opening and closing figures.

With a view to provide close-ended funds a level playing field, it is proposed to omit the word 'open-ended' from the proviso to sub-section (2) of section 115R and from the Explanation to section 115T so as to provide that all equity oriented funds shall not be liable to pay dividend distribution tax instead of only open-ended equity oriented funds.

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

Further, with a view to align the definition of equity oriented fund given in section 115T with the SEBI norms, it is proposed to amend the said Explanation to section 115T so as to provide that the exemption from dividend distribution tax shall be available only to a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than sixty five

per cent. of the total proceeds of such fund instead of the existing fifty per cent. The percentage of equity share holding of the fund shall continue to be computed with reference to the annual average of the monthly averages of the opening and closing figures.

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

Under the existing provisions contained in section 98 of the Finance (No.2) Act, 2004, Securities Transaction Tax is chargeable on purchase and sale of units of equity oriented funds as defined in clause (5) of section 97 of the said Act. Under section 10(38) of the Income-tax Act, income by way of long-term capital gain arising from transfer of equity share in a company or a unit of an equity oriented fund as defined in the Explanation to that section, where the transaction of sale of such equity share or unit is entered into on or after 1st October, 2004 and such transaction is chargeable to securities transaction tax, is not included in the total income. Clause (5) of section 97 of Finance (No.2) Act, 2004 and the Explanation to clause (38) of section 10, inter-alia, define "equity oriented fund" to mean a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund.

It is proposed to amend this definition so as to provide that "equity oriented fund" is a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of sixty five per cent. of the total proceeds of such fund instead of the existing fifty per cent. This will align the definition with the SEBI norms and with the amended definition proposed in section 115T.

These amendments will take effect from 1st June, 2006. [*Clauses 4, 26 27 and 76*]

Exemption on Aircraft lease rentals extended

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, 2006. In other words, the tax exemption is not available in respect of lease rent payments under an agreement into on or after 1st April, 2006. Further, clause (6BB) of section 10 also provides exemption from grossing of tax paid by the Indian company on lease payments under an agreement entered into after the 31st March, 2006.

It is proposed to provide that the exemption for lease payments shall continue with regard to agreements entered into on or before 31st March, 2007. The benefit of exemption from grossing of tax will consequently be available in respect of lease payments made in pursuance of agreements entered into after 31st March, 2007 when the lease payments become taxable.

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to assessment year 2007-2008 and subsequent years. [*Clause 4*]

Extending benefits of section 80 C to fixed deposits in banks

Section 80 C provides for a deduction of rupees one lakh to an individual or a Hindu undivided family, with respect to sums paid or deposited in certain specified schemes. The investments or payments eligible for deduction 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. Further, in order to minimise distortions, there are no sectoral caps and the assessee is free to choose any one or more of the eligible avenues within the overall ceiling specified.

Sub-section (2) of Section 80C, provides that the amount paid or deposited in the previous year in schemes specified in clause (i) to clause (xx) is eligible for deduction under the said section. To provide a level playing field amongst banks and other institutions like insurance companies, mutual funds, etc. it is proposed to insert a new clause (xxi) in sub-section (2) of section 80 C so as to provide that investment in a term deposit for a fixed period of not less than 5 years with any scheduled bank shall be eligible for deduction under the said section. It is also proposed to define the expression “scheduled bank” for this purpose.

Clause (xi) of sub-section (2) refers to contribution in the name of any person specified in sub-section (4) of section 80C for participation in any such Unit-linked insurance plan of the LIC mutual fund notified under clause (23D) of section 10 as the Central Government may, by notification, specify. Clause (xiii) of the said sub-section refers to subscription to any units of any mutual fund notified under clause (23D) of section 10 or from the administrator or the specified company under any plan formulated in accordance with such scheme as may be notified by the Central Government. Clause (xiv) of the said sub-section refers to the contribution by an individual to any pension fund set up by any mutual fund notified under clause (23D) of section 10 or by the administrator or the specified company, as the Central Government may, by notification, specify.

Since clause (23D) of section 10 has since been amended and it also refers to a mutual fund registered under Securities and Exchange Board of India Act, 1992 or regulations made there under, it is proposed to amend the provisions of clauses (xi), (xiii) and (xiv) of sub-section (2) so as to substitute the words "notified under clause (23D)" by the words "referred to in clause (23D)". This would align the provisions of these clauses with that of clause (23D) of section 10. This amendment is only for the purposes of aligning the provisions of section 80 C with that of clause (23D) of section 10.

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 16*]

Rationalisation of provisions relating to deduction of health insurance premium paid by the employer and exempt status of such payments in the hands of employees

Any salary due or paid or allowed to an employee by the employer is chargeable to tax under the head 'salaries'. The term 'salary' has been defined in section 17 which, inter-alia, includes wages, pension, perquisites or profits in lieu of or in addition to salary. However, clause (iii) of the proviso to clause (2) of section 17, exempts any premium paid by an employer to effect or to keep in force an insurance on the health of such an employee, from the purview of perquisite, provided it is in accordance with the scheme approved by the Central Government for the purposes of section 36(1)(ib). Section 36 (1)(ib) refers to a scheme framed by the General Insurance Corporation under section 9 of the General Insurance Business (Nationalisation) Act 1972 and approved by the Central Government.

Clause (iv) of the proviso to clause (2) of section 17 similarly exempts reimbursement of medical insurance premium of employees provided it is in accordance with the scheme approved by the Central Government for the purposes of section 80D. Section 80D, as amended by the Finance Act 2001, provides that the scheme should be either a scheme framed by the General Insurance Corporation under the General Insurance Business (Nationalisation) Act 1972 or it should be in accordance with the scheme of any other insurer which is approved by the Insurance Regulatory Development Authority under the Insurance Regulatory and Development Authority Act, 1999.

Section 36(1)(ib) provides that an employer is entitled to a deduction in the computation of his profits and gains from business or profession, in respect of the amount of any premium paid by cheque by him to keep in force an insurance on the health of his employees. However, the deduction is available only if the insurance is in accordance with a scheme framed by the General Insurance Corporation of India and approved by the Central Government for this purpose.

With a view to align the provisions of section 36(1)(ib) with those of section 80D, it is proposed to substitute the said clause (ib) so as to also provide for a deduction of the amount of any premium paid by cheque by the assessee, as an employer, to keep in force an insurance on the health of his employees under a scheme framed by any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

Further, as a rationalisation measure, it is also proposed to amend the provisions contained in clauses (iii) and (iv) of the proviso to clause (2) of section 17, so as to provide that any premium paid by the employer or reimbursement of premium paid by the employees, in health insurance schemes of other insurers, approved by the Insurance Regulatory and Development Authority, shall also be exempt from the purview of perquisites.

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 8 and 9*]

Rationalisation of provisions of section 80 CCC

Section 80 CCC provides that an assessee, being an individual, shall be allowed a deduction (up to rupees ten thousand) from his total income of the amount paid or deposited by him to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from the fund referred to in clause (23AAB) of section 10.

Since the deduction available under section 80 C and section 80 CCC are capped by an overall limit of rupees one lakh, as laid down in section 80 CCE, and there are no sectoral caps in section 80 C, it is proposed to align the provisions of the two sections by amending the provisions of section 80 CCC so as to increase the limit of investment from rupees ten thousand to rupees one lakh. It may be reiterated that the proposed amendment will be subject to the overall cap of rupees one lakh provided under section 80CCE.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 17*]

Extension of tax benefits to the Power Sector

Section 80 IA of the Income Tax Act provides for deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc. Clause (iv) of sub-section (4) of the said section provides that an undertaking which

(a) is set up in India for generation or generation and distribution of power, if it begins to generate power during the period beginning on 1st April, 1993 and ending on 31st March, 2006;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines during the period beginning on 1st April, 1999 and ending on 31st March, 2006;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2006, is eligible for deduction under the said section.

Under the existing provisions, the deduction is not available to undertakings which start generation, or transmission or distribution by laying a network of new transmission or distribution lines after 31.3.2006, or undertake substantial renovation and modernisation of the existing network of transmission or distribution lines after the said date. Since the Government is committed to provide power to all by 2012, it is proposed to amend sub-clauses (a) (b) and (c) of clause (iv) of sub-section (4) of section 80 IA to extend the time limit from 31.3.2006 to 31.3.2010.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 18*]

Extension of tax benefits to Industrial Parks

Section 80 IA of the Income Tax Act provides for deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. Clause (iii) of sub-section (4) of the said section provides that an undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone notified by the Central Government in accordance with the scheme framed and notified by it for the period beginning on 1st April, 1997 and ending on 31st March, 2006, is eligible for deduction under the said section.

To continue attracting investment to the industrial parks, it is proposed to amend clause (iii) of sub-section (4) of section 80 IA to extend the time limit from 31.3.2006 to 31.3.2009.

This amendment will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 18*]

Provisions relating to exemption of specified income of certain bodies or authorities

It is proposed to insert a new clause in section 10 of the Act to provide exemption from income tax to any specified income of a non-profit body or authority notified by the Central Government which is established, constituted or appointed under a multi-lateral treaty, agreement, or convention, to which the Central Government is a signatory. The nature and extent of income to be exempted will also be notified by the Central Government.

This amendment will take effect retrospectively from 1st April, 2006. [*Clause 4*]

MISCELLANEOUS

Definition of infrastructure capital company, infrastructre capital fund and infrastructure facility

Under the existing provision of Income-tax Act, infrastructure capital company and infrastructure capital fund have been defined in clause (23G) of section 10. Further, this definition is also with reference to section 80-IA and 80-IB. The definition of infrastracture capital company and infrastructure capital fund existing in clause (23G) of section 10 have been used in the Income-tax Act in various other provisions. Since clause (23G) of section 10 is proposed to be omitted from the Income-tax Act, it is proposed to amend section 2 of the Income-tax Act so as to provide for a general definition of infrastructure capital company and infrastructure capital fund.

This amendment will take effect from the 1st day of April, 2006.

Further, consequent to the proposal to omit clause (23G) of section 10, it is also proposed to define infrastructure facility for the purposes of clause (d) of the Explanation of clause (viii) of sub-section (1) of section 36 of the Income-tax Act, to mean,—

(i) an infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA, or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions as may be prescribed;

(ii) an undertaking referred to in clause (ii) or clause (iii) or clause (iv) of sub-section (4) of section 80-IA; and

(iii) an undertaking referred to in sub-section (10) of section 80-IB.

This amendment will take effect from the 1st day of April, 2007 and will, accordingly, apply in relation to assessment year 2007-08 and subsequent years. [*Clauses 3, 9 and 40*]

Rationalisation of provisions related to granting of recognition to a Provident Fund

Rule 4 of Part A of Schedule IV to the Income tax Act, 1961 provides for the conditions which are required to be satisfied by a provident fund for receiving or retaining recognition under the Income-tax Act.

Under the existing provisions contained in the said rule, a provident fund may receive and retain recognition if it satisfies certain conditions such as—

(i) all employees shall be employed in India, or the employer has its principal place of business in India;

(ii) the fund shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust;

(iii) the contribution of an employee in any year shall be a definite proportion of his salary for that year and shall be deducted by the employer from the employee's salary;

(iv) the contribution of an employer to the individual account of an employee in any year shall not exceed the amount of contributions of the employee in that year; etc.

With a view to provide legislative synergy between the Income-tax Act and the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 to tackle the problems being faced by the small investors in the recognised provident funds, it is proposed to insert a new clause (ea) in the said rule so as to provide that the fund shall be of an establishment to whom the provisions of sub-section (3) or sub-section (4) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are applicable and such establishment has been exempted under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section.

Further, Rule 3 of Part A of Schedule IV provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which satisfies the conditions prescribed in Rule 4 and the rules made by the Board in this behalf. He may, at any time, withdraw such recognition if the provident fund contravenes any of such conditions. There may be a number of provident funds recognised under the said rule, which do not fulfil the conditions set out in the proposed clause (ea) of Rule 4. Since a synergy between the provisions of the Income Tax Act and the Employees' Provident Fund and Miscellaneous Provisions Act is to be established, it is proposed to insert a proviso in sub-rule (1) of Rule 3 so as to provide that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006 and such provident fund does not satisfy the conditions set out in clause (ea) of Rule 4, and any other conditions which the Board may, by rules specify in this behalf, the recognition to such fund shall be withdrawn, if such fund does not satisfy such conditions on or before 31st March, 2007.

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clause 56*]

Provisions relating to double taxation relief etc.

It is proposed to insert a new section 90A to provide that any specified association in India may enter into an agreement with any specified association in a specified territory outside India and the Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement for grant of double taxation relief, for avoidance of double taxation, for exchange of information for the prevention of evasion or avoidance of income tax or for recovery of income tax. It is further proposed to provide that in relation to any assessee to whom the said agreement applies, the provisions of the Income-tax Act shall apply to the extent they are more beneficial to that assessee.

It is also proposed to provide that any term used but not defined in the Income tax Act or in the said agreement shall have the same meaning as assigned to it in the said notification, unless the context requires otherwise and it is not inconsistent with the provisions of the Income tax Act or the said agreement. For this purpose, the 'specified association' and 'specified territory' will be notified by the Central Government.

A consequential amendment is also proposed to be made to the definition of 'rate or rates in force' or 'rates in force' under section 2(37A) so as to provide a reference to the proposed new section.

These amendments will take effect from 1st June, 2006. [*Clauses 3 and 20*]

Reference to the definition of 'derivatives'

Under the existing provisions of clause (5) of section 43, an eligible transaction in respect of trading in derivatives carried out in a recognised stock exchange is not deemed to be a speculative transaction. The definition of derivatives was earlier referred to, in clause (aa) of section 2 of the Securities Contracts (Regulation) Act, 1956. Through an amendment made in January, 2005 to the Securities Contracts (Regulation) Act, 1956, the said clause (aa) has been re-lettered as clause (ac). Accordingly, the reference to the definition of the term 'derivative' has been re-lettered in clause (5) in section 43.

This amendment will take effect retrospectively from 1st April, 2006. [*Clause 11*]

FRINGE BENEFIT TAX

Rationalising the provisions of Fringe Benefit Tax

Section 115 WB provides a definition of the term 'fringe benefits'. It, inter-alia, means any privilege, service, facility or amenity, directly or indirectly, provided by an employer to his employees, any contribution by the employer to an approved superannuation fund for the employees, etc.

Sub-section (2) of the said section provides that the fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has in the course of his business or profession, incurred any expense on or made any payment for the purposes of entertainment, hospitality, conference, sales promotion including publicity, etc. Proviso to clause (D) of sub-section (2) of section 115WB excludes certain expenditure on advertisement from sales promotion including publicity.

To expand the domain of such exceptions to provide relief to employers, it is proposed to insert a new clause in the proviso to clause (D) of sub-section (2) of the said section 115WB so as to provide that the expenditure on distribution of free samples of medicines or of medical equipment, to doctors and payment to any person of repute for promoting the sale of goods or services of the business of employers, shall not be included in 'sales promotion including publicity' for valuation of fringe benefits.

Sub-section (3) of section 115WB provides that for the purposes of sub-section (1) of the said section, the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee.

To specifically exempt expenditure of employers, incurred on the to and fro journeys from residence to office of their employees, from the provisions of this tax, it is also proposed to amend sub-section (3) of section 115WB so to provide that any benefit or amenity in the nature of free or subsidised transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence shall not form part of fringe benefits.

Under the existing provisions contained in section 115WC, the value of fringe benefits is to be determined in terms of percentage of certain expenses specified in section 115WB, which shall be taken as fringe benefits for the purpose of levy of fringe benefit tax.

Clause (b) of sub-section (1) of section 115WC provides that the actual amount of contribution by the employer to an approved superannuation fund for employees shall be the value of fringe benefits.

It is proposed to amend the said clause (b) so as to provide that contribution by an employer to an approved superannuation fund to the extent it does not exceed rupees one lakh per employee in respect of whom contribution is made, shall not be liable to fringe benefit tax. For example, consider an employer who has three employees: A, B and C and he makes contribution to their account in the approved superannuation fund in the following manner:—

Employee	*Contribution to approved superannuation fund by the employer*
A	Rs. 50,000
B	Rs. 90,000
C	Rs. 2,00,000

In the case of employees A and B, the value of fringe benefits shall be taken to be nil since contributions by the employer in respect of these employees does not exceed Rs. 1,00,000 in each case. However, in the case of employee C the value of fringe benefit shall be Rs. 1,00,000 (Rs. 2,00,000 - 1,00,000) for the purposes of levy of fringe benefit tax.

Under the existing provisions contained in clause (c) of sub-section (1) of said section 115WC, it is provided that twenty percent of the expenses referred to in clauses (A) to (K) of sub-section (2) of section 115WB, which includes expenses incurred on conveyance, tour and travel (including foreign travel), shall be the value of fringe benefits.

It is proposed to insert a new clause (e) in sub-section (1) of section 115WC so as to provide that five percent of the expenses incurred on tour and travel (including foreign travel) shall be taken for determining the value of fringe benefits. However, twenty percent of the expenses incurred for the purposes of conveyance shall be continued to be taken for the purposes of valuation of fringe benefits.

Sub-section (2) of the said section 115WC provides for lower rate for valuation of fringe benefits in the case of certain expenses referred to in sub-section (2) of section 115WB.

It is proposed to insert new clauses (aa), (ab), (da) and (db) in sub-section (2) of section 115WC, so as to provide that in the case of an employer engaged in the business of carriage of passengers or goods by aircraft or ship, the value of fringe benefits for the purposes referred to in clauses (B) and (G) of sub-section (2) of section 115WB relating to hospitality and use of hotel, lodging and boarding respectively shall be "five per cent." instead of "twenty per cent." referred to in clause (c) of sub-section (1).

These amendments will take effect from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [*Clauses 28 and 29*]

SECURITIES TRANSACTION TAX

Section 98 of the Finance (No.2) Act, 2004 relating to charge of securities transaction tax

The existing provisions of section 98 of the Finance (No.2) Act, provide that the Securities Transaction Tax shall be charged in respect of the following transactions at the rates 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.

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) @ 0.125% 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) @ 0.125 % 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) @ 0.025% 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) @ 0.017%, on the value of transactions of derivatives being option or future, entered in a recognised stock exchange,

(v) @ 0.25% on the value of transactions of sale of units of an equity-oriented fund to the mutual fund.

This amendment will take effect from 1st June, 2006. [*Clause 76*]