

## AMENDMENTS BROUGHT IN BY THE FINANCE ACT, 2008

### DIRECT TAX

#### INCOME TAX ACT

#### Rates of Income - Tax for Assessment Year 2009 - 10

**1.1 (A) For woman, resident in India and below the age of 65 years at any time during the previous.**

Upto Rs. 1,80,000	Nil
Rs. 1,80,001 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

**1.1 (B) For an individual (man or woman), resident in India who is of the age of 65 years or more at any time during the previous year.**

Upto Rs. 2,25,000	Nil
Rs. 2,25,001 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

**1.1 (C) Individuals, [other than those mentioned in para 1.1(A) and (B) above] HUF, AOP/BOI (other than co-operative societies, whether incorporated or not)**

Upto Rs. 1,50,000	Nil
Rs. 1,50,001 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

**Surcharge:** The amount of income - tax computed in accordance with the above provisions or in section 111A or section 112A shall, in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding Rs. 10,00,000, be increased by a surcharge for purposes of the Union calculated at the rate of 10% of such income - tax.

**No surcharge** is to be levied if the **total income does not exceed** Rs. 10,00,000.

**Education Cess (EC):** Education Cess at the rate of 2% on income-tax and surcharge shall be levied.

**Secondary and Higher Education Cess (SHEC):** Further, an additional surcharge, called the "Secondary and Higher Cess (SHEC) on income-tax: at the rate of 1% of income-tax and surcharge (not including the "Education Cess on income-tax") in all cases shall be levied.

**Marginal Relief:** Marginal relief would be provided to ensure that the additional income-tax payable, including surcharge, on the excess of income over Rs. 10,00,000 is limited to the amount by which the income is more than Rs. 10,00,000.

**Example:**

Total income (including (Rs.)	For men and women resident in India above 65 years of age		For women resident in India below 65		For others years of age	
	Tax (including surcharge @ 10%)	Tax (including surcharge Payable due to marginal relief	Tax (including surcharge) @ 10%	Tax (including surcharge) payable due to marginal relief	Tax (including surcharge) @ 10%	Tax (including surcharge) payable due to marginal relief
1	2	3	4	5	6	7
10,05,000	2,18,000	2,02,500 <sup>1</sup>	2,23,850	2,07,000 <sup>3</sup>	2,27,150	2,10,000 <sup>5</sup>
10,10,000	2,20,550	2,07,500 <sup>2</sup>	2,25,500	2,12,000 <sup>4</sup>	2,28,800	2,15,000 <sup>6</sup>
10,20,000	2,23,850	2,17,500	2,28,800	2,22,000	2,32,100	2,25,000
10,29,000	2,26,820	2,26,500	2,31,770	2,31,000	2,35,070	2,34,000
10,29,470	2,26,975	2,26,970	2,31,925	2,31,470	2,35,225	2,34,470
10,29,480	2,26,978	2,26,978	2,31,928	2,31,480	2,35,228	2,34,480
		(No marginal relief)				
10,30,00	2,27,150	2,27,150	2,32,100	2,32,000	2,35,400	2,35,000
		(No marginal relief)				

**Working Notes:**

1. Tax on Rs. 10,00,000	Rs. 1,97,500
Add: Income in excess of Rs. 10,00,000	<u>Rs. 5,000</u>
	<b>Rs. 2,02,500</b>
2. Tax on Rs.10,00,000	Rs. 1,97,500
Add: Income in excess of Rs.10,00,000	<u>Rs.10,000</u>
	<b>Rs. 2,07,500</b>
3. Tax on Rs.10,00,000	Rs. 2,02,000
Add: Income in excess of Rs. 10,00,000	<u>Rs. 5,000</u>
	<b>Rs. 2,07,000</b>
4. Tax on Rs. 10,00,000	Rs. 2,02,000
Add: Income in excess of Rs. 10,00,000	<u>Rs. 10,000</u>
	<b>Rs. 2,12,000</b>
5. Tax on Rs. 10,00,000	Rs. 2,05,000
Add: Income in excess of Rs. 10,00,000	<u>Rs. 5,000</u>
	<b>Rs. 2,10,000</b>
6. Tax on Rs. 10,00,000	Rs. 2,05,000
Add: Income in excess of Rs. 10,00,000	<u>Rs. 10,000</u>
	<b>Rs.2,15,000</b>

No marginal relief shall be available in respect of Education Cess (EC) and secondary and Higher Education Cess (SHEC) and as such tax payable under columns 3,5 and 7 **shall be increased by an EC @ 2% and SHEC @ 1%.**

**1.(D) Artificial juridical persons:** The rates of tax are same as given above in the case of individuals. However, artificial juridical persons will be required to pay surcharge @ 10% on tax payable on amount of total income (whether such total income is less or more than Rs.10,00,000).

For EC and SHEC, see after para 1.G below

**1.(E) Firms:** In case of firms, the rate of tax remains at 30%.

**Surcharge on income-tax:** The amount of income-tax computed at the rate given above, or in section 111A or section 112, in the case of every firm **having total income exceeding Rs. 1 crores** shall be increased by surcharge calculated at the rate of 10% of such income -tax.

**Marginal relief:** Marginal relief shall be available and the total amount payable as income -tax and surcharge on total income exceeding Rs.1 crore shall not exceed the total amount payable as income - tax on a total income of Rs. 1 crore by more than the amount of income that exceeds Rs. crore.

**Example:**

Total Income (Rs.)	Tax including Tax (including surcharge) surcharge at 10%	payable due to marginal relief
1,01,00,000	33,33,000	31,00,000
1,03,00,000	33,99,000	33,00,000
1,04,00,000	34,32,000	34,00,000
1,04,45,000	34,46,850	34,45,000
1,04,46,000	34,47,180	34,46,000
1,04,47,000	34,47,510	34,47,000
1,04,48,000	34,47,840	34,47,840

No surcharge shall be levied in the case of firms having total income of Rs. 1 crore or less.

For EC and SHEC, see after para 1.G below

**1.(F) Companies:**

**(a) Domestic Companies:** In case of domestic companies, the rate of tax remains at 30%.

**(b) Foreign Companies:** As regards foreign companies there is no change in the existing tax rates and the rate shall continue to be 40%.

**Surcharge on income - tax :** The amount of income - tax computed in accordance with the above rates, or in section 111A or section 112, shall, in the case of every company having total income exceeding Rs.1 crore, be increased by a surcharge calculated,

- (i) In the case of every domestic company at the rate of 10% of such income - tax.
- (ii) In the case of every company other than a domestic company at the rate 2.5% (instead of 10% in case of domestic companies).

**Marginal relief :** Marginal relief shall be available and, in such cases, the total amount payable as income - tax and surcharge on total income exceeding Rs. 1 crore shall not exceed the total amount payable as income - tax on a total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore (see Example below para 1.C above).

No surcharge shall be levied in the case of companies having total income Rs.1 crore or less.

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

### **1(G) Co - operative Societies**

Upto Rs.10,000	10%
Rs.10,001 to Rs.20,000	20%
Above Rs.20,000	30%

*Surcharge:* There will be no surcharge in case of co -operative societies.

**1(H) Local Authorities:** There is no change in the existing rates and the rate shall continue to be 30%.

*Surcharge:* There will be no surcharge in case of local authorities also.

Education Cess and Secondary & Higher Education Cess

Education Cess: An Education Cess of 2% shall be levied on the income - tax (including surcharge if any) payable by all corporate or non -corporate assesseees.

**Secondary and Higher Education Cess :** Further, an additional surcharge, called the "Secondary and Higher Education Cess on income -tax ", at the rate of 1% of income - tax and surcharge (not including the "Education Cess on income - tax ") in case of all assesseees shall be levied.

## **Amendments relating to DEFINITIONS**

### **2. Widening the scope of "Agricultural Income" [Section 2 (1A)] [W.e.f A.Y. 2009 - 10]**

The Act has amended 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.

### **3. Streamlining the definition of "Charitable purpose" [Section 2(15) W.e.f A.Y. 2009-10]**

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.

With a view to limiting the scope of the phrase "advancement of any other object of general public utility", the Act has amended 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.

The purpose of bringing this amendment was that number of entities operating on commercial lines are claiming exemption on their income either under section 10(23 C) 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.

#### **Amendments relating to incomes which do not form part of TOTAL INCOME [Section 10]**

#### **4. Exemption to a "Sikkimese" individual [ Section 10(26AAA)] [W.r.e.f. A.Y.1990 - 91]**

The Act has inserted a new clause (26AAA) in section 10 to provide that the following income, which accrues or arises to a Sikkimese 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 has also been provided that this exemption will not be available to a Sikkimese woman who, on or after 1 - 4 - 2008, marries a non-sikkimese individual.

For the purpose of the above clause 'Sikkim' shall mean:

- (i) An individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulations, 1961 read with the Sikkim Subject Rules, 1961 (here in after referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or
- (ii) An individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or
- (iii) Any other individual, whose name does not appear in the Register of sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register.

#### **5. Income of Agricultural Produce Marketing Committee or Board to be exempt [Section 10 (26AAB) [W.e.f. A.Y.2009 -10]**

The Finance Act, 2008 has inserted new clauses (26AAB) in section 10 to provide that any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce shall be exempt.

## **6. Exemption of income of Coir Board [Section 10(29A)] [W.r.e.f.2002-03]**

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

## **7. Amendment to give effect to reverse mortgage scheme [Section 10(43) and Section 47 (xvi)] [W.r.e.f.A.Y. 2008 -09]**

**Regular mortgage vis-a-vis Reverse mortgage:** In case of 'regular mortgage' the borrower makes monthly/yearly repayment to lender whereas in case of 'reverse mortgage', a lender makes payments to the borrower. While the reverse mortgage loan is outstanding, the borrower owns the house and holds title to it, without having to make any monthly mortgage payments.

Reverse mortgage scheme in case of senior citizens (62 years of age) was introduced last year by State Bank of India and Punjab National Bank after the Budget 2007. In the context of the aforesaid scheme, the following tax issues arising there from have been resolved by the Act by inserting section 10 (43) and section 47(xvi)

### **1. Whether the loan received under a reverse mortgage scheme amounts to income?**

- ❖ Although the receipts of loan under reverse mortgage is in the nature of a capital receipt, but with a view to providing certainty in the tax regime to the senior citizen, the Act has inserted clause (43) to section 10 of the Income tax Act to provide that any amount received by an individual as a loan either in lump sum or in installment in a transaction of reverse mortgage referred to in section 47 (xvi) shall be exempt.

### **2. Whether mortgage of property for obtaining a loan under the reverse 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. The Act has therefore inserted a new clause (xvi) 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.

3. Capital gains tax attracted only at the point of alienation of Mortgaged Property; consequently to the above 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.

#### **8. Tax holiday for units covered under section 10A and 10B extended by one year [Section 10A and 10B]**

The Finance Act, 2008 has extended the deduction available u/s 10A relating to industrial undertaking in Free Trade Zone, etc and u/s 10B relating to 100% Export Oriented Undertakings by one year. Hence, now deduction shall be allowed maximum upto assessment year 2010 -11 instead of assessment year 2009 -10.

### **“PROFITS AND GAINS OF BUSINESS OR PROFESSION”**

#### **9. Weighted deduction for sum paid to a company to be used by such company for scientific research [Section 35(1) (ia)] [ W.e.f. A.Y. 2009 - 10)**

Section 35 (1) (ii) of the Income - tax Act, provides for weighted deduction to a payer, to the extent of 125% 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 lump sum investment for building in - house scientific facilities, the Act inserted a new clause (ia) in sub - section (1) of section 35 of the Income - tax Act to allow a weighted deduction of 125% 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.

❖ With a view to avoid multiple claims for deduction, the Act has provided that a company approved under the provision of section 35(1)(ia) will not be entitled to claim weighted deduction of 150% under section 35 (2AB).

❖ Deduction to the extent of 100% of the sum spends as revenues expenditure on scientific research which is available under section 35 (1) (i) will continue to be allowed.

1. Any person, whether company or not, can avail of the deduction under the above clause by making payment to any company approved for this purpose.
2. Further there is no requirement that the scientific research carried on by such company should be related to the business of the donor.

**10. Extending the provision relating to amortization of preliminary expenses to all undertakings [Section 35D] [W.e.f.A.Y.2009 - 10]**

Section 35D provides for deduction of certain specified preliminary expenses. The deduction is allowed of 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 setting up of a new industrial unit.

The above amendments seek to substitute the words "industrial undertaking" with the word "undertaking" and the words "industrial unit" with the word unit. The intention of the law is to provide the benefit of amortization of post commencement preliminary expenses to all sectors for extension of an "undertaking" or the setting up a "new unit", be it is a service sector or otherwise.

**11. Securities Transaction Tax (STT) to be allowed as a deduction [Section 36 (1) (xv)] [W.e.f.A.Y.2009 - 10]**

At present, the amount of STT paid is allowed as rebate under section 88E 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'.

The Act has discontinued the rebate available to such assessee under section 88-E of the Income -tax Act w.e.f assessment year 2009 -10.

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(1) (xv) 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'.

Consequently, section 40(a) (ib), which provided that STT is not an allowable expense, has been omitted.

**12. Commodities Transaction Tax to be allowed as a deduction [Section 36 (1)(xvi)] [W.e.f. A.Y. 2009 -10]**

The Act has inserted clause (xvi) in sub -section 36 w.e.f A.Y. 2009 -10 to provide that any amount of commodities transaction tax (CTT) 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'.

**13. No disallowance of certain expenses if the TDS for the month of March is deposited by the due date of filing the return of income [Section 40(a) (ia)]**

As per the existing provisions of section 40(a) (ia) any interest, commission or brokerage, rent, royalty, fees for professional services, fees for technical services, any amount payable to a resident contractor or sub - contractor shall not be allowed as a deduction in computing the income chargeable under the head 'Profits and gains of business or profession'.

The disallowance can be resorted to under the following situations:

- (i) Where in respect of such sum tax is deductible under Chapter XVII -B and such tax has not been deducted; or
- (ii) Where in respect of such sum tax has been deducted but not paid during the previous year, or in the subsequently year before the expiry of the time prescribed under section 200(1)

However, where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section 200(1), Such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

The Finance Act, 2008 has amended the above clause (ia) to section 40, **w.r.e.f assessment year 2005 - 06** to provide that in case of above expenses on which tax is deductible at source under Chapter XVII -B and such tax has not been deducted or after deduction has not been paid:

- (A) In a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub - section (1) of section 139; or
- (B) In any other case, on or before the last day of the previous year, such expenses shall not be allowed as deduction in the year in which these are incurred.

However, where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted—

- (A) During the last month of the previous year but paid after the said due date; or
- (B) During any other month of the previous year but paid the end of the said previous year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

It may be observed from the above that if the TDS is deposited after the due date but in the same previous year in which it is deducted, deduction of the expense shall be allowable.

However, where the tax was deductible and was deducted during the month of March of the relevant previous year, and the same is deposited on or before the due date of filing the return specified under section 139 (1), the deduction shall be allowed in the previous year in which the expenditure is incurred.

On the other hand, if the tax deducted in the month of March is deposited after the due date of filing return specified under section 139(1), the deduction of the expense shall be allowed in the year in which such tax has been deposited.

**Example :**

SL. No.	Nature of Expenditure	Date of payment/ credit	Due date of deposit of TDS	Actual date of deposit expense	Previous year in deduction of	Previous year in which was deduction
1	2	3	4	5	6	7
1.	Job Work	15-10-2007	7-11-2007	15-11-2007	2007-08	2007-08
2.	Audit Fee	14-11-2007	7-12-2007	6-12-2007	2007-08	2007-08
3.	Interest on Loan	31-1-2008	7-2-2008	28-3-2008	2007-08	2007-08
4.	Commission on sale	31-3-2008	31-5-2008	30-7-2008	2008-09	2007-08
5.	Legal fee credited	15-3-2008	7-4-2008	2-6-2008	2008-09	2007-08
6.	Interest credited	31-3-2008	31-5-2008	2-4-2009	2009-10	2009-10
7.	Fee for Technical Service	15-1-2008	7-2-2008	30-9-2008 (i.e. due date u/s 139(1))	2008-09	2008-09
8.	Rent credited	31-3-2008	31-5-2008	30-9-2008 (i.e. due date u/s 139(1))	2008-09	2007-08
9.	Royalty credited	31-3-2008	31-5-2008	7-6-2008	2008-09	2007-08

It may be noted that although the disallowance of expense shall not be made under section 40(a) (ia) if the TDS is deposited within the time prescribed in the new provisions above, but the assessee shall be liable to pay interest under section 201(1A) for delay, if any, in deposit of tax.

#### **14. Amendment to the provisions of section 40A (3) of the Income-tax Act [Section 40A (3)] [W.e.f. A.Y. 2009-10]**

Section 40A(3) provides that any expenditure incurred in respect of which payment is made in a sum exceeding Rs. 20000 otherwise than by an account payee cheque drawn on a bank or an account payee draft, shall not be allowed as a deduction. Section 40A(3)(b) also provides for deeming a payment as profits and gains of the business or profession if the expenditure is incurred in a particular year and the payment is made in any subsequent year in a sum exceeding Rs.20000 otherwise than account payee cheque or account payee draft.

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. However, the provision 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. The Orissa High Court in cash of CIT v Aloo Supply Co.(1980) 121 ITR680(Ori) and the Madras High Court in CIT v Kothari Sanitation & Tiles (p) Ltd.(2006) 282 ITR 117 (Mad) held that where the assessee was doing more than one transaction in a day but if the amount in each transaction does not exceed the limit prescribed in section 40A(3), the rigors 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 Rs.20,000, the disallowance of such expenditure shall be made under the new sub-section (3) of section 40A.

Similarly, **as per new section 40A(3A)**, if an expenditure is incurred in a particular year and the payment of the same is made in any subsequent year in a sum exceeding Rs.20,000 otherwise than by an account payee cheque or draft, such payment shall be deemed to be the profits and gains of business or profession of the previous year in which such payments is made.

#### **Illustration :**

B has incurred an expenditure of Rs.30,000. B makes separate payments of Rs.15,000 Rs.6,000 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.30,000. Since, the aggregate payment by cash exceeds Rs.20,000 Rs.30,000 will not be allowed as a deduction in computing the total income of R in accordance with the amendment.

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

**15. Clarification regarding definition of written down value under section 43(6) [Section 43(6)] [ W.r.e.f. A.Y. 2003 - 04]**

Section 32(1)(ii) provides that depreciation shall be allowed at the prescribed percentage on the written down value (WDV) of any block of assets. Section 43(6) (b) 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.

Due to exemption available under section 10 earlier, 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, the Act has amended 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.

**16. Specified date for obtaining and furnishing the tax audit report u/s 44AB advanced to 30th September [Section 44AB] [W.r.e.f assessment year 2008 -09]**

W.r.e.f assessment year 2008 -09, the above specified date for obtaining and furnishing the tax audit report **shall be 30th September** of the relevant assessment year **instead of 31st October**.

### **"CAPITAL GAINS"**

#### **17. Capital gains on transfer in the context of foreign currency exchangeable bonds [Section 47(xa) and Section 49(2A)] [W.r.e.f. A.Y. 2008 -09]**

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 principle and interest in respect of which is payable in foreign currency.

The FCEBs differ from FCCBs in as much as 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 fields to FCEBs, the Act has inserted clause (xa) to section 47 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 has substituted 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.

#### **18. 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 47 (xvi)] [W.r.e.f. A.Y. 2008 -09]**

See para 7 above

#### **19. Increase in tax rates for Short Term Capital Gains [Section 111A and 115AD] [ W.e.f. A.Y. 2009 -10]**

Section 111A and 115AD provide for special tax rate of 10% 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. The Act has increased the rate of tax on such short -term capital gain to 15%.

### **DEDUCTIONS under Chapter VIA from GROSS TOTAL INCOME**

#### **20. Enlargement of the scope of eligible saving instruments under section 80C [Section 80C(2)] [W.r.e.f.A.Y. 2008 - 09]**

The following investments made by assessee, during the previous year, shall also be eligible for deduction under section 80C within the overall ceiling of Rs.1,00,000 :-

- (i) Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004; and

- (ii) Five year time deposit in an account under Post Office Time Deposit Rules, 1981

Further, it has been provided 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 relating to interest) has suffered taxation in any of the earlier years, such amount shall not be taxed again.

However, any amount received by the nominee or legal heir of the assessee, on the death of such assessee (other than interest, if any, accrued thereon which was not included in the total income in the past years) shall not be taxable in the hands of he nominee or the legal heir.

**21. Additional deduction for health insurance premium paid parents [Section 80D] [W.e.f. A.Y. 2009 - 10]**

Section 80D of the Income - Tax Act provides for a deduction of up to Rs.15,000 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 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, an additional deduction of Rs.5,000 is allowed. 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 assesses to supplement the efforts of their parents in getting themselves medically insured. Accordingly, existing section 80D has been substituted w.e.f assessment year 2008 - 09 to provide as under :—

1. Where the assessee is an individual, the deduction allowed shall be the aggregate of the following namely :-

- (a) the whole of the amount paid to effect or keep in force an insurance on the health of the assessee or his spouse and dependent children as does not exceed in aggregate Rs.15,000; and
  - (b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents (whether dependent or not ) of the assessee as does not exceed in aggregate Rs.15,000.
2. Where the assessee is a Hindu undivided family, the deduction allowed shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in aggregate Rs.15,000.

**Additional deduction of Rs.5,000:** Where the sum specified in clause (1)(a) and (b) and clause (2) above is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, an additional deduction of Rs.5,000 shall be allowed in each case.

**Illustration :**

A pays (through any mode other than cash) during the previous year medical insurance premia as under :—

- (i) Rs.14,000 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 new provisions, he will be allowed a deduction of Rs.29,000 (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.31,000 (Rs.14,000 + Rs.17,000).

**Whether the parents are dependent or not, is not a consideration for deciding the deduction under the 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, thereon will get a deduction of Rs.17,000 (in addition to the deduction of Rs.14,000 for the medical insurance on self and family) and the father will get a deduction of Rs.13,000.

**22 . Sunset provision for deduction for refining of mineral oil under section 80 IB(9) in certain cases [Section 80 -IB (9)]**

The Act has inserted a third proviso in section 80 -IB(9) 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 1 -4 -2009 unless such undertaking fulfils all the following conditions, namely :—

- (i) It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least 49% of the voting rights.
- (ii) It is notified by the Central Government in this behalf on or before 31 -5 - 2008 and

(iii) It begins refining not later than 31 -3 - 2012

**23. Five year tax holiday to hospitals located in certain areas  
[Section 80 IB (11C)] [W.e.f. assessment year 2009 -10]**

Sub-section (11B) of section 80 - IB provides a tax holiday for five consecutive assessment years, beginning from the initial assessment year, to 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 1 -10 2004 and ending on 31 -3 -2008.

With a view to encouraging investment in hospitals in non -metro cities, the Act has extended the benefit of this sub -section to hospitals located anywhere in India, other than the excluded area. Hence, the Act has inserted a new sub -section (11C) in the said section 80 -IB. New sub-section (11C), inter -alia, seeks to provide that:

- (i) 100% 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 1 -4 - 2008 and ending on 31-3-2013 ; any where in India other than the excluded area ;
- (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.  
The area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census;
- (iv) The hospital has at least 100 beds for patients;
- (v) The construction of the hospital is in accordance with the regulations or bye-laws of the local authority; and
- (vi) The assessee furnishes along with the return of income, a report of audit in such form and containing such particulars, as may be prescribed, and duly signed and verified by a chartered accountant certifying that the deduction has been correctly claimed.

**24. Five year tax holiday for hotels located in specified districts having a World Heritage Site. [Section 80 -ID] ]W.e.f A.Y. 2009 -10]**

The existing section 80 -ID of the Income -tax Act provides for a five year tax holiday to a new hotels of two, three and four star categories and convention centers provided the hotel or convention centre is located in the specified area

viz. 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, the Act has extended the scope of 100% 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 1 -4 -2008 and ending on 31 - 3- 2013.

Specified districts having a World Heritage Site are the districts of Agra, Jalgaon, Arungabad, Kancheepuram, Puri, Bharatpur, Chhatarpur (M.P), 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 (Assam), Goalpara (Assam), Nagaon (Assam), North Goa, South Goa, Darjeeling and Nilgiri.

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

#### **Changes in the provisions relating to STT and rebate u/s 88E**

##### **25. Rebate u/s 88E omitted**

W.e.f. assessment year 2009 -10 STT shall be allowed as a deduction u/s 36(1)(xv) and as such rebate u/s 88E has been omitted. For details see *para 11* above.

#### **"MINIMUM ALTERNATIVE TAX"**

##### **26. Clarification regarding add back of 'Deferred Tax', 'Dividend Distribution Tax', etc. for calculating Book Profit [Section 115JB] [W.r.e.f A.Y. 2001 -02]**

Clause (a) of the *Explanation* to section 115JB, *inter -alia*, provides for increasing the book profits by income -tax paid or payable and the provisions therefore; if debited to profit and loss account.

However, section 115JB has not specifically provided for add back of some "below the line" items like deferred tax, dividend distribution tax, etc. There has been some ambiguity regarding add back of these items, if debited to profit and loss account.

E.g. the ITAT in the case of ACIT Kolkata v Balrampur Chini Mills LTD. (2007) 14 SOT 372 (Kol) held that deferred tax amount debited to profit and loss account was neither income -tax paid or payable nor reserve nor unascertained liability and not covered by any of the clauses (a) to (g) of the *Explanation 1* to section 115JB(2) and therefore not liable to be added to net profit for computing book profits.

Similarly, it was held that dividend distribution tax payable as per provisions of section 115 -O of the Act is of similar nature as FBT payable and since FBT is not to be added back dividend distribution tax should also be not added back.

**With a view to clarifying the intention, the Finance Act has made the following amendments:**

- (a) It has inserted 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 amount of deferred tax and the provision therefore**, if debited to profit and loss account.
- (b) It has inserted *Explanation 2* to section 115JB 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.

**Note :** Though as per Circular No. 8/2005, dated 29 -8 -2005, FBT is not to be added back but interest on FBT shall have to be added back as per clause (ii) above which states that any interest charged under this Act is to be added.

- (c) It has also inserted clause (viii) to *Explanation 1* to section 115JB to provide that the profit as per the profit and loss account shall be **reduced by the amount of deferred tax**, if any such amount is credited to the profit and loss account.

**"DIVIDEND DISTRIBUTION TAX"**

**27. Amendment of provisions relating to Dividend Distribution Tax [Section 115 -O] [W.r.e.f. A.Y. 2008 - 09]**

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 15% 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, the Finance Act has provided 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 sections 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.

## "FRINGE BENEFIT TAX"

### **28. Rationalization of the provision of the Fringe Benefit Tax [Section 115WB (2)] [W.e.f. A.Y. 2009 - 10]**

With a view to rationalizing the provisions of Fringe Benefits Tax, the following amendments to sub-section (2) of section 115 WB of the Income-tax Act have been made :

- (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 conditions, as may be prescribed.
- (ii) *Explanation* to clause (E) has been amended to provide that any expenditure incurred or payment made to :—
- ❖ provide creche 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 employee's welfare for the purpose of calculation of the value of fringe benefits.
- The above expenditure is in addition to the following three expenditure which were hitherto not treated as employees welfare expenditure.
- Any expenditure incurred or payment made to:
- (a) Fulfill any statutory obligation,
  - (b) Mitigate occupational hazards,
  - (c) Provide first-aid facilities in the hospital or dispensary run by the employer.
- (iii) Clause (K) has been omitted. Hence, any expenditure on or payment for maintenance of any accommodation in the nature of guest house shall not be included for valuation of fringe benefits.
- (iv) Clause (c) and clause (d) of sub-section (1) of section 115WC has been amended so as to provide that the value of fringe benefits on account of expenditure on festival celebration shall be 20% as against the existing rate of 50%.

### **29. Advancement of due date of filing FBT return from 31st October to 30th September in respect of certain categories of assesses [Explanation to section 115WD(1)] [W.r.e.f. assessment year 2008 - 09]**

For details see para 32 below.

**30. Time limit for service of notice u/s 115WE (2) [W.r.e.f. assessment year 2008 - 09]**

The Act has amended section 115WE (2) W.r.e.f. assessment year 2008 - 09 to provide that the notice under section 115WE (2) for scrutiny assessment under section 115WE(3) 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.

Similar changes have been made in section 143(2)

**31. Deemed payment of tax by the employee where FBT on securities allotted to him is recovered by the employer [Section 115WKB] [W.r.e.f.A.Y. 2008 - 09]**

The Central Board of Direct Taxes (CBDT) had issued Circular Number 9, dated 20 -12 - 2007, clarifying therein certain issues relating to levy of FBT on ESOPs. One of the clarifications was 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 credit for this deemed payment of FBT in a foreign country.

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.

**ADMINISTRATIVE AND COMPLIANCE PROCEDURES**

**32. Advancement of due date from 31st October to 30th September in respect of certain categories of assesses [Explanation 2 to section 139 (1) and Explanation to section 115WD (1)] [W.r.e.f. A.Y 2008 - 09]**

The due date for filing the income -tax returns has been prescribed as 31st day of October of the assessment year for the following categories of assesses :

- (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.

The Act has amended the said clause (a) of the *Explanation 2*, w.r.e.f. assessment year 2008 - 09 so as to provide that the due date for filing of return of income for the above categories of assesses 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 115 WD, has also been advanced from 31st day of October of the assessment year to 30th day of September of the assessment year.

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

**33. Power to the Assessing Officer to extend the time for completion of special audit [Section 142 (2C)] [W.r.e.f.A.Y. 2008 - 09]**

As per proviso to section 142 (2C), extension of time for furnishing the audit report in case of special audit directed to be conducted under section 142(2A) can be made only when an application is made in this behalf by the assessee and there are good and sufficient reasons for such extension.

The Act amended the said proviso so as to 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.

**34. Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1)/115 WE (1) through Centralized Processing of Returns [section 143 (1) and section 115 WE (1)] [W.r.e.f.A.Y. 2008-09]**

The scope of the present summary assessment scheme does not contain any provision allowing *prima facie* adjustments. Its scope is limited only to checking as to whether taxes have been correctly paid on the income returned and there is no provision for correcting arithmetical mistakes or internal inconsistencies in the return filed.

With an objective to reduce loss, the Act has amended section 143(1) of the Income - tax Act to provide that where a return has been made under section 139, or in.

- (b) The Central Government may issue a notification in the Official Gazette, directing that any of the provision of this Act relating to processing of returns shall not apply or shall apply with such restrictions, modifications and adoptions as may be specified in the notification. However, such direction shall not be issued after 31 -3 - 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 made section 115 WE (1) of the Income -tax Act, relating to fringe benefits.

**35. Service of notice and the time limit for issuance of notice under section 143 (2) of the Income -tax Act [Section 143 (2) and section 292BB] [W.r.e.f. A.Y. 2008 - 09]**

Sub-section (2) of section 143 of the Income-tax Act provides that the notice for scrutiny assessment 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 order 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, the Act has inserted a *new section 292BB* in the Income -tax Act to provide that where an assessee has —

- (a) Appeared in any proceeding related to an assessment or reassessment, or
- (b) Co-operated 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.

**Section 292BB -When not applicable:** The above provisions of section 292 BB shall not apply where the assessee has raised such objection before the completion of such assessment or reassessment.

Similar amendment has also been made by inserting section 42 in the Wealth-tax.

**Time limit for service of notice under section 143(2) :** The Act has also amended *section 143(2)(ii)* to provide that the notice under section 143(2) 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*.

### **36. Amendments in respect of reassessment proceedings to clarify correct legislative intention [Section 147 and 151]**

The Income-tax Act empowers Assessing Officer to reopen a case under section 147 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.

In order to correctly reflect the legislative intention, the Act has amended:

- (i) Section 147 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 incomes involving matters which are the subject matter of any appeal, reference or revision ;
- (ii) 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 made in the Wealth-tax Act by inserting third proviso to section 17(1) and an *Explanation* to section 17(1B).

**The amendments relating to section 147 will take effect from 1-4-2008.**

**The amendments relating to section 151 will take effect retrospectively from 1-10-1998.**

### **37. Time limit for completion of assessment or re-assessment [Section 153(4)] and second proviso to *Explanation 1* of section 153.**

- (a) Time limit for completion of assessment or re-assessment which stand revived under section 153A(2) [Section 153(4)] :
  - ❖ The Act has inserted sub-section (4) to section 153 to provide that the time limit for completion of assessment or reassessment relating to any assessment year which stands revived under newly inserted section 153A(2) shall be :
    - (i) one year from the end of the month in which the abated assessment revives, **or**
    - (ii) within the period already specified in section 153 or in sub section (1) of section 153B, **whichever is later.**
- (b) Time limit for completion of assessment or re-assessment if proceeding before the Settlement Commissioner abate u/s 245HA :  
[Second proviso to *Explanation 1* to section 153] :
  - ❖ For the purpose of making assessment of proceedings which have been abated before the Settlement Commission, the Act has inserted second proviso to *Explanation* to section 153 of the Income tax Act so as to allow a minimum time period of *one year for completion of assessment 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 1-6-2007 and thereafter.

**38. Provision for assessment in the case of annulment of the proceeding under section 153A [Section 153A(2), 153(4) and clause (vii) of Explanation to section 153B] [W.r.e.f. 1-6-2003]**

Under the Income-tax Act, whenever a search is conducted under section 132 for 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 questions relating to revival of proceedings and time limits which remain ambiguous. With the view to providing clarity and reducing disputes, the Act has amended 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. [Section 153A(2)]
- (ii) that time limit for completion of assessment or reassessment relating to any assessment year which stands revived under section 153A(2) above shall be : (a) one year from the end of the month in which the abated assessment revives, or (b) within the period already specified in section 153 or in sub-section (1) of section 153B, whichever is later [Section 153(4)].
- (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. [Clause (vii) of *Explanation* to section 153B]

**Illustration:**

In the case of M, a search proceeding under section 132 is initiated on 15-4-2007. 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 31-12-2009 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 5-8-2007 which is received by the Commissioner on 29-8-2007. 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 152A 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 31-12-2007 (normal time limit under section 153) or 31-8-2008 [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 5-2-2008. 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 31-12-2009 under clause (a) of sub-section (1) of section 153B, shall get extended by a period starting from 3-8-2007 and ending on 3-2-2008 (*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.

**39. Intimation send under 143(1) shall be deemed to be notice of demand [Proviso to section 156] [W.r.e.f. A.Y. 2008-09]**

The Act has inserted a proviso to section 156 to provide that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.

**TAX DEDUCTION AND COLLECTION AT SOURCE**

**40. Explanation to section 191 substituted [W.r.e.f. 1-6-2003]**

The existing *Explanation* to section 191 provides that if any person, referred to in section 200 and the principal officer of the company referred to in section 194, does not deduct the whole or any part of the tax and such tax has not been paid by the assessee direct, then, such person, the principal officer of the company shall, without prejudice to any order consequences which he or it may incur, be deemed to be an assessee in default as referred to in sub-section (1) of section 201 in respect of such tax.

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

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

"For the removal of doubts, it is hereby declared that if any person, including the principal officer of company.—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(a) 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 this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax."

**41. Removal of TDS on Corporate Bonds [Section 193 [W.e.f. 1-6-2008]**

In order to facilitate development of the corporate bond market for improving the availability of finances or infrastructure development, the Act has **removed** TDS on any interest payable to a resident on any security issued by a company where such *security is in dematerialized form and is listed on a recognized stock exchange in India* in accordance with the Securities Contracts (Regulation) Act, 1956 and any rules made there under.

**42. Enlargement of scope of TDS under section 194C to cover association of persons and body of individuals [Section 194C] [W.e.f. 1-6-2008]**

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 do deduct tax at source, there is scope for leakage of revenue.

Like individuals and HUF, w.e.f 1-6-2008, AOP and BOI [other than "person specified" under section 194C(1)] will also be required to deduct tax at source under profession carried on by such AOP and BOI exceed Rs. 40,00,000/10,00,000, as the case may be during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

**43. Provision for furnishing of information regarding deduction of tax at source under section 195 [W.e.f.-1-4-2008]**

Sub-section (1) of section 195 provides that any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the Act shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

**The Act has inserted sub-section (6) in section 195** so as to provide that the person referred to in sub-section (1) shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

**44. Section 199 relating to credit for tax deducted and section 206C(4) relating to credit for TCS substituted [Section 199 and 206C(4)] [W.e.f.A.Y. 2008-09]**

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, the Act has substituted section 199 and section 206C(4).**

- ❖ **Sub-section (1) of section 199** seeks to provide that any deduction made in accordance with the provisions of Chapter XVII-B and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.
- ❖ **Sub-section (2)** seeks to provide that the Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.
- ❖ The Act has substituted **sub-section (4) to section 206C** relating to TCS to provide that any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules as may be prescribed by the Board from time to time.

#### **45. Consequences of non-deduction of tax at source [Section 201] [W.r.e.f. A. Y. 1-6-2002]**

The amendment 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 deducted 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.

A similar amendment has also been carried out in *Explanation* to section 191. w.r.e.f. 1-6-2003. See para 40.

#### **46. Amendments to the provisions of Dematerialization of TDS and TCS certificates [Section 203(3) and Section 206C(5)] [W.e.f. 1-4-2008]**

A scheme for dematerialization of Tax Deducted at Source (TDS)/Tax Collected at Source (TCS) certificates was introduced through the Finance (No. 2) Act, 2004, with effect from 1-4-2005 for any deduction or collection of tax at source made on or after 1-4-2005 which was postponed till 1-4-2008. Since the national level information technology infrastructure of the Income-tax Department is not yet operational, the Act has extended the commencement of the scheme to 1-4-2010.

## **Powers of Commissioner (Appeals) and clarification regarding stay of demand by Income-tax Appellate Tribunal**

### **47. Power of Commissioner (Appeal) in case of an appeal against the order of assessment in respect of which the processing before the Settlement Commission abates [Section 251(1)(aa)] [W.r.e.f. assessment year 2008-09]**

In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, the Commissioner (Appeal) may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment.

Similar amendments have been made by inserting sub-section (9A) to section 23A of the Wealth-tax Act.

### **48. Stay or demand by ITAT**

As per the existing provisions of section 254(2A), the ITAT can not grant stay either under the original order or under any subsequent order, beyond the period of 365 days in aggregate provided the delay is not attributable to the assessee. The Act has amended section 254 of the Income-tax Act and further provided that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

## **PENALTY AND PROSECUTION**

### **49. Satisfaction for initiation of penalty under section 271(1)] [Section 271(1)] [W.r.e.f. A.Y. 1989-90]**

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.

Hon'ble Delhi High Court in the case of *CIT v 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 clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction for the Assessing Officer for initiation of penalty proceedings under clause (c) of sub-section (1).

Similar amendment has also been made in the Wealth-tax Act by inserting sub-section (1A) to section 18.

**50. Commissioner empowered to grant immunity from penalty and prosecution in case of assessment consequent to abatement of settlement proceedings [Section 273AA and 278AB] [W.e.f. A.Y. 2008-09]**

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, the Act has amended the law to empower the Commissioner of Income tax to grant immunity from penalty and prosecution in cases which abate.

Provision regarding immunity from penalty and prosecution and providing a time limit for assessment relating to abatement of settlement proceedings have been introduced by the Act by inserting sections 273AA, 278AB and second proviso to *Explanation* to section 153 of the Act.

**(A) Immunity from penalty [Section 273AA]:** The salient features of the scheme for granting immunity from penalty as per section 273AA 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 conditions 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.

**(B) Immunity from prosecution [Section 278AB]:** The salient features of the scheme for granting immunity from prosecution as per section 278AB 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 they 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 1-6-2007, 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, of abatement, concealed any particulars from the Income-tax authority or had given false evidence.

**(C) Time limit for completing assessments where proceedings before Settlement Commission have abated [Second proviso to Explanation to section 153]**

For the purpose of making assessment of proceedings which have been abated before the Settlement Commission the Act has inserted second proviso to *Explanation* to section 153 of the Income tax Act so as to allow a minimum time period of *one year for completion of assessment 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 1-6-2007 and thereafter.

Similar amendments have been made in the Wealth-tax Act by inserting section 18BA and 35GA and proviso 2 to *Explanation 1* after section 17A(4).

## MISCELLANEOUS PROVISIONS

### **51. Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit [Section 268A] [W.r.e.f. A.Y. 1999-2000]**

The Hon'ble Supreme Court in *Berger Paints India Ltd. v 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.

**With a view to protecting the Revenue's right to file or not to file an appeal**, the Act has **inserted 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 and appeal or application for reference on the same issue in the case of:
  - ❖ the same assessee for any other assessment year; or
  - ❖ 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 filling an appeal or application for reference shall be deemed to have been issued under sub-section (1) of this new section and all the provision of this section shall apply to such order/instruction/direction.

### **52. Authentication of documents/notices/letters [Section 282A] [W.e.f. 1-6-2008]**

A **new section 282A** has been inserted 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 an office of a designate income-tax authority is printed, stamped or otherwise written thereon. It is also provided 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.

**53. Notice deemed to be valid in certain circumstances [Section 292BB] [W.e.f. A.Y. 2008-09] See para 35.**

**54. Presumption as to books of accounts, other documents, etc. in case of a survey [Section 292C] [W.r.e.f. A.Y. 1-6-2002]**

The Act has amended section 292C of the Income-tax Act, so as to extended the presumption regarding the books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation as is available in case of a search under section 132.

Further, the Act has amended the said section so as to extend this presumption also to books of account, other documents or assets which have been delivered to the requisition officer in accordance with the provisions of section 132A. **This amendment will take effect retrospectively from 1-10-1975.**

The Act has also amended 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 1-10-1975.**

#### **(B) SECURITIES TRANSACTION TAX (STT)**

**55. Rationalization of provision of Securities Transaction Tax [W.e.f. 1-6-2008]**

Section 98 of Chapter VII or 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% and will be payable by the seller.

The Act has amended sections 98 and 99 so as to provide that, —

- (i) in case of sale of a option in securities, STT shall be levied at the rate of 0.017% 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 0.15% 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% and shall be payable by the seller.

## (C) COMMODITIES TRANSACTION TAX

### 56. Introduction of Commodities Transaction Tax

A new tax called Commodities Transaction Tax (CTT) has been levied on taxable commodities transactions entered in a recognized association.

The Act has defined '**Taxable commodities transaction**' to mean a transaction of purchase or sale in recognized association of—

- (i) option in goods; or
- (ii) option in commodity derivative; or
- (iii) any other commodity derivative,

The tax is 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 :

<b>Taxable commodities transaction</b>	<b>Rate</b>	<b>Payable by</b>
1. Sale of an option in goods or an option in commodity derivative	0.017% on option premium	Seller
2. Sale of an option in goods or an option in commodity derivative	0.125% on the settlement price of the option.	Purchaser
3. Sale of any other commodity derivative.	0.017% 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 to be levied from the date on which Chapter VII of the Finance Act, 2008 comes into force by way of notification in the Official Gazette by the Central Government.

## (D) BANKING CASH TRANSACTION TAX

### 57. Discontinuation of Banking Cash Transaction Tax [W.e.f. 1-4-2009]

The Act has introduced a sunset clause by inserting a new sub-section (3) in section 95 of the Finance Act, 2005. The new sub-section provides that no BCTT shall be charged in respect of any taxable banking transaction after 31-3-2009.

**WEALTH TAX**

<b>SECTION</b>	<b>SUBJECT</b>	<b>EFFECTIVE DATE</b>	<b>CHANGES</b>
<b>17</b>	Wealth Escaping Assessment		Assessing Officer may assess or reassess such net wealth, other than the net wealth which is the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment
<b>17A</b>	Time Limit for completion of assessment	01.06.2007	“Provided further that where a proceeding before the Settlement Commission abates under section 22HA, the period of limitation referred to in this section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 22HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.”
<b>18</b>	Penalty	01.04.1989	Where any amount is added or disallowed in computing the net wealth of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty
<b>18BA</b>	Power of Commissioner to grant immunity from penalty	01.04.2008	New Section
<b>35GA</b>	Power of Commissioner to grant immunity from prosecution	01.04.2008	New Section
<b>42</b>	Notice deemed to be valid in certain circumstances	01.04.2009	New Section

<b>42D</b>		01.04.2009	New Clause: Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 37B, then, the provisions of subsection (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 37B, had been found in the possession or control of that person in the course of a search under section 37A
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## INDIRECT TAX

### SERVICE TAX

Rate of service tax

- No change in service tax rates.
- Works contract composition rate increased from 2 percent to 4 percent (Effective 1 March 2008).

#### **Introduction of New Taxable Services:**

- Management of investments by life insurers under Unit Linked Insurance Plan.
- Information technology software service for use in the course, or furtherance, of business or commerce.
- Services provided by recognized stock exchange in relation to securities.
- Services provided by a recognized association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts.
- Services provided by a processing and clearing house in relation to processing, clearing and settlement of transactions in relation to securities, goods or forward contracts.
- Supply of tangible goods without transferring right of possession and effective control of such goods.
- Internet telephony service substituted by internet telecommunication service and the scope of the said category expanded to include:
  - Internet backbone services, including services by one internet service provider to another
  - Internet access services.

#### **Expansion of scope of existing services (effective from a date to be notified upon enactment of Finance Bill, 2008):**

Service Category	To Include
Banking and other financial services	Purchase and sale of foreign currency, including money changing by an authorized dealer or an authorized money changes
Foreign exchange broker service	Purchase and sale of foreign currency, including money changing by an authorized dealer or an authorized money changes
Business auxiliary service	Information technology service
Consulting engineer service	Computer software engineering consultancy
Cargo handling service	Packing together with transportation of cargo or goods with or without services like loading, unloading, unpacking
Technical testing and analysis service	Testing or analysis of information technology software
Technical inspection and certification service	Inspection, examination and certification of information technology software
Tour operator service	Journey from one place to another in a contract carriage vehicle and not just a tourist vehicle

**Clarification (by way of explanation) regarding the scope of existing services:**

<b>Service category</b>	<b>Clarification</b>
Business auxiliary service	Includes service provided in relation to promotion or marketing of games of chance(including lottery),organized, conducted or promoted by the client
Management, maintenance or repair	"properties" covered under the said category to include information technology software
Renting of immovable property	Includes allowing or permitting the use of space in an immovable property, irrespective of whether transfer of possession or control of such immovable property takes place

**Exemptions from service tax (effective from 1 March, 2008):**

- Service provided by a person located outside India in relation to booking of a hotel in India for a person located outside India.
- Unconditional exemption of 75 percent of gross amount charged as freight, for services provided in relation to transport of goods by a Goods Transport Agency (GTA). Definition of 'output service' amended to specifically exclude from its scope, the services provided by a GTA.

**Amendments in provisions regarding export/ import of services (effective from 1 March, 2008):**

- The Export of Services Rules, 2005 have been amended to clarify that the following services provided through internet or any electronic/ computer network would be treated as export of services (irrespective of whether the services are performed in India or outside India), if these services are rendered in relation to goods or any immovable property, as the case may be, situated outside India at the time of provision of service:
  - Management, maintenance or repair
  - Technical testing and analysis service
  - Technical inspection and certification service.

Similar amendment made in Taxation of Services (provided from outside India and received in India) Rules, 2006 (the Import Rules).

**Valuation for transactions between 'associated enterprises' (effective from enactment of Finance Bill, 2008):**

- Transaction between 'associated enterprises' liable to tax even if no payment is received and the taxable value is recognized as revenue/ expenditure in the books of the person who is liable to pay service tax. In other words, service tax in case of transaction between 'associated enterprises' to be paid on receipt of payment or crediting/ debiting of the amount in the books of accounts whichever is earlier.

### **Amendments in CENVAT Credit Rules, 2004 (effective from 1 April, 2008):**

- Removal of capital goods outside the premises of the service provider permitted without any time restriction provided the same are being used for provision of output service.
- Provider of output services using common inputs or input services for providing taxable and exempted services and opting not to maintain separate books of accounts may:
  - Either pay an amount equal to 8 percent of the value of the exempted services or
  - pay amount equivalent to credit attributable to inputs and input services used for providing exempted services (to be calculated in the manner prescribed).
- Provision introduced for taking of credit on inputs and capital goods in respect of which purchase invoices are received by an office or any other premises of the output service provider desirous of taking credit. Such credit allowed on the basis of invoice/ bill/ challan issued by the office/ premises receiving purchase invoice.

### **OTHER PROPOSALS**

Effective from 1 March, 2008:

- Facility of payment of service tax in advance and adjustment against service tax for the subsequent period extended to all service providers (earlier the facility was available only to service providers having centralised registration).
- Limit for self-adjustment of excess service tax paid increased from the present level of INR 0.05 million to INR 0.1 million.
- Time limit for filing revised return increased from 60 days to 90 days.

Effective from 1 April, 2008:

- The exemption limit for small service providers increased from the present level of INR 0.8 million to INR 1 million.

### **CUSTOMS DUTY**

#### **Amendments (effective from 1 March, 2008)**

- No change in peak rate of Basic Customs Duty (BCD) on non-agricultural products. However, effective Customs Duty stands reduced from 34.13 percent to 31.70 percent due to reduction in Additional Duty of Customs (ADC).
- BCD on Project Imports reduced from 7.5 percent to 5 percent on specified industrial projects, power transmission, sub-transmission and distribution projects, etc.
- Exemption of ADC of 4 percent withdrawn for power generation projects (other than mega power projects), transmission, sub-transmission and distribution projects, and specified goods for high voltage transmission projects.
- Benefit of 5 percent BCD expanded to include MP3/ MP4 and MPEG player with or without audio and video reception facility.
- Exemption from BCD extended to specified parts of set-top boxes, raw materials /inputs used in manufacture of specified electronic/ IT products.
- Customs Duty on export of chromium ores and concentrates increased from INR 2,000 PMT to INR 3,000 PMT.
- National Calamity Contingent Duty (NCCD) of 1 percent has been imposed on mobile phones. This duty shall be levied as ADC under Section 3 (1) of Customs Tariff Act, 1975.
- NCCD of Customs removed on specified synthetic filament yarn.
- BCD on specified raw materials for use in sports goods for export exempt subject to specified conditions.
- Maximum period of re-export of leased equipment and machinery, temporarily imported for use in projects increased to 18 months. Such goods would be

subject to customs duty ranging from 5 percent to 40 percent of applicable duty depending on their period of stay.

- The maximum period for duty drawback on re-export of goods reduced to 18 months.

#### **Illustrative Changes in BCD rates:**

##### **Proposed amendments (effective from enactment of Finance Bill, 2008)**

- All Gazetted Customs officers empowered to issue summons.
- Penalty for violations of Customs provisions not expressly mentioned in the law increased from INR 10,000 to INR 100,000.
- Difference in opinion within the committee of commissioners of customs regarding appealing against an order to be referred to jurisdictional Chief Commissioner of customs for his decision.

### **CENTRAL EXCISE**

#### **Amendments (effective from 1 March, 2008)**

- Excise duty reduced from 16 percent to 14 percent. Other ad valorem rates of 24 percent, 12 percent and 8 percent remain unchanged.
- National Calamity Contingent Duty (NCCD) of 1 percent imposed on mobile phones.
- Benefit of 8 percent Excise Duty expanded to include MP3/ MP4 and MPEG player with or without audio and video reception facility.
- Effective Excise Duty for clearances from 100 percent Export Oriented Unit ('EOU') to Domestic Tariff Area ('DTA') to be computed on 50 percent BCD and applicable ADC.
- Excise Duty on unbranded Motor Spirit changed from 6 percent (advalorem) plus INR 13 per Litre (specific rate) to specific rate of INR 14.35 per Litre.
- Excise Duty on unbranded High Speed Diesel changed from 6 percent (advalorem) plus INR 3.25 per Litre (specific rate) to specific rate of INR 4.60 per Litre.
- Abatement rates for maximum retail price ('MRP') products realigned due to reduction in Excise Duty.
- Rules notified for determination of MRP to be applicable in specific cases.

#### **Reduction in excise duty (effective from 1<sup>st</sup> March 2008)**

#### **Increase in Excise Duty (effective from 1<sup>st</sup> March 2008)**

#### **Amendments (effective from 1 April 2008)**

- Manufacturer of dutiable and exempted goods has the option to take full credit and pay either 10 percent of the value of exempted goods or reverse the credit attributable to the exempted goods.

#### **Proposed amendments (effective from enactment of Finance Bill 2008)**

- Explanation inserted in Section 2 of the Central Excise Act to clarify that goods include any article capable of being bought and sold and deemed to be marketable.
- Government empowered to charge duty on the basis of capacity of production for certain specified products.
- Refund of interest paid on excise duty to be made available to an assessee.
- Interest to be paid to assessee on delayed refund of pre-deposit by department.

### **CENTRAL SALES TAX (CST)**

- CST rate to be reduced from 3 percent to 2 percent with effect from 1 April, 2008.
- Once agreement is reached about compensation for losses, new rate would be notified.

### **GOODS & SERVICE TAX (GST)**

According to the Finance Minister, considerable progress has been made in the preparation of introducing GST from 1 April, 2010. However, no concrete roadmap has been unveiled.

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