FINANCE BILL, 2008

PROVISIONS RELATING TO DIRECT TAXES

Introduction

The provisions of the Finance Bill, 2008 relating to direct taxes seek to amend the Income-tax Act, inter alia, with a view to,-

(i) restructuring the personal income tax slabs by lowering the burden on the individual taxpayers significantly so as to enhance productivity and revenue contribution through improved compliance;

(ii) streamline tax administration business processes so as to reduce transaction costs and facilitate voluntary compliance by leveraging capabilities of the direct tax administration to identify non-compliance;

(iii) providing impetus for growth in trade, commerce and industry;

(iv) enhancing research and development capacity in the economy through calibrated tax incentives;

(v) providing appropriate incentives to enable self-financing of old age security through the mechanism of reverse mortgage of residential house and health insurance;

(vi) reducing the ex-ante cost of equity capital by lowering the cascading effect of dividend distribution tax;

(vii) rationalising the capital gains tax regime for equity so as to reduce the tax induced bias against distribution of corporate profit; and

(viii) encouraging the growth of the corporate debt market by eliminating TDS on interest on corporate bonds so as to facilitate seamless transactions.

2. The Finance Bill, 2008 seeks to prescribe the rates of income-tax on incomes liable to tax for the assessment year 2008-09, the rates at which tax will be deductible at source during the financial year 2008-09 from interest (including interest on securities), winnings from lotteries or cross-word 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 2008-09.

3. Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, changes in the provisions of the tax laws are ordinarily proposed to be prospective in their operation.

4. The substance of the main provisions of 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 2008-09.

In respect of income of all categories of assessees liable to tax for the assessment year 2008-2009, 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, 2007, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases.

(1) Surcharge on income-tax-

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 artificial juridical person, the tax so computed shall be enhanced by a surcharge of ten per cent. on all levels of income.

In the case of local authority and co-operative society, no surcharge shall be levied.

In the case of every firm and domestic company, surcharge at the rate of ten per cent. shall be levied only in cases where the total income exceeds one crore rupees. In the case of every company, other than a domestic company, surcharge at the rate of two and one-half per cent. shall be levied only in cases where the total income exceeds one crore rupees. However, marginal relief shall be allowed in all these cases to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.

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

(2) Surcharge on fringe benefit tax-

In respect of fringe benefits chargeable to tax under section 115WA of the Income Tax Act, surcharge shall be levied as follows-

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

(b) in the case of every firm, artificial juridical person and domestic company, at the rate of ten per cent. of the amount of tax, irrespective of the amount of fringe benefits.

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

(3) Education cess-

Additional surcharge called the "Education Cess on Income-tax" shall continue to be levied at the rate of two per cent. on the amount of tax and surcharge, if any, in all cases. In addition, the additional surcharge called "Secondary and Higher Education Cess on income-tax" shall also continue to be levied at the rate of one per cent. on the amount of tax and surcharge, if any, in all cases. No marginal relief shall be available in respect of such Cess.

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

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

(1) Surcharge-

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

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

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

iii) in the case of every firm and domestic company, at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

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

No surcharge shall be levied in the case of any cooperative society or local authority.

(2) Education Cess-

The additional surcharge, called the "Education Cess on income-tax" shall continue to be levied for the purposes of the Union at the rate of two per cent. of income-tax and surcharge, if any, in all cases. Further, the additional surcharge, called the "Secondary and Higher Education Cess on income-tax" shall continue to be levied for the purposes of the Union at the rate of one per cent. of income-tax and surcharge, if any, 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 2008-09.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2008-09 and also for computation of "advance tax" payable during the said year in the case of all categories of assessees 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 2008-09 on current incomes in cases where accelerated assessments have to be made. For instance, 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, assessment of bodies formed for a short duration etc.

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

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

The rates of income-tax in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) have been specified in Paragraph A of Part III.

The basic exemption limit is proposed to be increased from Rs. 1,10,000/- to Rs. 1,50,000/-. Accordingly, the new rates of income-tax on total income in such cases shall be as under-

Upto Rs. 1,50,000/-	Nil.
Rs. 1,50,001/- to Rs. 3,00,000/-	10 per cent.
Rs. 3,00,001/- to Rs. 5,00,000/-	20 per cent.
Above Rs. 5,00,000/-	30 per cent.

In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year, the exemption limit is proposed to be raised from Rs. 1,45,000/- to Rs. 1,80,000/-. The new rates of income-tax on total income in such cases shall be as under-

Upto Rs. 1,80,000/-	Nil.
Rs. 1,80,001/- to Rs. 3,00,000/-	10 per cent.
Rs. 3,00,001/- to Rs. 5,00,000/-	20 per cent.
Above Rs. 5,00,000/-	30 per cent.

In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, the exemption limit is proposed to be raised from Rs. 1,95,000/- to Rs. 2,25,000/-. The new rates of income-tax on total income in such cases shall be as under-

Upto Rs. 2,25,000/-	Nil.
Rs. 2,25,001/- to Rs. 3,00,000/-	10 per cent.
Rs. 3,00,001/- to Rs. 5,00,000/-	20 per cent.
Above Rs. 5,00,000/-	30 per cent.

The amount of income-tax computed shall, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, having total income exceeding ten lakh rupees shall be increased by a surcharge for purposes of the Union calculated at the rate of ten percent 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 referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, the amount of income-tax computed shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

Further, in the case of every association of persons and body of individuals, surcharge will be levied at the existing rates on tax on fringe benefits, where the fringe benefits exceed ten lakh rupees.

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 will continue to be the same as those specified for assessment year 2008-09. 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 will continue to be the same as that specified for assessment year 2008-09.

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

Surcharge will be levied at the existing rates on tax on fringe benefits, irrespective of the amount of fringe benefits.

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the assessment year 2008-09. No surcharge shall be levied.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the assessment year 2008-09.

It has further been provided that the amount of income-tax computed shall, in the case of every domestic company having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income tax. In the case of every company, other than a domestic company, having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income tax.

However, in such cases, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Surcharge will be levied at the existing rates on tax on fringe benefits, irrespective of the amount of fringe benefits.

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, if any, in all cases. Further, the additional surcharge, called the "Secondary and Higher Education Cess", shall also continue to be levied at the rate of one per cent. of income-tax and surcharge, if any, (not including the education cess) in all cases. [*Clause 2*]

WIDENING OF TAX BASE

Sunset provision for deduction for refining of mineral oil under section 80-IB(9)

Sub-section (9) of section 80-IB provides for a hundred percent deduction of profits and gains derived from commercial production or refining of mineral oil. For the purpose of this section, the term 'mineral oil' does not include petroleum and natural gas, unlike in other sections of the Act.

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

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

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

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

This amendment will take effect from the 1st day of April, 2008. [*Clause 15*]

Commodities Transaction Tax

A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered in a recognized association.

It is proposed to define 'Taxable commodities transaction' to mean a transaction of purchase or sale in a recognised association of –

(i) option in goods; or

(ii) option in commodity derivative; or

(iii) any other commodity derivative.

The tax is proposed to be levied at the rate, given in the Table below, on taxable commodities transactions undertaken by the seller or the purchaser, as the case may be as indicated hereunder:-

S. No.	Taxable commodities transaction	Rate	Payable by
1.	Sale of an option in goods or an option in commodity derivative.	0.017 per cent on option premium	Seller
2.	Sale of an option in goods or an option in commodity derivative, where option is exercised.	0.125 per cent on the settlement price of the option.	Purchaser
3.	Sale of any other commodity derivative	0.017 per cent of the price at which the commodity derivative is sold.	Seller

The provisions with regard to collection and recovery of CTT, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution, filing of appeal, power to the Central Government, etc. have also been provided.

This tax is proposed to be levied from the date on which Chapter VII of the Finance Bill, 2008 comes into force by way of notification in the Official Gazette by the Central Government.

Further, it is proposed to amend section 36 of the Income-tax Act to provide that any amount of commodities transaction tax paid by the assessee during the year in respect of taxable commodities transactions entered into in the course of business shall be allowed as deduction subject to the condition that such income from taxable commodities transactions is included under the head ‘profits and gains of business or profession’.

This amendment in section 36 of the Income-tax Act will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clauses 7,97 to 116*]

WELFARE MEASURES

Amendment to give effect to reverse mortgage scheme

The Finance Minister, in paragraph 89 of his speech, while presenting the Union Budget, 2007-08, had announced that the National Housing Bank (NHB) will introduce a reverse mortgage scheme for senior citizens. In pursuance of this announcement, some of the banks have already formulated scheme for reverse mortgage.

In the context of the aforesaid scheme, it was necessary to resolve the tax issues arising therefrom. The first issue is whether mortgage of property for obtaining a loan under the reverse mortgage scheme is transfer within the meaning of the Income-tax Act thereby giving rise to capital gains. Section 2(47) of the Income-tax Act provides an inclusive definition of ‘transfer’. Further, ‘transfer’ within the meaning of the Transfer of Properties Act includes some types of mortgage. Therefore, a mortgage of property, in certain cases, is a transfer within the meaning of section 2(47) of the Income-tax Act. Consequently, any gain arising upon mortgage of a property may give rise to capital gains under section 45 of the Income-tax Act. However, in the context of a reverse mortgage, the intention is to secure a stream of cash flow against the mortgage of a residential house and not to alienate the property. It is therefore proposed to insert a new clause (xa) in section 47 of the Income-tax Act to provide that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be regarded as a transfer and therefore shall not attract capital gains tax.

The second issue is whether the loan, either in lump sum or in instalment, received under a reverse mortgage scheme amounts to income. Receipt of such loan is in the nature of a capital receipt. However with a view to providing certainty in the tax regime to the senior citizen, it is proposed to amend section 10 of the Income tax Act to provide that such loan amounts will be exempt from income tax.

Consequent to these amendments, a borrower, under a reverse mortgage scheme, will be liable to income tax (in the nature of tax on capital gains) only at the point of alienation of the mortgaged property by the mortgagee for the purposes of recovering the loan.

These amendments will take effect from the 1st day of April, 2008 and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years. [*Clauses 4,11*]

Enlargement of the scope of eligible saving instruments under section 80C

Section 80C of the Income-tax Act provides for a deduction of upto rupees one lakh to an individual or a Hindu undivided family (HUF) for,-

(i) making investments in certain saving instruments; or

(ii) incurring expenditure on tuition fee and repayment of housing loan.

With a view to encourage small savings, it is proposed to enlarge the scope of eligible saving instruments by inserting two new clauses in sub-section (2) of section 80C. The following investments made by the assessee, during the previous year, shall be eligible for deduction under section 80C within the overall ceiling of rupees one lakh:-

(i) five year time deposit in an account under Post Office Time Deposit Rules, 1981; and

(ii) deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.

Further, it is also proposed to provide that where any amount is withdrawn by the assessee from such account before the expiry of a period of 5 years from the date of its deposit, the amount so withdrawn shall be deemed to be income of the assessee of the previous year in which the amount is withdrawn. The amount so withdrawn, accordingly, shall be liable to tax in the assessment year

relevant to such previous year. The amount liable to tax shall also include that part of the amount withdrawn which represents interest accrued on the deposit. However if any part of the amount so received or withdrawn (including the amount relating to interest) has suffered taxation in any of the earlier years, such amount shall not be taxed again.

The proposed amendment shall apply to investments, as above, made during the financial year 2007-08 and subsequent years.

[*Clause 13*]

Additional deduction for health insurance premium paid for parents

Section 80D of the Income-tax Act provides for a deduction of up to fifteen thousand rupees to an assessee, being an individual or a Hindu undivided family. The deduction is allowed for making a payment to effect or keep in force an insurance on,-

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

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

In case the assessee or any other member of the family, on whose health the insurance has been effected or kept in force, is a senior citizen, the deduction allowed is up to twenty thousand rupees. The existing provisions also have the requirements that the payment must be through a mode other than cash and should be out of the taxable income of the assessee.

Since health insurance cover for the elderly comes at a relatively higher price, it is necessary to encourage individual assessees to supplement the efforts of their parents in getting themselves medically insured. Accordingly, it is proposed to allow an additional deduction of up to fifteen thousand rupees to an assessee, being an individual, on any payment made to effect or keep in force an insurance on the health of his parent or parents. The existing condition of 'dependent' with respect to parents is being dispensed with. This deduction shall be in addition to the existing deduction available to the individual assessee on medical insurance for himself, his spouse and dependent children.

Further, it is proposed that if either of the individual assessee's parents, who has been medically insured, is a senior citizen, the deduction would be allowed up to twenty thousand rupees.

For example, an individual assessee pays (through any mode other than cash) during the previous year medical insurance premia as under:

(i) Rs 12,000/- to keep in force an insurance policy on his health and on the health of his wife and dependent children;

(ii) Rs 17,000/- to keep in force an insurance policy on the health of his parents.

Under the proposed new provisions he will be allowed a deduction of Rs 27,000/- (Rs. 12,000/- + Rs. 15,000/-) if neither of his parents is a senior citizen. However, if any of his parents is a senior citizen, he will be allowed a deduction of Rs 29,000/- (Rs.12,000/- + Rs.17,000/-). Whether the parents are dependent or not, is not a consideration for deciding the deduction under the proposed new section.

Further, in the above example, if cost of insurance on the health of the parents is Rs 30,000/-, out of which Rs 17,000/- is paid(by any non-cash mode) by the son and Rs 13,000/- by the father (who is a senior citizen), out of their respective taxable income, the son will get a deduction of Rs 17,000/- (in addition to the deduction of Rs 12,000/- for the medical insurance on self and family) and the father will get a deduction of Rs 13,000/-.

This amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 14*]

RATIONALISATION AND SIMPLIFICATION MEASURES

Streamlining the definition of "charitable purpose"

Section 2(15) of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase "advancement of any other object of general public utility", it is proposed to amend section 2 (15) so as to provide that "the advancement of any other object of general public utility" shall not be a charitable purpose if it involves the carrying on of –

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

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

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

This amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years. [*Clause 3*]

Extending the provision of section 35D relating to amortization of preliminary expenses to all undertakings

Section 35D provides for deduction of certain specified preliminary expenses. The deduction is allowed on an amount equal to one fifth of such expenditure for five successive previous years. The preliminary expenses relate either to the period before the commencement of the business or after. However, if preliminary expenses relate to a period after the commencement of the business, such expenses are only allowed if they are in relation to the extension of an industrial undertaking or the setting up of a new industrial unit.

With a view to providing a level playing field to the services sector, it is necessary to extend to the service sector, the same benefit of amortization of specified post-commencement preliminary expenses as is available to the manufacturing sector for the extension of an undertaking or the setting up of a new unit. Therefore, it is proposed to amend section 35D accordingly.

The amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 6*]

Amendment of provisions relating to dividend distribution tax

Section 115-O relates to tax on distributed profits of domestic companies. Sub-section (1) of the section provides that tax on distributed profits at the rate of fifteen per cent. shall be levied on any amount declared, distributed or paid by a domestic company to its shareholders by way of dividends.

With a view to help domestic companies to efficiently structure their business, it has been decided to mitigate the cascading effect of dividend distribution tax upto one level. Accordingly, it has been proposed that the amount of dividend referred to in sub-section (1) will be reduced by the amount of dividend received by the domestic company from its subsidiary, if

(a) the subsidiary has paid tax under section 115-O on such dividend, and

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

It is also provided that the same amount of dividend shall not be taken into account for such reduction, more than once. For the purpose of the section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

This amendment will take effect from the 1st day of April, 2008. [*Clause 21*]

RATIONALISATION OF PROVISION OF TAX DEDUCTION AND COLLECTION AT SOURCE

Enlargement of scope of TDS under section 194C to cover association of persons and body of individuals

Sub-section (1) of section 194C of the Income-tax Act inserted by the Finance Act, 1972 provides for deduction of income-tax at source from any sum credited or paid to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Government, local authorities, statutory corporations, companies, co-operative societies, statutory authorities engaged in providing housing accommodation, registered societies, trusts, universities, firms and those individuals/HUFs who are required to get their accounts audited under section 44AB.

A number of Special Purpose Vehicles (SPVs) are being set-up to execute large works contracts Some of these SPVs are structured as Joint Ventures(JVs)/Consortiums in the nature of an Association of Persons (AOP) or Body of Individuals (BOI). Since the provisions of section 194C currently do not specifically require an AOP or BOI to deduct tax at source, there is scope for leakage of revenue. Therefore, the amendment proposes to provide that any association of persons or body of individuals, whether incorporated or not shall be liable to deduct income-tax at source under sub-section (1) of section 194C.

The amendment will take effect from the 1st day of June, 2008. [*Clause 40*]

Provision for furnishing of information regarding deduction of tax at source under section 195

Sub-section (1) of section 195 requires any person responsible for paying any interest or any other sum chargeable to tax (except dividends and income under the head “salaries”) to a non-resident or to a foreign company, to deduct tax at source at the rates in force. Payments to a non-resident by way of royalty and payments for technical services are examples of sums chargeable to tax on which tax is required to be deducted at source under this section.

Currently, the person making the remittance is required to furnish an undertaking (in duplicate) addressed to the Assessing Officer accompanied by a certificate from an Accountant in a specified format. This undertaking and certificate is submitted to the Reserve Bank of India or its authorized dealers who in turn are required to forward a copy to the Assessing Officer.

The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from the non-residents. There has been substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, it is proposed to introduce e-filing of the information in the certificate and undertaking. The amendment therefore, proposes to provide that the person responsible for deduction of income tax shall furnish the information relating to payment of any sum to the non-resident or to a foreign company in a form and manner to be prescribed by the Board.

This amendment will take effect from the 1st day of April, 2008. [*Clauses 41,54*]

Amendments to the provisions of Dematerialisation of TDS and TCS certificates

A scheme for dematerialisation of Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS) certificates was introduced through the Finance (No. 2) Act, 2004, with effect from 01-04-2005 for any deduction or collection of tax at source made on or after 1-04-2005. The commencement of this scheme was postponed to 1-4-2006 by the Finance Act, 2005 and later to 1-4-2008 by the Finance Act, 2006. Since the national level information technology infrastructure of the Income-tax Department is not yet operational, it is proposed to extend the commencement of the scheme to 1-04-2010.

The system of allowing credit to the assessee for TDS/TCS needs a certain degree of flexibility considering the ongoing technological and business process changes. Providing rigorous conditions regarding the method of giving credit for TDS/TCS in the Act itself, makes the system difficult to restructure and implement according to the changing technological environment. In view of this, it is proposed to substitute section 199 and section 206C(4) so that the manner in which credit of TDS/TCS is to be given will be governed by Rules to be framed under section 199 & section 206C(4) i.e. the Board may make such rules as may be necessary for the purpose of giving credit in respect of TDS/TCS or tax paid by employer on perquisite under section 192(1A).

These amendments will take effect from the 1st day of April, 2008. [*Clauses 27, 42, 44, 45*]

Removal of TDS on Corporate Bonds.

Section 193 of the Income-tax Act provides for deduction of tax at source (TDS) on any income by way of interest on securities payable to a resident.

In order to facilitate development of the corporate bond market for improving the availability of finances for infrastructure development, it is proposed to remove TDS on any interest payable to a resident on any security issued by a company where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder.

This amendment will take effect from the 1st day of June, 2008. [*Clause 39*]

MEASURES TO PROMOTE SCIENTIFIC RESEARCH AND DEVELOPMENT

Weighted deduction for sum paid to a company to be used by such company for scientific research

Section 35(1)(ii) of the Income-tax Act, provides for weighted deduction to a payer, to the extent of 125 per cent of the sum paid to an approved scientific research association, approved university, college or other institution to be used for scientific research subject to certain other specified conditions.

With a view to encouraging outsourcing of scientific research, particularly by small companies which are handicapped in making lumpy investment for building in-house scientific facilities, it is proposed to insert a new clause (iia) in sub-section (1) of section 35 of the Income-tax Act to allow a weighted deduction of 125 per cent of the amount paid by a person to a company to be used for scientific research, if such company -

(i) is registered in India;

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

(iii) is for the time being approved by the prescribed authority in the prescribed manner; and

(iv) fulfills such other conditions as may be prescribed.

However, with a view to avoid multiple claims for deduction, it is also proposed to provide that a company approved under the provisions of section 35(1)(iia) will not be entitled to claim weighted deduction of 150% under section 35(2AB). However, deduction to the extent of 100% of the sum spent as revenue expenditure on scientific research which is available under section 35(1)(i) will continue to be allowed.

These amendments will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 5*]

MEASURES TO PROMOTE SOCIO-ECONOMIC DEVELOPMENT

Widening the scope of "agricultural income"

"Agricultural income" is defined in section 2(1A) of the Act to mean, *inter-alia*, income derived from land which is situated in India and is used for agricultural purposes. Such agricultural income is exempt from tax under section 10(1) of the Income-tax Act, 1961 ('Act').

It has been held by judicial authorities that whether income from nursery operations constitutes agricultural income or not, will depend on the facts of each case. If the nursery is maintained by carrying out basic operations on land and subsequent operations are carried out in continuation of the basic operations, then income from such nursery would be agricultural income not liable to tax under section 10. However, if the nursery is maintained independently without resorting to basic operations on land, then income from such nursery would not be agricultural income and would be liable to be included in the total income.

With a view to giving finality to the issue, it is proposed to amend section 2(1A) so as to provide that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Accordingly, irrespective of whether the basic operations have been carried out on land, such income will be treated as agricultural income, thus qualifying for exemption under section 10(1) of the Act.

This amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years. [*Clause 3*]

Exemption to a "Sikkimese" individual

Section 10 of Income-tax Act relates to incomes which do not form part of total income.

It is proposed to insert a new clause (26AAA) in section 10 to provide that the following income, which accrues or arises to a Sikkemese individual, shall be exempt from income-tax –

(a) income from any source in the State of Sikkim; or

(b) income by way of dividend or interest on securities

It is also proposed to provide that this exemption will not be available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual.

The *Explanation* to the clause defines the term "Sikkimese" based on the Sikkim Subjects Regulation, 1961 read with Sikkim Subject Rules, 1961 and subsequent Government orders issued in this regard.

This amendment will take effect retrospectively from the 1st day of April, 1990 and will accordingly apply in relation to assessment year 1990-1991 and subsequent assessment years. [*Clause 4*]

Exemption of income of Coir Board

Section 10 (29A) provides that any income of certain specified commodity boards and export development authorities shall be exempt from income tax. It is proposed to allow a similar exemption in respect of any income accruing or arising to the Coir Board established under the Coir Industry Act, 1953.

This amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years. [*Clause 4*]

Extension of income tax exemption to Special Undertaking of Unit Trust of India (SUUTI)

The Special Undertaking of Unit Trust of India (SUUTI) was created vide The Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. SUUTI is the successor of UTI. The mandate of SUUTI is to liquidate government liabilities on account of the erstwhile UTI.

Vide section 13 (1) of the Repeal Act, SUUTI is exempt from income-tax or any other tax on any income, profits or gains derived, or any amount received in relation to the specified undertaking for a period of five years, computed from the appointed day, i.e. 1st day of February, 2003. This exemption has come to an end on 31st January, 2008.

Since two schemes of SUUTI, namely, US 64 bonds and 6.6% ARS bonds, are still pending closure, it is proposed to amend section 13 (1) so as to extend the exemption upto 31st March, 2009.

This amendment will take effect retrospectively from 1st February, 2008. [*Clause 118*]

Five year tax holiday to hospitals located in certain areas

Sub-section (11B) of section 80-IB provides a tax holiday for five consecutive assessment years, beginning from the initial assessment year, to an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area. The undertaking is required to fulfill certain conditions specified in the said sub-section. One of the conditions is that the hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008.

With a view to encouraging investment in hospitals in non-metro cities, it is proposed to extend the benefit of this sub-section to hospitals located anywhere in India, other than the excluded area. Hence, it is proposed to insert a new sub-section (11C) in the said section 80-IB. The proposed new sub-section, inter-alia, seeks to provide that,-

(i) the tax benefit shall be with respect to the profit derived from the business of operating and maintaining a hospital for a period of five consecutive assessment years, beginning from the initial assessment year;

(ii) the tax benefit will be available to hospital which is constructed and has started or start functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;

(iii) the excluded area shall mean an area comprising the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar and Gandhinagar and the city of Secunderabad;

(iv) the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.

Other existing conditions of sub-section (11B) of section 80-IB have also been incorporated in the proposed new sub-section.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 15*]

Five year tax holiday for hotels located in specified districts having a World Heritage Site.

Section 80-ID of the Income-tax Act provides for a five year tax holiday to new hotels of two, three and four star categories and convention centres. It is a requirement that such hotel must be constructed and has started or starts functioning at any time during the period beginning on the 1st day of April,2007 and ending on the 31st day of March, 2010. Further, such convention centre must be constructed at any time during the above specified period. The tax holiday is available to profits derived from the business of hotels or convention centres for five consecutive assessment years beginning from the initial assessment year. For availing the above benefit, the hotel or convention centre should be located in the specified area. The specified area has been defined as the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.

With a view to promoting tourism and to attract tourists to certain World Heritage Sites in India, it is proposed to extend the scope of tax benefits available in this section also to new two-star, three-star or four-star category hotels located in specified districts having a World Heritage Site. Such hotels are required to be constructed and start functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013. Specified districts having a World Heritage Site are proposed to be the districts of Agra, Jalgaon, Aurangabad, Kancheepuram, Puri, Bharatpur, Chhatarpur, Thanjavur, Bellary, South 24 Parganas (excluding areas falling within the Kolkata Urban Agglomeration on the basis of the 2001 census), Chamoli, Raisen, Gaya, Bhopal, Panchmahal, Kamrup, Goalpara, Nagaon, North Goa, South Goa, Darjeeling and Nilgiri.

Other conditions, already specified in this section, shall also be applicable to the new hotels.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 16*]

MEASURES FOR ADDITIONAL REVENUE MOBILISATION

Increase in tax rates for Short Term Capital Gain

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

It is proposed to increase the rate of tax on such short-term capital gain to fifteen percent.

These amendments will take effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clauses 18, 19*]

MEASURES TO PLUG REVENUE LEAKAGES

Amendment to the provisions of section 40A(3) of the Income-tax Act,

Section 40A(3)(a) of the Income-tax Act, 1961 provides that any expenditure incurred in respect of which payment is made in a sum exceeding Rs.20,000/- otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft, shall not be allowed as a deduction. Section 40A(3)(b) also provides for deeming a payment as profits and gains of business or profession if the expenditure is incurred in a particular year but the payment is made in any subsequent year in a sum exceeding Rs. 20,000/- otherwise than by an account payee cheque or by an account payee bank draft. However, the provisions of this section are subject to exceptions as provided in Rule 6DD of the Income-tax Rules, 1962.

Section 40A(3) is an anti tax-evasion measure. By requiring payments to be made by an account payee instrument, it is possible to verify the genuineness of the transaction thereby mitigating the risk of evasion. It has come to notice that the provisions of section 40A(3) are being circumvented by splitting a particular high value payment to a person into several cash payments, each below Rs. 20,000/-. This splitting is also resorted to for payments made in the course of a single day. Courts have also held that the statutory limit in section 40A(3) applies to payment made to a party at one time and not to the aggregate of the payments made to a party in the course of the day as recorded in the cash book. According to the judicial opinion, the words used are 'in a sum', i.e., single sum. Therefore, irrespective of any number of transactions, where the amount does not exceed the prescribed amount in each transaction, the rigours of section 40A(3) will not apply.

To overcome the splitting of payments to the same person made during a day as referred above and to increase the efficacy of the provision, the amendment seeks to substitute the present provision to provide that where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, the disallowance of such expenditure shall be made under the proposed sub-section (3) of section 40A or the payment shall be deemed to be the profits and gains of business or profession under the proposed sub-section (3A) of section 40A, as the case may be.

To illustrate with an example, let us assume a taxpayer has incurred an expenditure of Rs 40,000/-. The taxpayer makes separate payments of Rs 15,000/-, Rs 16,000/- and Rs 9,000/- all by cash, to the person concerned in a single day. The aggregate amount of payment made to a person in a day, in this case, is Rs 40,000/-. Since, the aggregate payment by cash exceeds Rs 20,000/-, Rs. 40,000/- will not be allowed as a deduction in computing the total income of the taxpayer in accordance with the proposed amendment.

The proviso to the proposed sub-section (3A) provides that in certain prescribed cases and circumstances the provisions of proposed sub-sections (3) and (3A) shall not apply.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clause 9*]

RATIONALISATION AND SIMPLIFICATION OF ADMINISTRATIVE AND COMPLIANCE PROCEDURES

Advancement of due date from 31st October to 30th September in respect of certain categories of assessees.

Section 139 provides for filing of return of income by certain categories of assessees. Due dates, for filing such return of income in respect of different categories of assesses, have been provided in Explanation 2 to sub-section (1) of this section.

Under clause (a), the due date has been prescribed as 31st day of October of the assessment year for the following categories of assessees:-

(i) a company;

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force.

It is proposed to amend the said clause (a) of this Explanation, so as to provide that the due date for filing of return of income for the above categories of assessees shall be 30th day of September of the assessment year.

Similarly, the due date for filing of return of fringe benefits, provided in clause (a) of the Explanation to sub-section (1) of section 115WD, is also proposed to be advanced from 31st day of October of the assessment year to 30th day of September of the assessment year in the following categories of assessees:-

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force.

There is no change in the due date of filing of returns in the case of all other categories of taxpayers.

These amendments will take effect from 1st April, 2008. [*Clauses 24, 27*]

Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralised Processing of Returns

Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income.

In India, the scheme of summary assessment being in force since the 1st day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss.

With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return:-

(a) any arithmetical error in the return; or

(b) an incorrect claim, if such incorrect claim is apparent from any information in the return.

Further it is proposed to clarify the meaning of the term "an incorrect claim apparent from any information in the return". This term shall mean such claim on the basis of an entry, in the return, –

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;

(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished under this Act; or

(c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

Further, these adjustments will be made only in the course of computerized processing without any human interface. In other words, the software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income. For this purpose the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this, it is also proposed that –

(a) the Board may formulate a scheme with a view to expeditiously determine the tax payable by, or refund due to, the assessee;

(b) the Central Government may issue a notification in the Official Gazette, directing that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such restrictions, modifications and adaptations as may be specified in the notification. However, such direction shall not be issued after 31st March 2009.

(c) every notification shall be laid before each House of Parliament as soon as such notification is issued. Along with the notification, the scheme referred above is also required to be laid before each House of Parliament.

Similar amendment has also been proposed in section 115WE of the Income-tax Act, relating to fringe benefits.

These amendments will take effect from 1st April, 2008. [*Clauses 25, 29*]

Provision for assessment in the case of annulment of the proceeding under section 153A

Under the Income-tax Act, whenever a search is conducted under section 132 or books of account or other documents or any assets are requisitioned under section 132A, provision of section 153A comes into operation. This section, inter-alia, provides for assessment or reassessment of total income in respect of each assessment year falling within a period of six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or books of account, etc are requisitioned. Time limit for completion of such assessment or reassessment is provided in section 153B.

At present, there are a number of question relating to revival of proceedings and time limits which remain ambiguous. With the view to providing clarity and reducing disputes, It is proposed to amend the Income tax Act to provide that-

(I) if any proceeding initiated under section 153A or any order of assessment or reassessment made under sub-section (1) of this section has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived and if such order of annulment is set aside, such revival shall cease to have effect.

(ii) that time limit for completion of such assessment or assessment shall be one year from the end of the month in which the abated assessment revives or within the period already specified in section 153 or in sub-section (1) of section 153B, whichever is later

(iii) the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A till the date of the receipt of the order setting aside the order of such annulments by the Commissioner, shall be excluded in computing the period of limitation for the purposes of this section.

To illustrate, suppose, in the case of an assessee, a search proceeding under section 132 is initiated on 10th April, 2007. The last of authorization related to this search is also issued during the financial year 2007-08. As on the date of the search, assessment for assessment year 2005-06 was pending. In the given situation,-

- in accordance with the provision of second proviso to renumbered sub-section (1) of section 153A, the assessment for assessment year 2005-06 shall abate;
- assessment or reassessment with respect to each of the six assessment year, i.e., from assessment year 2002-03 to assessment year 2007-08 shall be required to be made under first proviso to renumbered sub-section (1) of section 153A; and
- the time limit for completion of these assessments shall be 31st December, 2009 under clause (a) of sub-section (1) of section 153B.

Let us assume that the proceeding under section 153A is annulled in an appeal or legal proceeding by an order dated 3rd August, 2007 which is received by the Commissioner on 29th August, 2007. In such a situation,-

- the assessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08), if already completed under first proviso to renumbered sub-section (1) of section 153A, shall automatically become annulled due to this order;
- no order of assessment or reassessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08) can be made under first proviso to renumbered sub-section (1) of section 153A as the proceeding under section 153A has been annulled;
- the proceeding for assessment year 2005-06 which has been abated under second proviso to renumbered sub-section (1) of section 153A, shall revive under new sub-section (2); and
- the order in respect of this assessment can be made at any time before 31st December, 2007 (normal time limit under section 153) or 31st August, 2008 [new time limit under sub-section (4) of section 153], whichever is later.

Let us now assume that this order of annulment has been set aside and such order has been received by the Commissioner on 3rd February, 2008. In such a situation,-

- the assessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08), if already completed under first proviso to renumbered sub-section (1) of section 153A, shall automatically get revived as the proceeding under section 153A has got revived;
- order of assessment or reassessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08), if not already made, can now be made under first proviso to renumbered sub-section (1) of section 153A as the proceeding under section 153A has got revived;
- the time limit for making such order of assessment or reassessment, which was 31st December, 2009 under clause (a) of sub-section (1) of section 153B, shall get extended by a period starting from 3rd August, 2007 and ending on 3rd February, 2008 (i.e., six months) under the provision of new clause (vii) in *Explanation* occurring after sub-section (1) of section 153B; and
- the proceeding for assessment year 2005-06 which had got revived under new sub-section (2) of section 153A will again get abated due to the provision of its proviso. If assessment order has already been made with respect to this assessment proceeding, that assessment order will get annulled automatically.

These amendments will take effect retrospectively from 1st June, 2003. [*Clauses 32, 33, 34, 35, 36*]

Granting of power to the assessing officer to extend the time for completion of special audit under sub-section (2A) of section 142

Sub-sections (2A) to (2D) of section 142 deal with power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue.

Sub-section (2C) of the said section specifies the period within which the audit report is to be furnished. The proviso to said sub-section empowers the Assessing Officer to extend this period of furnishing of audit report. Further, it is also provided that the aggregate of the originally fixed period and the period(s) so extended shall not exceed 180 days from the date of issuance of direction of special audit. Further, such extension can be made only when an application is made in this behalf by the assessee and there are good and sufficient reason for such extension.

It is proposed to amend the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report *suo motu.* Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

The amendment will take effect from 1st April, 2008. [*Cause 28*]

Extension of time limit set out in Rule 3 for complying with the condition laid down in Clause (ea) of Rule 4 of Part A of the Fourth Schedule to the Income-tax Act

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

Rule 3 of Part A of the Fourth Schedule 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.

The proviso to sub-rule (1) of the said rule 3, inter-alia, specifies that in a case where recognition has been accorded to any provident fund on or before 31st day of March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st day of March, 2008, the recognition to such fund shall be withdrawn. One of the requirements of this clause (ea) of Rule 4 is that the establishment shall obtain exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF&MP Act)

With a view to provide further time to Employees' Provident Fund Organization (EPFO) to decide on the pending applications seeking exemption under section 17 of the EPF&MP Act, it is proposed to amend the said proviso, so as to extend the time limit by one more year i.e., from 31st day of March, 2008 to 31st day of March, 2009.

This amendment will take effect from 1st April 2008. [*Clause 55*]

Satisfaction for initiation of penalty under section 271 (1)

Sub-section (1) of section 271 of the Income-tax Act empowers the Assessing Officer to levy penalty for certain offences listed in that sub-section. It is a requirement that the Assessing Officer is required to be satisfied before such a penalty is levied.

There is a considerable variance in the judicial opinion on the issue as to whether the Assessing Officer is required to record his satisfaction before issue of penalty notice under this sub-section. Some judicial authorities have held that such a satisfaction need not be recorded. However, Hon'ble Delhi High Court in the case of CIT Vs. Ram Commercial Enterprises Ltd. (246 ITR 568) has held that such a satisfaction must be recorded by the assessing officer.

Given the conflicting judgements on the issue and the legislative intent, it is imperative to amend the Income tax Act to unambiguously provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment; and such order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the assessing officer for initiation of penalty proceedings under sub-section (1).

Similar amendment has also been proposed in the Wealth-tax Act.

These amendments will take effect retrospectively from 1st April, 1989. [*Clauses 48, 58*]

Service of notice and the time limit for issuance of notice under section 143 (2) of the Income-tax Act

Sub-section (2) of section 143 of the Income-tax Act provides that the notice under this sub-section shall be served on the assessee within a period of twelve months from the end of the month in which the return is furnished. Further, the service of such notice must be affected in a manner laid down in sections 282, 283 and 284 of the Income-tax Act, read with General Clauses Act.

Instances have come to the notice of the department, where notices under sub-section (2) of section 143, though issued by registered post within twelve months from the end of the month in which the return was furnished, have been held 'invalid' on the ground that the notice was actually received by the assessee after the limitation date and there was no 'service' as postulated under the section. This is notwithstanding the fact that the assessee has attended the assessment proceedings in response to the notice served on him. Instances have also come to notice where the orders of the assessing officer is being quashed on the consideration that there is no evidence of issue or service of notice, even though the assessee and his authorized representative have attended the hearing before the Assessing Officer during the assessment proceedings. Further, the design of the limitation period with reference to the end of the month leads to administrative inconvenience in as much as the last day of every month becomes a time barring date.

In order to address these issues and to reduce litigation, it is proposed to insert a new section 292BB in the Income-tax Act to provide that where an assessee has appeared in any proceeding or cooperated in any inquiry related to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was, -

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner.

Similar amendment is also proposed in the Wealth-tax Act.

Further, it is also proposed to amend clause (ii) of sub-section (2) of section 143 to provide that the notice under sub-section (2) of section 143 shall be served on the assessee within a period of six months from the end of the financial year in which the return is furnished.

This amendment will take effect from 1st April, 2008. [*Clauses 29, 52*]

Presumption as to books of accounts, other documents, etc.

Section 292C of the Income-tax Act provides for a rebuttable presumption with respect to books of account, other documents, money, bullion, jewellery or other valuable article or thing found in the possession or control of any person in the course of a search under section 132.

It is proposed to amend section 292C of the Income-tax Act, so as to extend this presumption also to books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation. This amendment will take effect retrospectively from 1st June, 2002.

Further, it is proposed to amend the said section so as to extend this presumption also to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A. This amendment will take effect retrospectively from 1st October, 1975.

It is also proposed to amend section 42D of the Wealth-tax Act to extend this presumption to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 37B of the Wealth-tax Act. This amendment will take effect retrospectively from 1st October, 1975. [*Clauses 53, 62*]

Authentication of documents/notices/letters

The demand on the tax administration has been growing on account of increase in the volume of work. The widening and deepening of the tax base has resulted in substantial increase in the number of taxpayers. To cope with the sheer volume of work and render timely service to the taxpayer, the Department has been increasingly using information technology in its major processes and procedures. A case in point is the scheme of 'e-filing of the returns'. There are also other important project like 'refund banker', e-payment of taxes, etc. These schemes are expected to enhance the level of taxpayers' service, which in turn is expected to result in increased voluntary compliance.

Centralized processing of returns and centralized issuance of notices using information technology is critical to quality taxpayers' service. In order to successfully implement these schemes, it is necessary to dispense with the signature of the officer and to use a common seal. The introduction of such common seal in respect of issue of notices, intimations, etc., would be significant step in minimizing taxpayers interface with the Department. Further, it will considerably reduce the discretion of the individual officer and will result in better accountability and compliance.

It is, therefore, proposed to insert a new section 282A in the Income-tax Act to provide that where any notice or other document is required to be issued, served or given, it shall be deemed to have been authenticated if the name and office of a designated income tax authority is printed, stamped or otherwise written thereon. It is also proposed to provide that for the purpose of this section, a designated income tax authority shall mean any income tax authority authorized by the Board for this purpose.

This amendment will take effect from the 1st June, 2008. [*Clause 51*]

Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit

There is a prescribed dispute resolution mechanism under the Income-tax Act. In this regard, the Central Board of Direct Taxes have issued instructions from time to time directing Departmental Officers to not file an appeal if the tax effect is less than the monetary limit prescribed by it.

The Hon'ble Supreme Court in M/s. Berger Paints India Ltd. Vs. CIT, Kolkata, (Civil appeal Nos. 1081 to 1083 of 2004) has held that if the revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge the correctness in the case of other assessees without just cause. Department's appeals are being dismissed by judicial authorities on the consideration that the disputed issue was not agitated in the case of the same assessee or in the case of any other assessee.

The underlying objective of Board's instruction is to reduce litigation in small cases. With a view to protecting the Revenue's right to file or not to file an appeal, It is proposed to insert a new section 268A so as to provide that –

- The Board may issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is to be for the purpose of regulating filing of appeal or application for reference by any income tax authority under the provisions of this Chapter.
- Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the Board, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –

  (a) the same assessee for any other assessment year; or

  (b) any other assessee for the same or any other assessment year.
- Where no appeal or application for reference has been filed by an income tax authority pursuant to the above mentioned orders/instructions/directions of the Board, it shall not be lawful for an assessee to contend that the income tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.
- The Appellate Tribunal or Court shall have regard to the above mentioned orders/ instructions/directions of the Board and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.
- Every order/instruction/direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) of this new section and all the provisions of this section shall apply to such order/instruction/direction.

This amendment will take effect retrospectively from 1st April, 1999. [*Clause 47*]

Capital gains on transfer in the context of foreign currency exchangeable bonds

In 1992, the Government allowed established Indian companies to issue foreign currency convertible bonds (FCCB), with special tax regime for non-resident investors, so as to encourage the flow of foreign exchange to India.

The Government has now allowed established Indian companies to issue foreign currency exchangeable bond (FCEB). These are bonds expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency. The FCEBs differ from FCCBs in as much as the latter can only be converted into shares of the issuing company, whereas FCEBs can also be converted into or exchanged for the shares of a group company. With a view to providing a level playing field to FCEBs, it is proposed to provide that the conversion of FCEBs into shares or debentures of any company shall not be treated as a 'transfer' within the meaning of Income-tax Act. Further it is also proposed to substitute sub-section (2A) of section 49 to provide that the cost of acquisition of the shares received upon conversion of the bond shall be the price at which the corresponding bond was acquired.

These amendments will take effect retrospectively from 1st April, 2008, and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years. [*Clauses 11, 12*]

CLARIFICATORY AMENDMENTS

Clarification regarding definition of written down value under section 43(6)

Clause (ii) of sub-section (1) of section 32 provides that depreciation shall be allowed at the prescribed percentage on the written down value (WDV) of any block of assets. Sub-clause (b) of clause (6) of section 43 provides that written down value in the case of assets acquired before the previous year means the actual cost to the assessee less all depreciation actually allowed to him under the Income-tax Act.

Some persons were exempt from tax and, therefore, not required to compute their income under the head "profits and gains of business or profession". Upon withdrawal of exemption, such persons became liable to income-tax and hence, required to compute their income for income-tax purposes. In this context, dispute has arisen on the basis for allowing depreciation under the Income-tax Act in respect of assets acquired during the years when it enjoyed exemption.

The Income Tax Appellate Tribunal has held that since there was no liability to tax, there was no occasion to compute the income of such person under the provisions of the Income-tax Act. Therefore, the depreciation provided in the books in the years when the income was exempt can not be treated as the depreciation "actually allowed". Accordingly, it was held that the actual cost of the asset was the written down value for the purposes of claiming depreciation under the Income-tax Act in the previous year in which such person first ceases to enjoy the income-tax exemption. This interpretation is not in conformity with the intent and purpose of the provisions of depreciation. Accordingly, it is proposed to amend section 43(6) to provide that,-

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

(b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax act for the purposes of section 43(6);

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

This amendment will take effect retrospectively from 1st April, 2003 and will accordingly apply in relation to assessment year 2003-04 and subsequent assessment years. [*Clause 10*]

Clarification regarding add back of 'deferred tax', 'dividend distribution tax', etc. for calculating book profit under section 115JB

Section 115JB of the Income-tax Act provides for levy of minimum alternate tax (MAT) on the basis of book profits of a company. As per the Explanation after sub-section (2), the expression "book profit" means net profit as shown in the profit and loss account prepared in accordance with the provisions of Part II and III of Schedule VI to the Companies Act, 1956 as increased or reduced by certain adjustments, as specified in that section. Clause (a) of the aforesaid Explanation, inter-alia, provides for increasing the book profits by income-tax paid or payable and the provisions therefor; if debited to profit and loss account.

The intention behind these add backs is that the items which mainly appear "below the line" in the profit and loss account should be added back to arrive at the "book profit" if they appear "above the line" in the profit and loss account. Section 115JB has not specifically provided for add back of some such "below the line" items like deferred tax, dividend distribution tax, etc. as they were thought to be included in the term "income-tax". However, there has been some ambiguity regarding add back of these items, if debited to profit and loss account.

With a view to clarifying the intention, it is proposed to insert a new clause after clause (g) of the Explanation 1 as so numbered so as to provide that the book profit shall be increased by the amount of deferred tax and the provision therefor, if debited to profit and loss account.

Further, it is also proposed to clarify that the amount of income tax shall include,-

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

(ii) any interest charged under this Act;

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

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

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

These amendments will take effect retrospectively from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent assessment years. [*Clause 20*]

Amendments in respect of reassessment proceedings to clarify correct legislative intention

The Income-tax Act empowers assessing officer to reopen a case under section 148 if he has reason to believe that any income has escaped assessment. Adequate safeguards have been provided so that such power of reopening is not arbitrarily used by the assessing officers. The issue of valid reopening of assessment has been a matter of dispute between the department and the taxpayers. Some of the judicial interpretations on the subject have been found to have a bearing on the legality of such reopening. Two of such judicial interpretations are given below:-

(i) One of the judicial interpretation on this issue is that if the order of the Assessing Officer has been interfered by the CIT (A) and further proceedings are pending before the ITAT, any notice under section 148 for the said assessment year is invalid. In the light of such interpretation, it may not be possible to issue notice under section 148 in any case which is pending before the ITAT/courts. Further, by the time the Tribunal or the court judgment is received, reopening of the case may be barred by limitation. Such a situation is not in conformity with legislative intent and some other judicial pronouncement. Infact, in one of the other judgement, it has been held that in a case where an assessment is made the subject of an appeal, only that part of assessing officer's order merges with the appellate authority's order in respect of which the appellate authority has exercised the appellate jurisdiction [CIT Vs. Sakseria Cotton Mills Ltd. 124 ITR 570 Bombay]. Hence, the legislative intent is clear that if an income has escaped assessment and which has not been subject matter of an appeal, reference or revision, notice under section 148 can be issued for assessment or reassessment of that income.

(ii) Section 151 of the Income-tax Act requires an assessing officer to seek the approval of the Joint Commissioner, in a case,-

- where no assessment under section 143(3) or section 147 has been made for the relevant assessment year; and
- the notice is to be issued after expiry of four years from the end of the relevant assessment year.

It has been provided that notice in such a situation shall be issued by the assessing officer only when the Joint Commissioner is satisfied, on the reasons recorded by the assessing officer, that it is a fit case for the issue of such notice. Hon'ble Allahabad High Court in the case of Dr. Shashi Kant Garg Vs. CIT 285 ITR 158 has observed that notice under section 148 in such a situation is to be issued by the Joint Commissioner. The legislative intent, in such a situation, has been very clear. The Joint Commissioner is only required to be satisfied on the reasons recorded by the assessing officer. There is no further requirement for him to issue the notice himself.

Hence, in order to correctly reflect the legislative intention, it is proposed to –

(i) amend section 148 of the Income-tax Act to provide that the assessing officer may assess or reassess an income which is chargeable to tax and has escaped assessment other than those income involving matters which are the subject matter of any appeal, reference or revision;

(ii) amend section 151 of the Income-tax Act to provide that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the assessing officer about fitness of a case for the issue of notice under section 148, need not issue the notice himself.

Similar amendments have been proposed in the Wealth-tax Act.

The amendments relating to section 148 will take effect from 1st April, 2008.

The amendments relating to section 151 will take effect retrospectively from 1st October, 1998. [*Clauses 30, 31*]

Consequences of non-deduction of tax at source

Under section 201, a person is deemed to be an assessee in default if there is a failure to deduct tax at source or for failure to deposit the tax deducted at source after such tax has been deducted. The persons covered under the ambit of section 201 are :-

(i) person referred to in section 200;

(ii) the principal officer and the company of which he is the principal officer in the cases referred to in section 194 [relating to deduction of tax at source on dividends].

Sub-section (1) of section 200 provides that any person deducting any tax at source on payments other than salary shall pay the sum so deducted to the Central Government or as the Board directs within the prescribed time. A view has been expressed that the provisions of sub-section (1) of section 201 do not cover failure to deduct tax at source. Such an interpretation is contrary to the intent of the legislature. The amendment, therefore, seeks to substitute sub-section (1) of section 201 to clarify that where a person, including the principal officer of a company,-

(i) who is required to deduct any sum in accordance with the provisions of Income-tax Act; or

(ii) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under the Income-tax Act, he shall be deemed to an assessee in default under section 201.

The amendment to substitute sub-section (1) of section 201 shall take effect retrospectively from 1st June, 2002.

A similar amendment has also been carried out in Explanation to section 191.

The amendment to substitute *Explanation* to section 191 will take effect retrospectively from 1st June, 2003. [*Clauses 38,43*]

Clarification regarding stay of demand by Income-tax Appellate Tribunal

The provisions relating to appeals to the Income Tax Appellate Tribunal (ITAT) are contained in section 252 to section 255 of the Income-tax Act. Sub-section (2A) of section 254 provides that the ITAT, where it is possible, may decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

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

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

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

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

To make this intention clear, it is proposed to amend section 254 of the Income-tax Act and further provide that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days, even if the delay in disposing of the appeal is not attributable to the assessee.

This amendment will take effect from 1st October, 2008. [*Clause 46*]

RATIONALISATION OF REVISED SETTLEMENT SCHEME

Provision regarding immunity from penalty and prosecution and providing a time limit for assessment relating to abatement of settlement proceedings is proposed tobe introduced.

The Finance Act, 2007 carried out a comprehensive amendment to the scheme of settlement of cases. This scheme provides for abatement of proceedings before the Settlement Commission under various circumstances. In order to deal with the various issues that may arise in the event of abatement of proceedings before the Settlement Commission, it is proposed to amend the law to empower the Commissioner of Income tax to grant immunity from penalty and prosecution in cases which abate. .

The salient features of the scheme for granting immunity from penalty are as under:-

- The application for the immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax.
- If penalty was levied before or during the pendency of settlement proceedings, then the assessee can approach the commissioner for immunity at any time.
- If no penalty was levied till the time of abatement of proceedings before Settlement Commission, then the assessee must make an application for immunity before the imposition of penalty by the Income tax authority.
- Immunity can be granted by the Commissioner on his satisfaction.
- The satisfaction is required to be that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.
- Immunity can be subject to such conditions as the Commissioner may think to impose.
- The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.
- The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the Income-tax authority or had given false evidence.

Similarly the salient features of the scheme for granting immunity from prosecution are as under:-

- The application for the immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax before institution of the prosecution proceedings after abatement.
- If prosecution proceedings were instituted before or during the pendency of settlement proceedings, then the assessee can approach the commissioner for immunity any time. However if the assessee has received any notice etc. from the Income tax authority for institution of prosecution, then he must apply to the commissioner for immunity, before actual institution of prosecution.

- Immunity can be granted by the Commissioner on his satisfaction.
- The satisfaction is required to be that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.
- Where application for settlement under section 245C had been made before the 1st day of June, 2007, the Commissioner can also grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act.
- Immunity can be subject to such conditions as the Commissioner may think to impose.
- The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.
- The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the Income-tax authority or had given false evidence.

Further it is also proposed to amend section 153 of the Income tax Act so at to allow a minimum time period of one year to the Income tax authority before whom the case was pending when the application was filed with the Settlement Commission. This time limit is applicable retrospectively with effect from 1st of June 2007. It shall be deemed that this revised time limit will apply to all cases where settlement proceedings have abated from 1st of June 2007 and thereafter.

Similar amendments have also been proposed in the Wealth-tax Act.

The amendments relating to power of the Commissioner to grant immunity from penalty and prosecution will come into affect from 1st April, 2008. [*Clauses 32, 49, 50, 59, 60*]

FRINGE BENEFIT TAX

Rationalisation of the provision of the Fringe Benefit Tax

Sub-section (2) of section 115WB of the Income tax Act provides that where an employer incurs any expenditure, inter alia, for the purposes of entertainment, hospitality, conference, and sales promotion (including publicity), such employer shall be deemed to have provided fringe benefits to its employees. Section 115WC of the Income-tax Act provides for valuation of the fringe benefits provided by the employer.

With a view to rationalizing the provisions of Fringe Benefit Tax, the following amendments to sub-section (2) of section 115WB of the Income-tax Act are proposed-

(i) Any expenditure on or payment through pre-paid electronic meal card shall also be excluded from the hospitality expenditure for calculation of the value of fringe benefit. Such electronic meal card should not be transferable, should be usable only at eating joints or outlets and should fulfill such other conditions, as may be prescribed.

(ii) Explanation to clause (E) is proposed to be amended to provide that any expenditure incurred or payment made to –

- provide crèche facility for the children of the employee; or
- sponsor a sportsman, being an employee; or
- organize sports events for employees,

shall not be considered as expenditure for employees' welfare for the purpose of calculation of the value of fringe benefits.

(iii) Clause (K) is proposed to be omitted. Hence, any expenditure on or payment made for maintenance of any accommodation in the nature of guest house shall not be included for valuation of fringe benefits.

Further, clause (c) and clause (d) of sub-section (1) of section 115WC is proposed to be amended so as to provide that the value of fringe benefits on account of expenditure on festival celebration shall be twenty per cent as against the existing rate of fifty per cent.

These amendments shall take effect from 1st April, 2009 and shall accordingly apply in relation to assessment year 2009-10 and subsequent years. [*Clauses 22, 23*]

Deemed payment of tax by the employee where FBT on securities allotted to him is recovered by the employer

The Central Board of Direct Taxes (CBDT) has issued circular number 9, dated 20th December, 2007, clarifying therein certain issues relating to levy of FBT on ESOPs. One of the clarifications is that if FBT on account of share allotted or transferred under ESOPs has been paid by the employer, but recovered from an employee, it shall be deemed that the employee has paid the FBT. Therefore, such an employee can claim credit for this deemed payment of FBT in a foreign country.

Representations have been received from taxpayers suggesting that this clarification should be incorporated in the Income-tax Act so as to provide a firm basis to enable the employees to claim credit for tax so paid. Since this demand is consistent with the clarification issued by the CBDT earlier, and does not have any adverse impact on revenues, it is proposed to insert a new section

115WKB to provide that where fringe benefit tax (with respect to allotment or transfer of specified security or sweat equity shares) has been paid by the employer and subsequently recovered from the employee, the recovery of fringe benefit tax shall be deemed to be the tax paid by such employee in relation to value of fringe benefits provided to him. The deeming provision shall apply only to the extent to which the amount of recovery relates to the value of the fringe benefits provided to such employee.

The new section further seeks to provide that, not withstanding anything contained in this Act, in the above situation, the employee shall not be entitled for any refund out of such deemed payment of tax; and shall also not be entitled to claim any credit of such deemed payment of tax against tax liability on other income or against any other tax liability.

This amendment shall take effect from 1st April, 2008 and shall accordingly apply in relation to assessment year 2008-09 and subsequent years. [*Clause 26*]

SECURITIES TRANSACTION TAX

Rationalization of provision of Securities Transaction Tax

Section 98 of Chapter VII of Finance (No.2) Act, 2004, provides for charge of securities transaction tax (STT). It is provided that in the case of sale of a derivative, where the transaction of such sale is entered into in a recognized stock exchange, the securities transaction tax will be at the rate of 0.017 per cent and will be payable by the seller.

It is proposed to amend section 98 and 99 so as to provide that,

(i) in case of sale of an option in securities, STT shall be levied at the rate of 0.017 per cent of the option premium and shall be paid by the seller;

(ii) in case of sale of an option in securities, where option is exercised, STT shall be levied at the rate of 0.125 per cent of settlement price and shall be paid by the purchaser; and

(iii) in case of sale of a futures in securities, STT shall be levied at 0.017 per cent and shall be payable by the seller.

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

At present, the amount of STT paid is allowed as rebate under section 88-E of the Income-tax Act. This rebate is allowed when the income from taxable securities transactions is included under the head 'profits and gains of business or profession'.

It is proposed to discontinue the rebate available to such assessee under section 88-E of the Income-tax Act. Hence, no rebate under section 88E shall be allowed to the assessee in, or after, the assessment year beginning on the 1st day of April, 2009.

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

Further, it is proposed that any amount of securities transaction tax paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction under section 36 of the Income-tax Act subject to the condition that such income from taxable securities transactions is included under the head 'profits and gains of business or profession'.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years. [*Clauses 7, 8, 17, 119*]

BANKING CASH TRANSACTION TAX

Discontinuation of Banking Cash Transaction Tax

The Banking Cash Transaction Tax (BCTT) was introduced by the Finance Act, 2005. It provides for a levy at the rate of 0.1 per cent (10 basis points) on the taxable banking transaction. The 'taxable banking transaction' has been defined to mean a transaction being,-

(i) withdrawal of cash (by whatever mode) exceeding specified limit on any single day from an account (other than a saving bank account) maintained with any scheduled bank; or

(ii) receipt of cash exceeding a specified limit from any scheduled bank on any single day on encashment of one or more term deposits, whether on maturity or otherwise.

The specified limit is Rs. 50,000/- in the case of an individual and HUF and Rs. 1,00,000/- for other person.

It is proposed to introduce a sunset clause by inserting a new sub-section (3) in section 95 of the Finance Act, 2005. The proposed new sub-section provides that no BCTT shall be charged in respect of any taxable banking transaction after the 31st day of March, 2009.

This amendment will take effect from 1st April, 2009. [*Clause 120*]